

PACA – A VALUABLE TOOL FOR GROWERS

USDA, PACA Division
Washington, DC

Your crop is harvested and ready to market. Getting to this point has not been easy—you have endured sleepless nights worrying about weather conditions, bank loans and spray schedules. You have spent thousands of hours working tirelessly to ensure that your crop is top quality and will provide the best return on your investment. However, until you have actually received payment for your hard-earned labors—and the checks have cleared the bank—all of your time and effort has been for nothing.

Producing a crop is only half the job. The rest involves marketing. Too often, however, growers encounter a myriad of difficulties when selling and marketing their produce. Some of the more common dilemmas include buyers who arbitrarily “clip” invoices—or do not pay at all; loads that are rejected at destination without justification; and sales agents who do not properly account for sales and expenses. Any of these can put your entire business at risk. However, whom can you turn to when problems like these arise?

The PACA Can Help

The Perishable Agricultural Commodities Act, or PACA for short, is a law that enacted by Congress in 1930 to promote fair trading practices in the fruit and vegetable industry. The law is designed to protect growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices, and provides a forum that can be used to settle commercial disputes. Although, the PACA is administered by the U.S. Department of Agriculture, no tax dollars are used—the program is funded almost entirely by license fees that are paid by companies which buy, sell, or broker commercial quantities of fruits and vegetables. This license requirement is what makes the law so effective. USDA can suspend or revoke the license of firms that do not abide by the law, and hold them liable for any damages that result. Naturally, the type of penalty issued depends upon the seriousness and nature of the violation.

Dispute Resolution

What should you do if you encounter problems getting payment from a buyer, or believe that you have suffered damages resulting from unfair trade practices? Your first step should be to call a PACA office to discuss the matter. PACA representatives provide unbiased assistance—whether this involves interpreting a contract term, analyzing an inspection result, or merely providing advice regarding your rights and responsibilities. Frequently, timely guidance such as this is sufficient to avoid any further action on your part. There are instances, however, when disputes are not so easily settled. In those cases, you'll need to file a claim with a PACA office.

To file a claim, simply submit a letter to any PACA office outlining whom you are filing against and the nature of your complaint. Along with your letter, you will need to send

copies of any supporting evidence such as invoices, broker's memoranda of sale, accountings, or other paperwork. Also, keep in mind that you must file your claim within 9 months of date that payment became due, or the date that performance of the contract was required. The cost of filing a claim is only \$100.

Once the PACA staff receives your complaint, they will gather the relevant facts from all parties involved in the dispute and assist in reaching a settlement. The PACA Division receives more than 1,500 such cases a year. About 94 percent of those claims were resolved informally, generally within 8 weeks. If an informal settlement is not possible, USDA will issue a binding decision and order. Although it costs an additional \$500 to obtain a formal ruling, you can recover this fee from the other party if you prevail.

Sales Agents

Many growers hire sales agents to sell and market their crop. Although arrangements vary, agents typically receive a percentage of the sales price as their commission, and may be entitled to deduct other expenses. The PACA requires that agents outline the duties and responsibilities of both parties in writing before the first lot is received. In addition, agents must issue you accurate accountings documenting the sales prices obtained and the expenses deducted from each transaction. Agents are generally required to submit these accountings in 10-day intervals throughout the season, and must promptly pay you the net proceeds due once payment is collected. If you believe your sales agent has not met its responsibilities, you should speak to a PACA specialist. If necessary, you can file a claim and a PACA representative will audit the agent's records to determine whether any additional proceeds are due.

Mediation Service

Mediation is an effective way to resolve disputes, since it places the resolution of the dispute directly in the hands of the interested parties. It provides an outlet for settling differences outside of the legal system, strengthens business relationships, and provides a forum where both parties can air their differences in a neutral atmosphere. Mediation sessions can be held face-to-face or over the telephone. All PACA personnel that handle disputes are trained in mediation, and can mediate your dispute upon request provided both parties are agreeable. Furthermore, there is no additional cost to mediate a dispute beyond the initial \$100 filing fee. To obtain more information about this service, or to arrange for mediation of a dispute, you can contact any PACA office.

The PACA law is there to ensure fairness, and offers many services to assist you. For additional information, call any PACA office at (800) 495-7222 or visit our website at www.ams.usda.gov/paca. After all, you have worked too hard to be treated unfairly!