



PennState Law

Center for Agricultural
and Shale Law

PENNSYLVANIA DEPARTMENT OF AGRICULTURE  AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Understanding Agricultural Law Webinar Series

Understanding Agricultural Law

Webinar Series

Understanding the Basics of

Producer Protections for Buyer Default

April 26, 2024

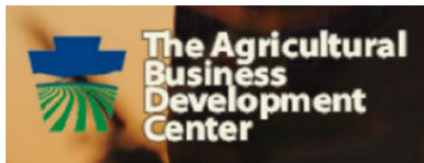




Understanding Agricultural Law

**A Legal Educational Series for General Practice Attorneys and Business
Advisors Representing Agricultural and Rural Clients**

This webinar series is specifically tailored to create subject matter literacy and competence on fundamental issues of agricultural law for attorneys, advisors, and service providers to agricultural producers and agri-businesses.





Understanding Agricultural Law Series:

Past Topics:

- Agricultural Labor Laws
- Leasing Farmland for Energy Development
- Local Land Use Regulation of Agriculture
- Statutory Protections for Ag Operations
- Agricultural Cooperatives
- Livestock Market Regulation
- Crop Insurance
- Federal & State Conservation Programs
- Licensing & Regulation of Direct Agricultural Product Sales
- Agricultural Finance
- PA's "Clean & Green" Tax Assessment Program
- Animal Confinement Laws
- Conservation Easements
- Landowner Immunity Statutes
- The Farm Credit System
- Milk Pricing
- Pesticides
- Seed Laws
- Fair Labor Standards Act (FLSA)
- Perishable Agricultural Commodities Act (PACA)
- Food Labeling
- Organic Production

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Understanding Agricultural Law Webinar Series

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June 28, 2024 *Understanding the Basics of the Clean Water Act & Agriculture*

July 26, 2024 *Understanding the Basics of Agritourism Laws*

Aug. 23, 2024 *Understanding the Basics of the H-2A Temporary Agricultural Worker Program*

More upcoming programs from the Center for Agricultural and Shale Law.



July 16, 2024 *Quarterly Dairy Legal Webinar: U.S. State Milk Pricing & Supports, Part 2*

Register at <https://aglaw.psu.edu/events/>



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Understanding the Basics of Producer Protections for Buyer Default

PENNSYLVANIA DEPARTMENT OF AGRICULTURE  AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Understanding Agricultural Law Webinar Series



Default Legal Remedies for Nonpayment

- File Suit
 - Breach of Contract/Tort
 - Uniform Commercial Code
 - Pennsylvania Title 13 Pa.C.S.A. Commercial Code



Default Legal Remedies for Nonpayment

Problem—Buyer Insolvency



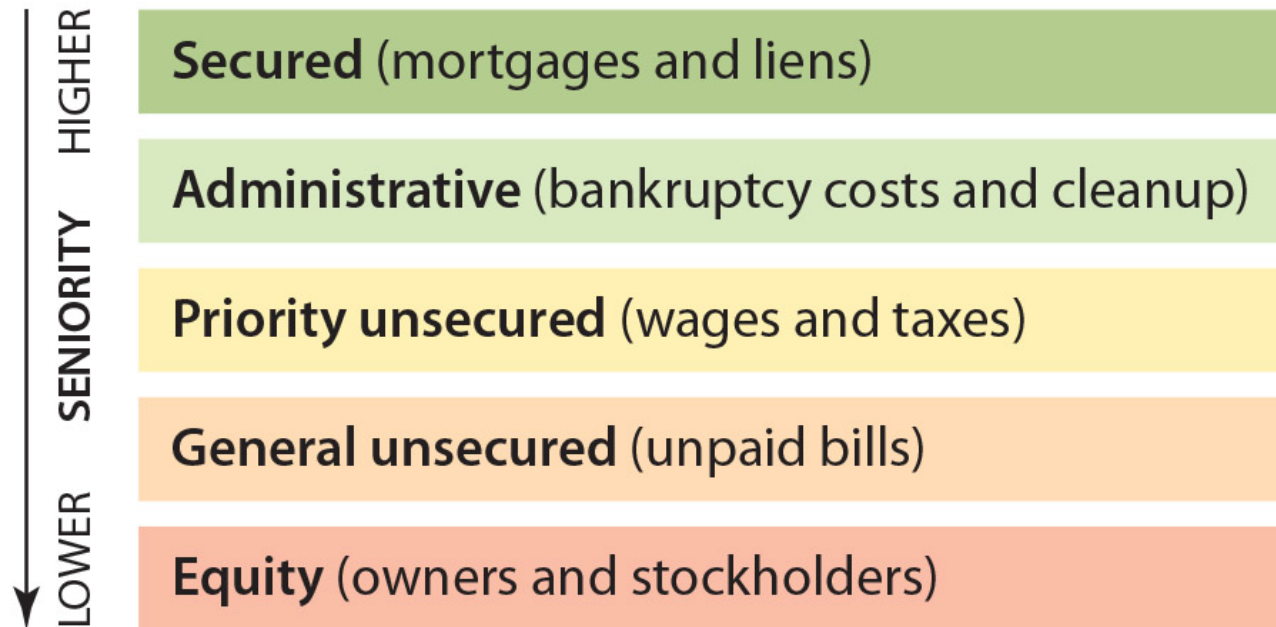


Default Legal Remedies for Nonpayment

Problem—Bankruptcy, Order of Creditors

Which Debt Gets Paid First in Bankruptcy

Federal bankruptcy law determines the order of payment.



Bankruptcy creditor hierarchy <https://ieefa.org/articles/ieefa-primer-cleanup-costs-supersede-most-other-liabilities-oil-and-gas-bankruptcies>

