

March 24, 2020

Members of Congress
United States House of Representatives
Washington, DC 20515

RE: USDA Support for growers, shippers and distributors who are exposed to unprecedented credit risks as a result of the Covid-19 Pandemic

Dear Members of Congress,

On behalf of the California Fresh Fruit Association (CFFA) and its members, I write to express our concern over the Covid-19 pandemic and the devastating impact on the “food away from home” channel of distribution, effecting countless foodservice operations, distributors, processors, along with growers and shippers.

CFFA is a voluntary public policy organization that works on behalf of our members – growers, shippers, marketers and associates – on issues that specifically affect commodities: fresh grapes, kiwis, pomegranates, cherries, blueberries, peaches, pears, apricots, nectarines, plums, interspecific varieties and apples and persimmons. It is the Association’s responsibility to serve as a liaison between regulatory and legislative authorities by acting as the unified voice of our members.

The Perishable Agricultural Commodities Act of 1930 (The Act), was passed in recognition of the fact that the produce industry, with highly perishable inventory and low barriers to entry, is particularly vulnerable to credit risk. Sellers can rarely reclaim inventories or fixed assets when buyers file for bankruptcy. The Act and its statutory trust provision (PACA Trust) added in 1984 (7 CFR Sec. 46.46), have served the industry well. However, the unprecedented, massively widespread, and overnight devastation due to Covid-19, to roughly half of the food supply in the United States, is and will continue to have, crippling financial impacts on the fresh produce industry.

It is highly likely that the PACA Trust process will fall short of protecting the survival and cash flow of grower/shippers across the country, without support from the United States Department of Agriculture (USDA). The following is a proposed course of action that the USDA could follow to reduce the devastating impact to our fresh produce supply chain, while minimizing the amount of directed government aid required and the additional burden of managing the relief efforts.

Proposed USDA Support:

In these unprecedented circumstances, we propose that the USDA guarantee the payment of all legitimate PACA Trust claims, to the extent these claims are not satisfied by the available PACA Trust assets (e.g., receivables realized from the sale of perishable agricultural commodities).

The process would not create a new USDA process, as the USDA’s PACA Trust has been in existence for decades. PACA Trust beneficiaries, such as grower, shippers, and distributors, would be clearly identified as a specific class in bankruptcies involving valid PACA Trust claims. The specific amount owed to each beneficiary would be clearly defined by the amount of the beneficiary’s qualified receivables, less proceeds realized from the receiver’s available trust assets.

This move would assure the survival of countless growers, shippers, and distributors of produce throughout the supply chain, and would provide for liquidity, allowing cash impaired suppliers to borrow against government backed receivables.

The USDA would only step in where there is a demonstrated need (i.e., where a PACA Trust beneficiary's claim is not satisfied through the bankruptcy process) and the process of administrating the aid would not require extensive additional USDA development or support.

The process could work as follows:

- Receivers who cannot meet their financial obligations file bankruptcy
- Growers, shippers, distributors and other PACA Trust beneficiaries, with valid PACA Trust rights, would assert these rights in federal bankruptcy court just as they do today.
- The bankruptcy process would define the amount of qualified, protected receivables that are due the PACA claimants and the amount of the PACA trust assets the receiver can produce.
- The Federal Government would guarantee any shortfall of PACA Trust assets to meet 100% of the claimant's amounts.

We understand that these are trying times and that our nation is facing an enemy unlike one we have ever seen. Members of CFFA take the responsibility of providing a safe and reliable food supply seriously and we are just asking for your help in giving us the tools to accomplish that goal.

Sincerely,



Ian LeMay
President