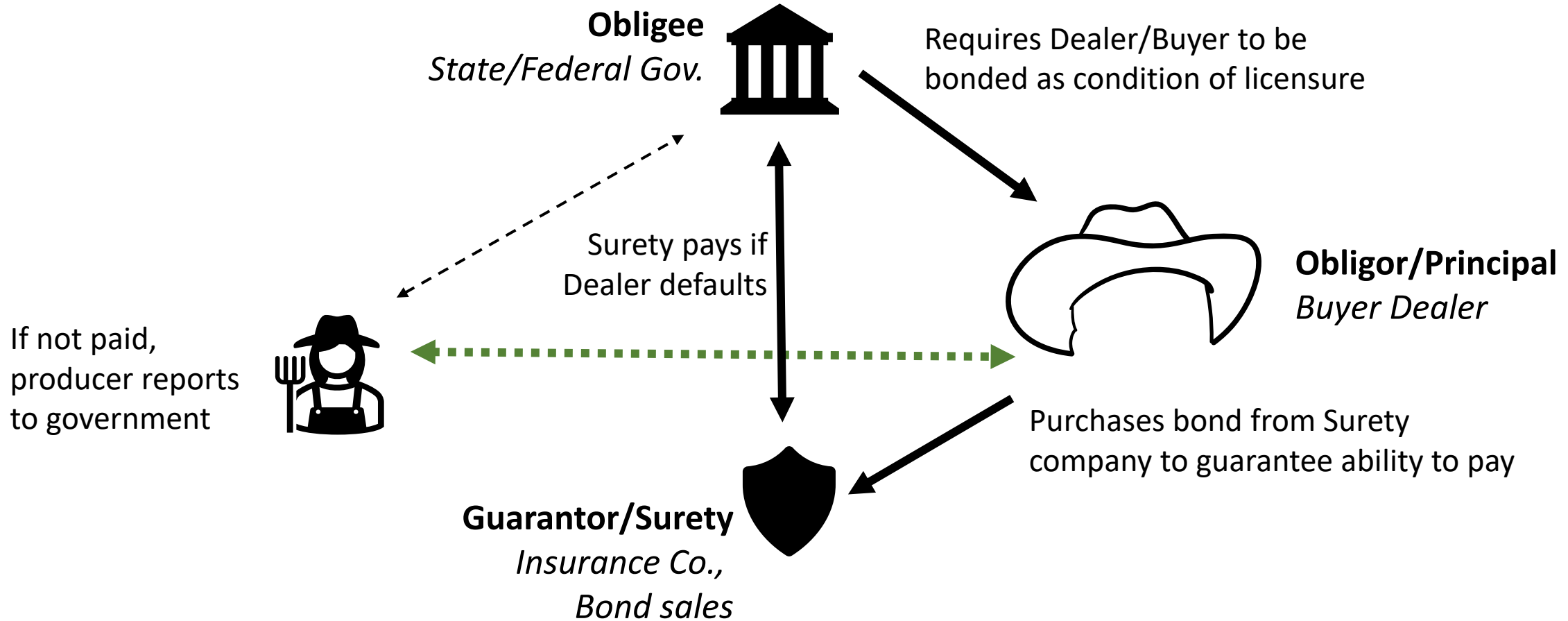


State & Federal Statutory Remedies for Commodity Buyer Default

1. Bonding & Indemnity Fund Statutes (State)
 - a. Grain Dealers
 - b. Milk Dealers—Pennsylvania
2. Trust Statutes (Federal)
 - a. Packers & Stockyards Act (1921)
 - b. Perishable Agricultural Commodities Act (1930)

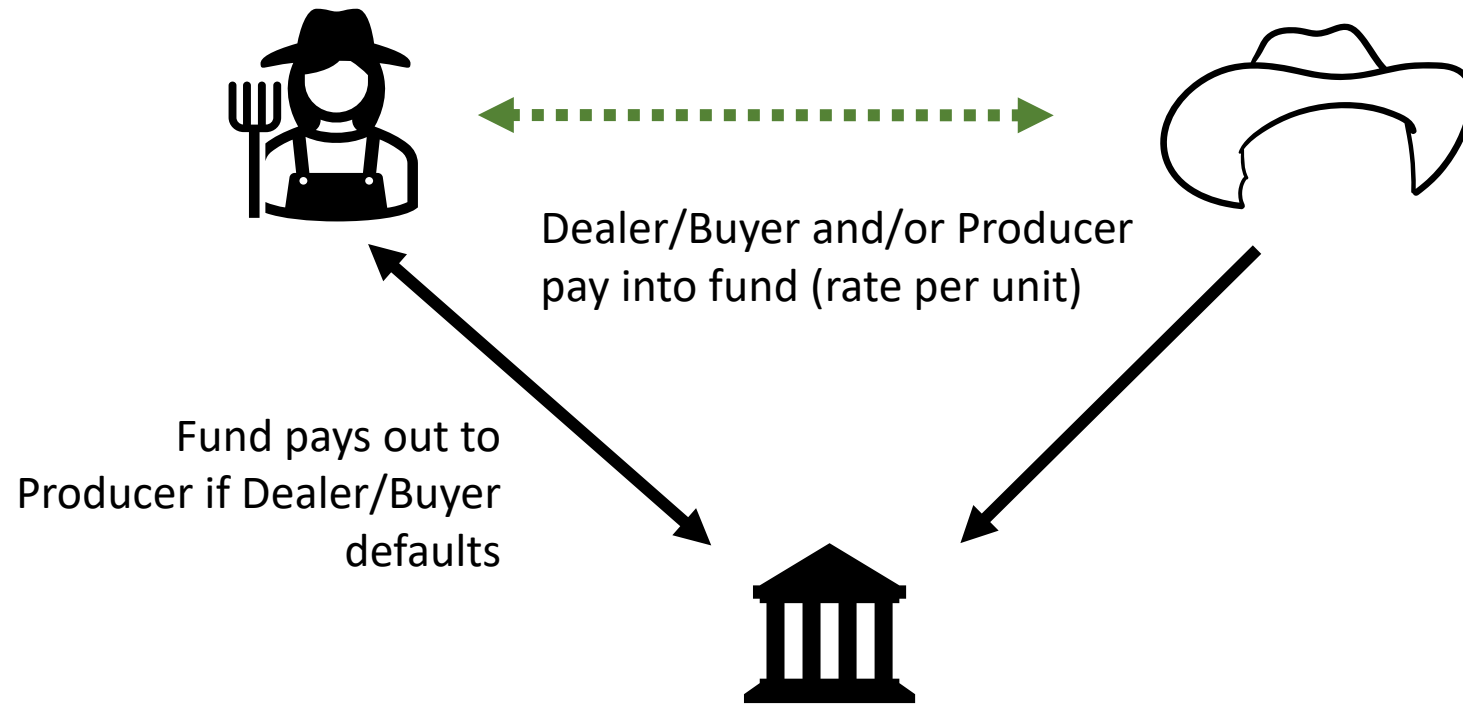


1. Bonding & Indemnity Funds (Bonds)





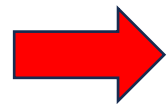
1. Bonding & Indemnity Funds (Indemnity Fund)





State & Federal Statutory Remedies for Commodity Buyer Default

1. Bonding & Indemnity Fund Statutes (State)



a. Grain Dealers

b. Milk Dealers—Pennsylvania

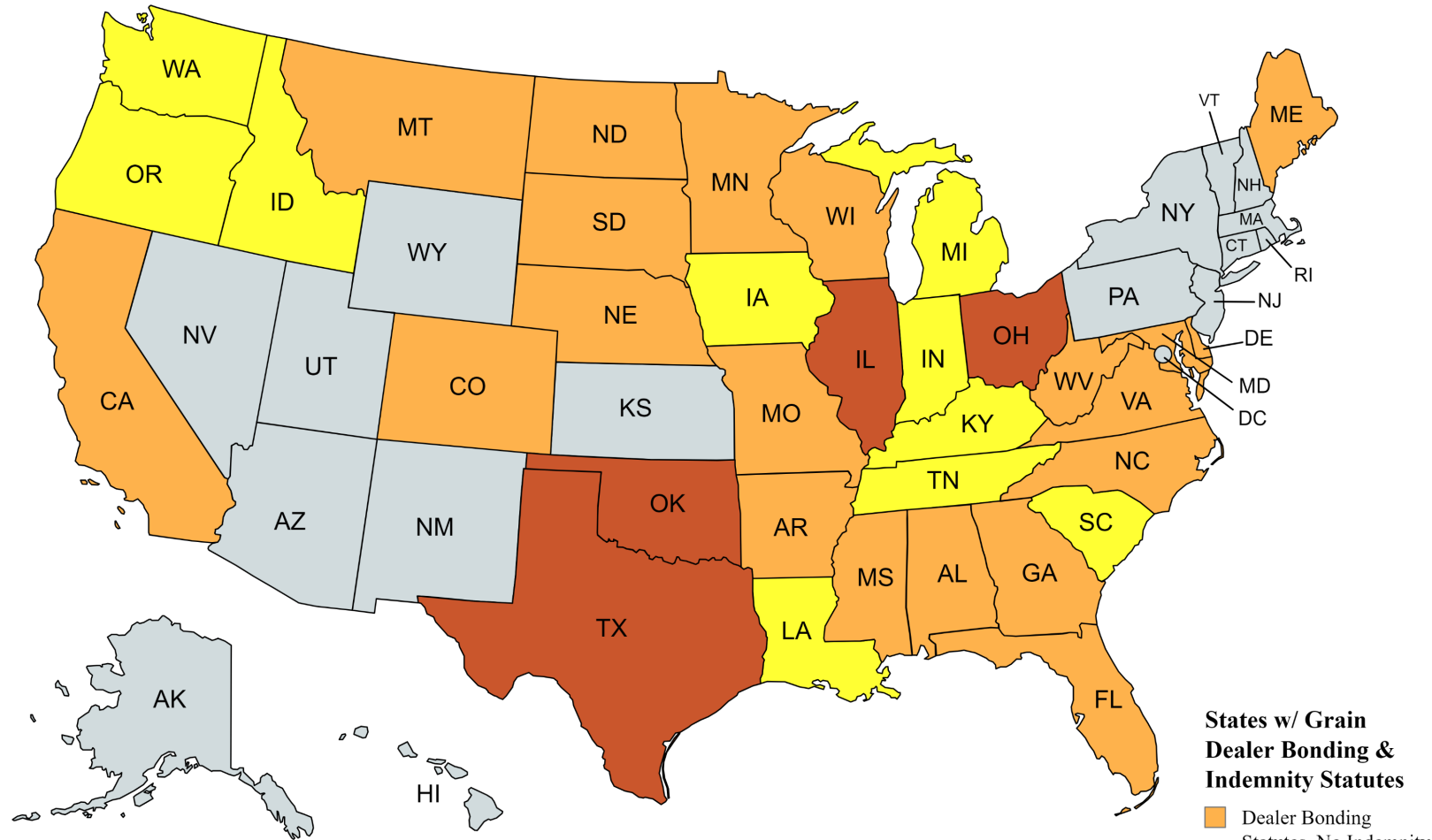
2. Trust Statutes (Federal)

a. Packers & Stockyards Act (1921)

b. Perishable Agricultural Commodities Act (1930)



1a. Grain Dealers—States with Bonding/Indemnity Statutes



States w/ Grain Dealer Bonding & Indemnity Statutes

- Dealer Bonding Statutes, No Indemnity
- Indemnity Statutes, No Bonds
- Both Bonding and Indemnity Statutes

See Center for Agricultural and Shale Law, Grain Regulations—Bonds

<https://us4.campaign-archive.com/?e=&u=80a8906440d1294b47ed9043c&id=9a15f0c4f6>

Grain Bonding Regulations – Indemnity Funds

<https://us4.campaign-archive.com/?e=&u=80a8906440d1294b47ed9043c&id=dd15ce91ec>



1a. Grain Dealers—Bonding Statutes

Amount Requirements:

- Min: \$5,000–\$25,000
- Max: \$100,000–\$1,000,000

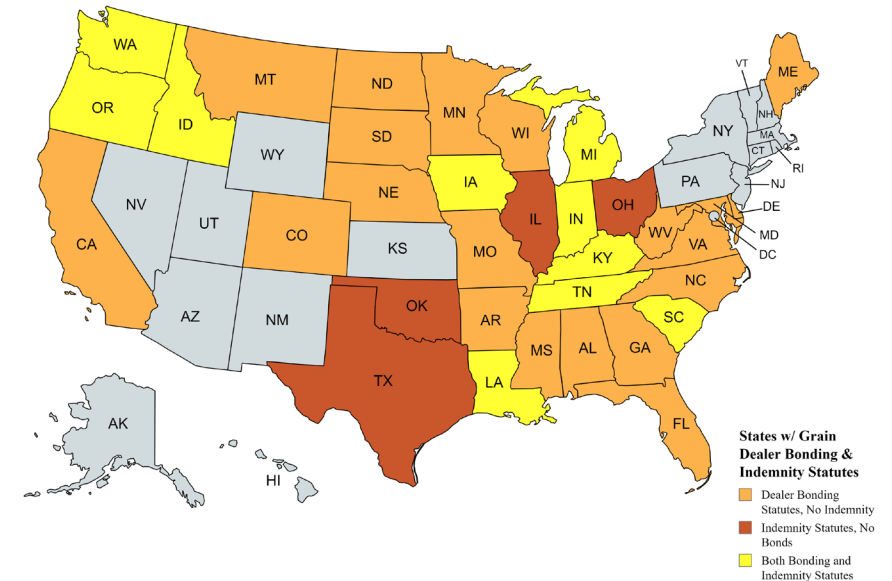
Length of Time to File Claim

- 160–180 days

Payouts

- Pro Rata Basis
 - Ex: \$20K Bond, \$5K claim, \$25K total claims = \$4K payment

**Bonding also required as part of voluntary licensing under U.S. Warehouse Act (7 U.S.C. §§241–256; 7 C.F.R. §§ 869.1–869.404)*



See Center for Agricultural and Shale Law, Grain Regulations—Bonds
<https://us4.campaign-archive.com/?e=&u=80a8906440d1294b47ed9043c&id=9a15f0c4f6>
Grain Bonding Regulations – Indemnity Funds
<https://us4.campaign-archive.com/?e=&u=80a8906440d1294b47ed9043c&id=dd15ce91ec>



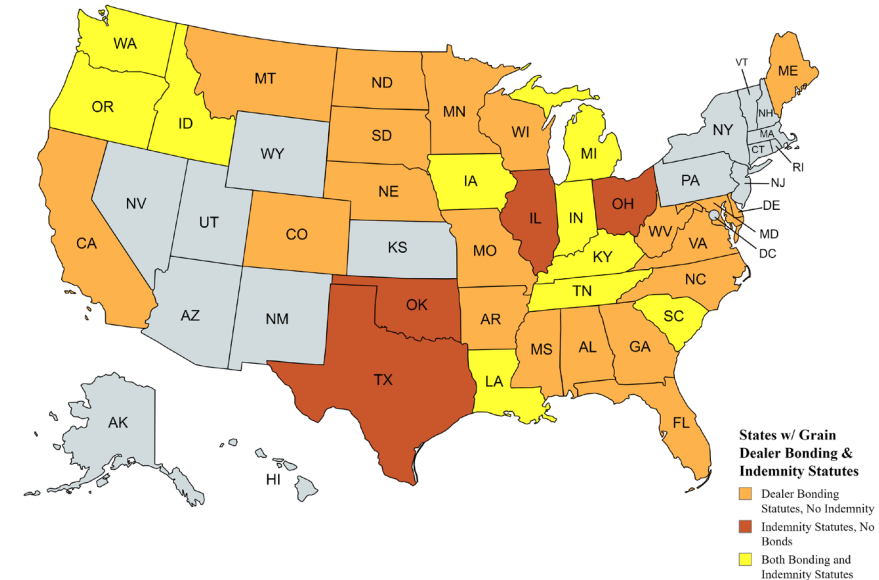
1a. Grain Dealers—Indemnity Funds:

Min/Max Fund Amount:

- \$250,000 (Idaho) to \$25,000,000 (Illinois)

Assessments:

- Grain Value ($\$0.0025 \times$ total value of all grain sold annually) *or*
- Grain Amount ($\$0.01$ – $\$0.02$ per bushel on all grain handled)

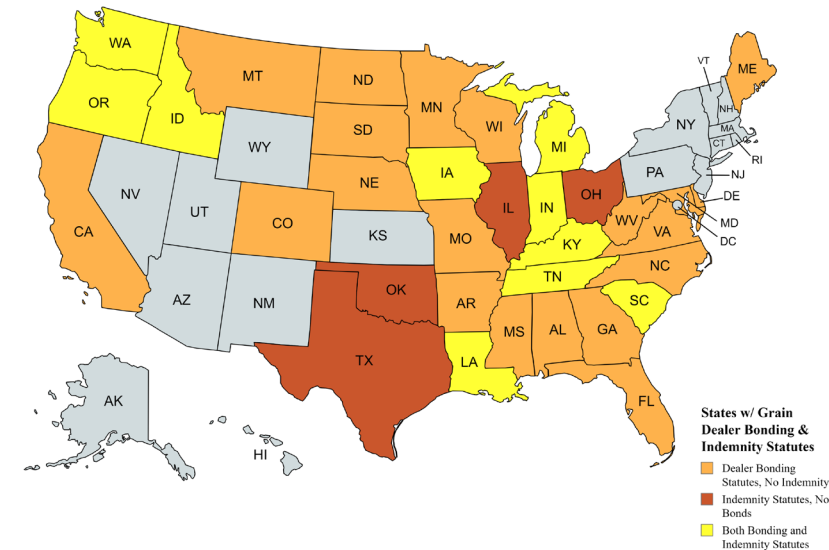


See Center for Agricultural and Shale Law, Grain Regulations—Bonds
<https://us4.campaign-archive.com/?e=&u=80a8906440d1294b47ed9043c&id=9a15f0c4f6>
Grain Bonding Regulations – Indemnity Funds
<https://us4.campaign-archive.com/?e=&u=80a8906440d1294b47ed9043c&id=dd15ce91ec>



1a. Grain Dealers–Indemnity Fund Payout–Dealer Consequences:

- Criminal Action
 - Failure to pay producer may be misdemeanor
 - Fines \$250–\$10,000 or up to 1-year jailtime
- Repayment
 - Dealer obligated to repay
- Civil Action
 - State may sue for recovery/injunction



See Center for Agricultural and Shale Law, Grain Regulations—Bonds
<https://us4.campaign-archive.com/?e=&u=80a8906440d1294b47ed9043c&id=9a15f0c4f6>
Grain Bonding Regulations – Indemnity Funds
<https://us4.campaign-archive.com/?e=&u=80a8906440d1294b47ed9043c&id=dd15ce91ec>



1a. Grain Dealers—Legislation Introduced in Pennsylvania

2021–2022

- SB 1032
- HB 2564

2023–2024

- HB 862

- “commodity” = “Corn, soybean, wheat, barley, oat, milo . . . not . . . crops purchased as seed”
- "providing for licensing and regulation of agricultural commodity handlers;
- creating an Agricultural Commodity Indemnity Fund; and
- providing for penalties and enforcement“

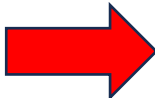
SB 1032 <https://www.legis.state.pa.us/CFDOCS/billInfo/billInfo.cfm?year=2021&slnd=0&body=S&type=B&bn=1032>

HB 2564 <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&slnd=0&body=H&type=B&bn=2564>

HB 862 <https://www.legis.state.pa.us/cfdocs/billInfo/BillInfo.cfm?year=2023&slnd=0&body=H&type=B&bn=862>



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1b. PA Milk–Two Main Statutes:

- **Milk Marketing Law, Act of Apr. 28, 1937, P.L. 417, No. 105**
[https://govt.westlaw.com/pac/Browse/Home/Pennsylvania/UnofficialPurdonsPennsylvaniaStatutes?guid=NC69A5F6D9C254813980F88EC0793985D&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/pac/Browse/Home/Pennsylvania/UnofficialPurdonsPennsylvaniaStatutes?guid=NC69A5F6D9C254813980F88EC0793985D&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))
- **Milk Producers Security Act, Act of Jul. 4, 2004, P.L. 509, No. 66**
[https://govt.westlaw.com/pac/Browse/Home/Pennsylvania/UnofficialPurdonsPennsylvaniaStatutes?guid=NBFC3D5CECAB142D2AB0F7073DCB527D5&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/pac/Browse/Home/Pennsylvania/UnofficialPurdonsPennsylvaniaStatutes?guid=NBFC3D5CECAB142D2AB0F7073DCB527D5&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

Regulations:

- **7 Pa. Code Part VI. Milk Marketing Board**
<https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/007/partVItoc.html&d=reduce>



1b. PA Milk—Milk Laws

What do they do?

- Establish PA Milk Board
- Establish Pricing System
- Set Bonding Requirements for Dealers
- Establish Indemnification (Security) Fund





1b. PA Milk—Milk Laws: “Milk dealer”

“Milk dealer.”

- Any person who *purchases or receives or handles on consignment or otherwise* milk within the Commonwealth, for sale, shipment, storage, processing or manufacture, within or without the Commonwealth, whether on behalf of the person or others, or both.
- This definition shall not include cooperatives as provided for in section 3(a).
- The term includes a vested milk dealer.

31 P.S. § 626.4



1b. PA Milk–Bonding Requirements for PA Milk Dealers

- Amount of Bond:
 - **75%** of highest aggregate amount owed to all producers for a 40-day period in last 12 months or
 - **30%** of highest aggregate amount owed to all producers for a 40-day period in last 12 months *if participating in the Security Fund*
- Bonds posted annually

See "Milk Producers Security Act," Act of Jul. 4, 2004, P.L. 509, No. 66, § 7, <https://www.legis.state.pa.us/WU01/LI/LI/US/HTM/1984/0/0136..HTM>
7 Pa. Code § 151.9. "Calculation of bonding obligation," <https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/007/chapter151/s151.9.html&d=reduce>



1b. PA Milk—PA Milk Producers' Security Fund

Dealer Assessment

- \$0.02 per hundredweight



"Currently, there is more than \$3 million in the Security Fund and more than \$100 million in collateral or corporate surety bonds."

Milk Producers' Security Act 31 P.S. § 626.9
[https://govt.westlaw.com/pac/Document/N433DCB20344211DA8A989F4EECDB8638?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/pac/Document/N433DCB20344211DA8A989F4EECDB8638?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

See Pennsylvania Milk Board > History, "Introduction,"
<https://www.pmb.pa.gov/Pages/History.aspx> (last accessed April 24, 2024).



1b. PA Milk—Prompt Payment

Milk Producers' Security Act

- [31 P.S. § 626.5](#): “[N]o later than the 50th day from which the milk was received or purchased.”
 - But—board may shorten
- [7 Pa. Code § 143.12](#): “[N]ot later than the 26th day of each month and the 17th day of the following month.”
 - Promissory note NOT payment



1b. PA Milk–Bond Claims



Milk Producers' Security Act

- Board will give notice to producers w/in 5 days of discovering Dealer default
- Producer has 30 days to file claim



1b. PA Milk Dealers–Bond Claims: Amount

- “75% of 40-day purchases” or
- Pro Rata



1b. PA Milk—Bond Claims: Penalties to Dealers

- \$150/day fine for late payments
- Suspension/revocation of license

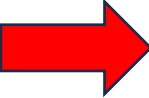


1b. PA Milk—Recent Bond Claims

- Nov. 2019—Trickling Springs Dairy
- July 2020—Dean Foods
- April 2021—William Shaffer, subdealer
 - Distributed Pro Rata:
 - "The Board finds that Valley's share of the bond is
 - $\$28,659.24/\$46,157.94 \times \$35,000.00 = \$21,731.33$
 - The Board finds that Galliker's share of the bond is
 - $\$17,498.70/\$46,157.94 \times 35,000.00 = \$13,268.67$ "



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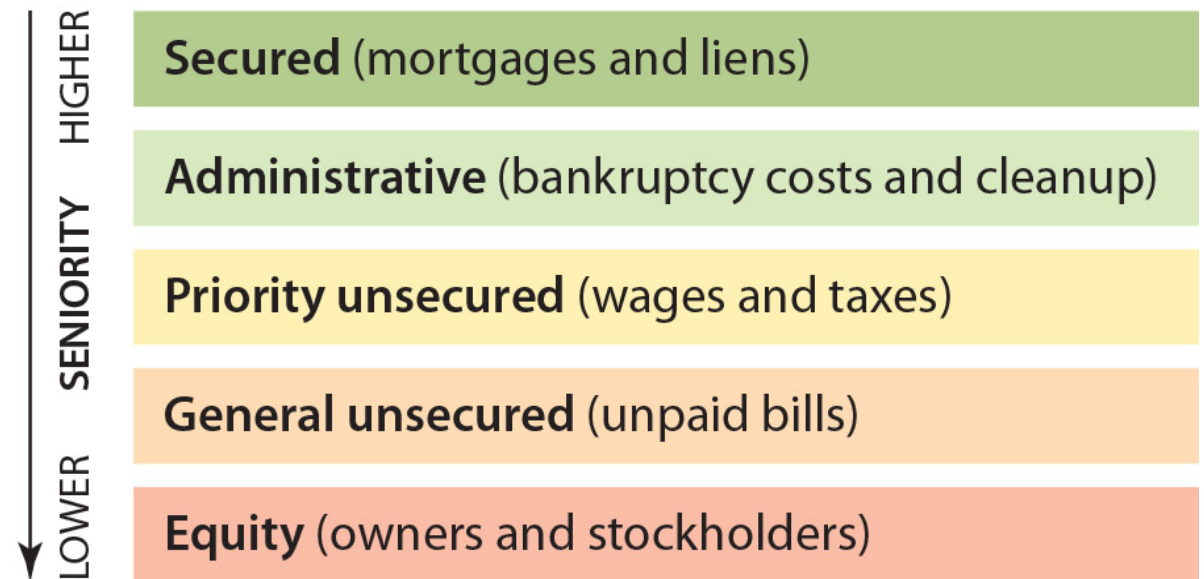


2. Trust Statutes

- "creates a fiduciary relationship and establishes superior creditor rights over other creditors"

Which Debt Gets Paid First in Bankruptcy

Federal bankruptcy law determines the order of payment.





Trust—Producer!

Secured (mortgages and liens)

Administrative (bankruptcy costs and cleanup)

Priority unsecured (wages and taxes)

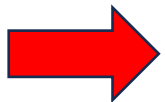
General unsecured (unpaid bills)

Equity (owners and stockholders)



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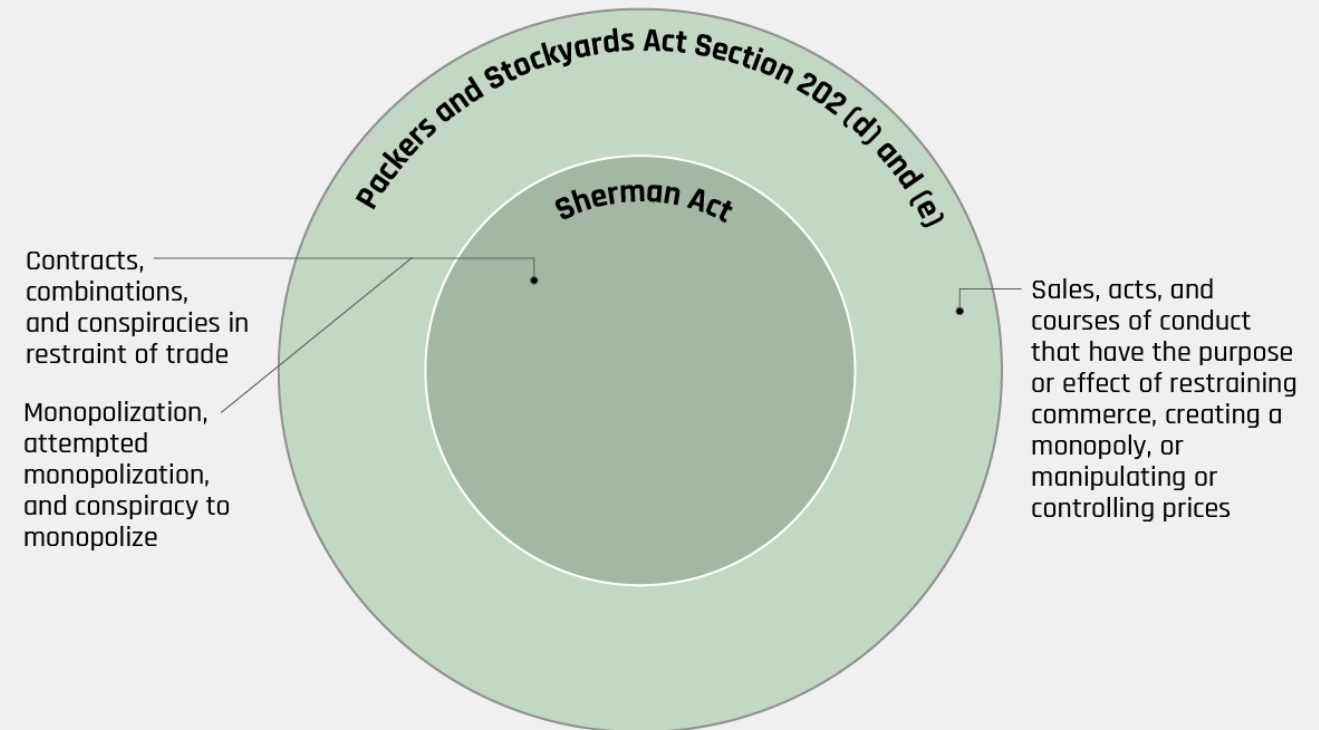
2a. PSA–Generally

- Ensure competition/fair dealing in livestock, meat, & poultry markets

Michael Kades, Protecting livestock producers and chicken growers: Recommendations for reinvigorating enforcement of the Packers and Stockyards Act, Equitable Growth <https://equitablegrowth.org/research-paper/protecting-livestock-producers-and-chicken-growers/>

The Packers and Stockyards Act prohibits conduct not covered by the Sherman Act

Unilateral acts that restrain commerce and that manipulate price violate the Packers and Stockyards Act



Source: Section 202(d) and (e) of the Packers and Stockyards Act, 7 USC Sec. 192(e); Section One and Two of the Sherman Act, 15 USC Secs. 1 and 2.



2a. PSA–Generally

- Applies to those selling/marketing in interstate or foreign commerce
- “Farmers and ranchers are not subject to the Act when buying livestock for their own stocking or feeding purposes, or when marketing their own livestock.”

AMS, Frequently Asked Questions About Regulated Entities <https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/regulated-entities/faq>



2a. PSA–Generally

- Administered by USDA’s Agricultural Marketing Service (AMS)
 - Before September 2017, administered by the “Grain Inspection, Packers, and Stockyards Administration (GIPSA)”

See Secretary Perdue Announces USDA Improvements for Customer Service & Efficiency, USDA
<https://www.usda.gov/media/press-releases/2017/09/07/secretary-perdue-announces-usda-improvements-customer-service>



2a. PSA—Terms

- **“Market Agency”**

- “any person engaged in the business of

- (1) buying or selling in commerce livestock on a commission basis
or

- (2) furnishing stockyard services . . . [including] through the use of
online, video, or other electronic methods . . . so long as such . . .
sales . . . Exceed[] \$250,000.”

- **“Dealer”**

- “any person, not a market agency, engaged in the business of
buying or selling in commerce livestock, either on his own account
or as the employee or agent of the vendor or purchaser.”

(7 U.S. Code § 201(c)-(d))



2a. PSA–Terms

Terms:

- “Packer”:
 - “any person engaged in the business
 - (a) of buying **livestock** in commerce for purposes of **slaughter**, or
 - (b) of **manufacturing** or preparing meats or meat food products for sale or shipment in commerce, or
 - (c) of **marketing meats**, meat food products, or livestock products in an **unmanufactured** form acting as a **wholesale** broker, dealer, or distributor in commerce.”

[\(7 U.S.C. § 191\)](#)



2a. PSA–Bonds

- Marketing Agencies & Dealers
- Slaughtering packers > \$500K in average annual purchases
- Minimum amount=\$10,000

[7 U.S.C § 204](#)

[9 C.F.R. Subpart G](#)

See also AMS, How to Comply with the Bond Requirement
<https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/regulated-entities/how-to-comply-bond-requirement>



2a. PSA—Bonds: Bonded Entities in PA

Top 12 Bonded PA Packers by Bond Coverage Amount

- Bonded Packers in PA, current as of April 11, 2024
- See <https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/regulated-entities/packer>

Business Name	City	Zip Code	Clause 4 Active Coverage
Clemens Food Group, LLC wholly owned subsidiary of Pleasant Valley Foods, LLC; Pleasant Valley Packing, LLC; The Clemens Family Corporation	Hatfield	19440	\$14,185,000
Nicholas Meat, LLC	Loganton	17747	\$2,250,000
Marcho Farms, Inc.	Souderton	18964	\$565,000
Leidy's, LLC	Souderton	18964	\$455,000
USA Pork Packers, Inc.	Hazleton	18201	\$135,000
Al-Marwa, LLC	Quakertown	18951	\$40,000
Herfurth Bros., Inc.	Gilbert	18331	\$40,000
Tri-County Meats, Inc.	Claysburg	16625	\$40,000
Baya Halal Meats, LLC	Doylesburg	17219	\$35,000
Zrile Bros. Packing Co., Inc.	W Middlesex	16159	\$35,000
Seabrite, Corp.	Denver	17517	\$30,000
Wayne Nell & Sons Meats, Inc.	East Berlin	17316	\$30,000



2a. PSA—Bonded Entities in PA

PA Packers Bond Coverage \$25K & Below

- Bonded Packers in PA, current as of April 11, 2024
- See <https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/regulated-entities/packer>

Business Name	City	Zip Code	Clause 4 Active Coverage
McElwee Butchering, LLC (dba Tyler's Custom Cuts)	Newville	17241	\$25,000
Cabin Hollow Butcher Shop, Inc.	Dillsburg	17019	\$20,000
Groff Meats, Inc.	Elizabethtown	17022	\$20,000
MRG Food LLC	McKeesport	15132	\$20,000
Philly Farm, Inc. (dba Albaraka Live Stock & Poultry)	Philadelphia	19140-3017	\$20,000
Pudliner's Packing, LLC	Johnstown	15906	\$20,000
Baringer, Arlene (dba Springfield Meat Co.)	Richlandtown	18955	\$15,000
Manieri, Stephen (dba Manierie Home Dressed Meats)	Bechtelsville	19505	\$15,000
Philly Food Distributors, Inc.	Philadelphia	19111	\$15,000
Thoma Meat Market, Inc.	Saxonburg	16056	\$15,000
Cunningham Meats, LLC	Indiana	15701	\$10,000
Eaders Butcher Shop Inc.	Big Cove Tannery	17212	\$10,000
Ted's Meat Market, LLC (dba Ted's Meat Market & Slaughterhouse)	Reynoldsville	15851	\$10,000



2a. PSA—Prompt Payment

Livestock: Dealers, Market Agencies, & Packers

- General Rule:
 - Payment due in full “before the close of the next business day following purchase and transfer of livestock.”
- For “grade and yield” basis or carcass for slaughter:
 - Payment due in full before “close of the business day following the determination of the purchase price.”

[7 U.S. Code § 228b](#)

See also Prompt Payment for Livestock Purchases, AMS

<https://www.ams.usda.gov/sites/default/files/media/PromptPaymentFactsheet.pdf>



2a. PSA—Prompt Payment

Live Poultry Dealers:

- Poultry growing arrangement
 - Payment in full “by close of the 15th day following the week in which the poultry was slaughtered.”
- Cash Sale
 - Payment in full “before the close of the next business day.”
 - “[C]ash sale means a sale in which the seller does not expressly extend credit to the buyer.”

[7 U.S.C. § 228b–1](#)

See also AMS, Live Poultry Dealer <https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/regulated-entities/live-poultry-dealer>



2a. PSA—Statutory Trust: Dishonored Payment

- Packer:
 - “Payment shall **not be considered to have been made** if the seller receives a payment instrument which is dishonored” (7 U.S.C. § 196(b))
- Poultry:
 - “Payment shall **not be considered to have been made** if the cash seller or poultry grower receives a payment instrument which is dishonored.” (7 U.S.C. § 197(c))
- Livestock Dealer:
 - “[A] payment to an unpaid cash seller shall **not be considered to have been made** if the unpaid cash seller receives a payment instrument that is dishonored.” (7 U.S.C. § 217b(a)(3))



2a. PSA—Statutory Trust

- Livestock *Packers* ([7 U.S.C. § 196](#))—1976
- Poultry *Dealers* ([7 U.S.C. § 197](#))—1987
- Livestock *Dealers* ([7 U.S.C. § 217b](#))—2020



2a. PSA—Statutory Trust

- Livestock *Packers* ([7 U.S.C. § 196](#))—1976
 - Trust provision applies if “average annual purchases . . . **exceed \$500,000**”
 - “All livestock purchased by a packer in cash sales, and all inventories of, or receivables or proceeds from meat, meat food products, or livestock products derived therefrom, **shall be held by such packer in trust for the benefit of all unpaid cash sellers** of such livestock until full payment has been received by such unpaid sellers”



2a. PSA—Statutory Trust

- Poultry *Dealers* ([7 U.S.C. § 197](#))—1987
 - Trust provision applies if “average annual sales . . . [or] value of live poultry obtained by purchase or by poultry growing arrangement [is] in **excess of \$100,000.**”
 - “All poultry obtained by a live poultry dealer, by purchase in cash sales or by poultry growing arrangement, and all inventories of, or receivables or proceeds from such poultry or poultry products derived therefrom, **shall be held by such live poultry dealer in trust for the benefit of all unpaid cash sellers** or poultry growers of such poultry, until full payment has been received by such unpaid cash sellers or poultry growers.”



2a. PSA—Statutory Trust

- Livestock *Dealers* ([7 U.S.C. § 217b](#))—2020
 - Trust provision applies to “[a]ny dealer whose average annual purchases of livestock . . . **exceed[s] \$100,000.**”
 - “All livestock purchased by a dealer in cash sales and all inventories of, or receivables or proceeds from, such livestock shall be **held by such dealer in trust for the benefit of all unpaid cash sellers** of such livestock until full payment has been received by such unpaid cash sellers.”



PSA—Statutory Trust: Elements of Trust

4 Elements of a Trust

- Trust Assets—Buyer’s inventory & proceeds from the inventory sales
- Trustee—Dealer/Buyer
- Beneficiary—Producer (cash seller)
- Purpose—*protect unpaid sellers*

“All X purchased by a dealer in cash sales and all inventories of, or receivables or proceeds from, X shall be held by such dealer in trust for the benefit of all unpaid cash sellers of X until full payment has been received by such unpaid cash sellers.”

Purpose—See 7 U.S.C. §§ 196(a); 197(a)



PSA—Statutory Trust: Elements of Trust

Trust Language in PA Milk Producers' Security Act:

(f) Any security fund established and maintained under this section [by the board] shall be considered a security trust fund for the exclusive benefit of producers supplying milk to the vested milk dealer paying into the fund. No claims of the Commonwealth or any other person may be made against the fund until all amounts due to producers for supplying milk to the vested milk dealer have been paid. Amounts paid into the security trust fund shall be considered an expense to the vested milk dealer necessary for maintaining a license and shall not be considered an asset of the vested milk dealer. (31 P.S. § 626.9(f))



2a. PSA—Statutory Trust: Preserving the Trust

Same for Sales to Packers, Poultry Dealers, and Livestock Dealers:

- Must provide “written notice” to Secretary
 - “within 30 days of the final date for making a payment” or
 - “within 15 business days after the date on which the seller receives notice that the payment instrument promptly presented for payment has been dishonored.”



2a. PSA—Statutory Trust: Claims

Some Q&As from AMS:

Do I Have a Potential Claim Under the Statutory Trust?

- Did a live poultry dealer [or packer] fail to pay you?
- Does the live poultry [or packer] dealer owe you for poultry [or livestock]?
- Was your transaction a cash sale or a poultry growing arrangement?

If you answered “no” to any of these questions, you do not have a potential claim.

Livestock Sellers' Rights Under the Statutory Trust for Livestock, AMS
<https://www.ams.usda.gov/services/enforcement/psd/livestock-trust>
Live Poultry Growers' and Sellers' Rights Under P&S Trust Provision
<https://www.ams.usda.gov/services/enforcement/psd/poultry-trust>



2a. PSA—Statutory Trust: Claims

How to file a trust claim:

- Submit to regional USDA AMS office:
 - “[Buyer’s] name and contact information
 - Your name and contact information
 - Date of any . . . transaction(s) for which the [buyer] owes you
 - Amount the [buyer] owes you for livestock/poultry
 - Date(s) of any notice(s) you received indicating that the bank dishonored the [buyer’s] payment
 - Copies of relevant documents and any other information that may support the validity of your trust claim”

Livestock Sellers' Rights Under the Statutory Trust for Livestock, AMS
<https://www.ams.usda.gov/services/enforcement/psd/livestock-trust>
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2a. PSA—Statutory Trust: Claims

More Q&As from AMS:

“What must a subject live poultry dealer [packer] do if I timely file a valid trust claim?”

- It fully pays you and all others who timely filed valid trust claims, or
- It fully distributes proceeds from the affected assets among claimants with valid trust claims, if timely filed valid trust claims exceed the value of affected assets.”

Livestock Sellers' Rights Under the Statutory Trust for Livestock, AMS
<https://www.ams.usda.gov/services/enforcement/psd/livestock-trust>
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<https://www.ams.usda.gov/services/enforcement/psd/poultry-trust>



2a. PSA—Statutory Trust: Claims

Q&As from AMS:

“Which of the subject packer's assets does the statutory trust affect?”

- All livestock purchased by the packer in cash sales, and
- All inventories, receivables, and proceeds of meat, meat food products, and livestock products derived from livestock purchased by the packer in cash sales.”

Livestock Sellers' Rights Under the Statutory Trust for Livestock, AMS
<https://www.ams.usda.gov/services/enforcement/psd/livestock-trust>
Live Poultry Growers' and Sellers' Rights Under P&S Trust Provision
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2a. PSA—Statutory Trust: Claims

Q&As from AMS:

“How does the statutory trust benefit me?”

- It grants you, and all other unpaid livestock sellers who file timely and valid trust claims against a subject packer,
 - Rights to the packer’s affected assets until the packer fully pays you for your livestock or it fully distributes the proceeds from those assets among claimants with valid trust claims, and
 - Superior legal claim to the packer’s affected assets than the packer’s secured creditors have over those same assets.”

Livestock Sellers' Rights Under the Statutory Trust for Livestock, AMS
<https://www.ams.usda.gov/services/enforcement/psd/livestock-trust>
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2a. PSA—Bond Claims

Unpaid sellers may also file claims against a buyer's bond under PSA

- File within “60 days from the date of the transaction on which the claim is based.”
- Bond payments paid pro-rata
- If Buyer files suit, surety not obligated to pay if:
 - Suit filed in first 120 days or
 - Later than 547 days after the transaction date


[9 CFR 201.33](#)

See also How to File a Bond Claim, AMS

<https://www.ams.usda.gov/sites/default/files/media/bondclaim.pdf>



State & Federal Statutory Remedies for Commodity Buyer Default

1. Bonding & Indemnity Fund Statutes (State)
 - a. Grain Dealers
 - b. Milk Dealers—Pennsylvania
2. Trust Statutes (Federal)
 - a. Packers & Stockyards Act (1921)
 -  b. **Perishable Agricultural Commodities Act (1930)**



2b. PACA–Generally

- “[E]stablish[] and enforce[e] a code of **fair business practices**”
- “[H]elp[] companies **resolve business disputes**”

[7 U.S.C. §§ 499a-499t](#)

Perishable Agricultural Commodities Act (PACA), AMS

<https://www.ams.usda.gov/rules-regulations/paca>



2b. PACA–Generally

- Applies to “commission merchants,” “dealers,” and “brokers” selling/marketing “perishable agricultural commodities” in interstate or foreign commerce
- Administered by USDA’s Agricultural Marketing Service (AMS)

[7 U.S.C. §§ 499a-499t](#)

Perishable Agricultural Commodities Act (PACA), AMS

<https://www.ams.usda.gov/rules-regulations/paca>



2b. PACA–Terms

- “Perishable Agricultural Commodity”
 - “Means any of the following, whether or not frozen or packed in ice:
 - (A) **Fresh fruits and fresh vegetables** of every kind and character; and
 - (B) Includes cherries in brine as defined by the Secretary in accordance with trade usages.”

[7 U.S. Code § 499a\(b\)\(4\)](#)



2b. PACA–Terms

- “Fresh Fruits and Vegetables”
 - “include all produce in fresh form generally considered as perishable fruits and vegetables, whether or not . . . held in common or cold storage,
 - but **does not include** those perishable fruits and vegetables which have been
 - manufactured into articles of **food of a different kind or character.**

[7 C.F.R. § 46.2\(u\)](#)



2b. PACA—Terms

- “Commission Merchant”
 - “any person engaged in the business of receiving in interstate or foreign commerce any perishable agricultural commodity for sale, on commission, or for or on behalf of another.”

[7 U.S. Code § 499a\(b\)\(5\)](#)



2b. PACA—Terms

- “Dealer”
 - “[A]ny person engaged in the business of buying or selling in wholesale or jobbing quantities . . . any perishable agricultural commodity” with “invoice cost[s] . . . in any calendar year . . . in excess of \$230,000”
 - “[N]o producer shall be considered as a “dealer” in respect to sales of any such commodity of his own raising”

[7 U.S. Code § 499a\(b\)\(6\)](#)



2b. PACA—Terms

- “Broker”
 - “[A]ny person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity . . . for or on behalf of the vendor or the purchaser.”
 - “[A]n independent agent negotiating sales for and on behalf of the vendor . . . if the only sales of such commodities negotiated by such person are sales of frozen fruits and vegetables having an invoice value not in excess of \$230,000 in any calendar year.”

[7 U.S. Code § 499a\(b\)\(7\)](#)



2b. PACA—Payment

- “Prompt Payment”
 - “It shall be unlawful in or in connection with any transaction in interstate or foreign commerce . . .
 - [f]or any commission merchant, dealer, or broker . . .
 - to fail or refuse truly and correctly to account and **make full payment promptly** in respect of any transaction in any such commodity to the person with whom such transaction is had.”
- “Full Payment Promptly”
 - “Payment for produce purchased by a buyer, within **10 days after the day on which the produce is accepted.**”

[7 U.S. Code § 499b\(4\)](#)

[7 CFR 46.2\(aa\)\(5\)](#)



2b. PACA—Payment

- “Full Payment Promptly”

OR—An agreement set in writing

- “Parties who elect to use different times of payment than those set forth in paragraphs (aa) (1) through (10) of this section **must reduce their agreement to writing before entering into the transaction and maintain a copy of the agreement in their records.** If they have so agreed, then payment within the agreed upon time shall constitute “full payment promptly”: Provided, *That the party claiming the existence of such an agreement for time of payment shall have the burden of proving it.*”

[7 U.S. Code § 499b\(4\)](#)

[7 CFR 46.2\(aa\)\(11\)](#)



2b. PACA—Statutory Trust

- “Perishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by such commission merchant, dealer, or broker in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents.”

- “floating trust” concept

[7 U.S.C. §499e\(c\)\(2\):](#)

See also The Perishable Agricultural Commodities Act—An Overview, National Agricultural Law Center
<https://nationalaglawcenter.org/overview/paca/>



2b. PACA—Statutory Trust: Preserving the Trust

To preserve trust interest, the seller must

- provide written notice to buyer to preserve the trust assets w/in 30 days of
 - the due date of a delinquent payment; or
 - a failed payment instrument (ex: bounced check).
- Agreed payment due date must be in transaction paperwork and must be < 30 days max. for the trust to be enforceable.

[See 7 U.S.C. § 499e](#)



2b. PACA—Statutory Trust: Preserving the Trust

AND/OR

- “use ordinary and usual billing or invoice statements to provide notice of the licensee’s intent to preserve the trust.”
 - 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 (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.



2b. PACA—Statutory Trust: “Unfair Trade Practice

File informal complaint with PACA Division of USDA AMS--\$100 Fee:

- “The name and address of each person and of the agent, if any, representing him in the transaction involved;
- Quantity and quality or grade of each kind of produce shipped;
- Date of shipment;
- Carrier identification;
- Shipping and destination points;
- If a sale, the date, sale price, and amount actually received;
- If a consignment, the date, reported proceeds, gross and net;
- Amount of damages claimed, if any;
- Statement of other material facts including terms of contract”
- [and] “true copies of all available papers relating to the transaction.”

See PACA
Enforcement, AMS
<https://www.ams.usda.gov/services/enforcement/paca>
[7 CFR 47.3\(a\)](#)



Trust—Producer!

Secured (mortgages and liens)

Administrative (bankruptcy costs and cleanup)

Priority unsecured (wages and taxes)

General unsecured (unpaid bills)

Equity (owners and stockholders)



REVIEW: State & Federal Statutory Remedies for Commodity Buyer Default

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Bonus: Pending Litigation on New Livestock Dealer Trust

McClain Feed Yard, Inc. (Bankr. N.D. Tex.), No. [23-20084](#), filed April 28, 2023

- Livestock Dealer (deceased) was likely running fraudulent operation
- Rabobank called in several million dollars in loans after investigating & discovering only 10,500 cattle instead of approx. 30,000 claimed (down from 90,000 previous months)
- Dealer's heirs filed for bankruptcy.
- Producers who sold cattle unpaid
 - USDA issued [notice](#) encouraging sellers to file claims—May 3, 2023
- Rabo has filed multiple suits against several parties, attempting to claim the cattle discrepancy as security for loan.
 - *Rabo Agrifinance LLC v. McClain Farms, Inc.* (W.D. Kentucky) No. [5:23-cv-00055](#), filed April 25, 2023
 - *Rabo AgriFinance LLC v. Acey Livestock, LLC* (Bankr. N.D. Tex.) No. [23-02005](#), filed Nov. 27, 2023



Thank you for joining us!

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May 24, 2024 *Understanding the Basics of Pennsylvania's Agricultural Area Security Law*

June 28, 2024 *Understanding the Basics of the Clean Water Act & Agriculture*

July 26, 2024 *Understanding the Basics of Agritourism Laws*

Aug. 23, 2024 *Understanding the Basics of the H-2A Temporary Agricultural Worker Program*

More upcoming programs from the Ag Law Center:

July 16, 2024 *Quarterly Dairy Legal Webinar: U.S. State Milk Pricing & Supports, Part 2*

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