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THE
PERISHABLE
AGRICULTURAL
COMMODITIES
ACT |

FAIR
TRADING
IN THE
FRUIT AND
VEGETABLE
INDUSTRY

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
FRUIT AND VEGETABLE DIVISION
AMS-516 OCTOBER, 1963



THE PERISHABLE AGRICULTURAL COMMODITIES ACT

The PACA, Fair Trading in the Fruit and Vegetable Industry

The Perishable Agricultural Commodities Act is designed to encourage fair trading practices in the marketing of fresh or frozen fruits and vegetables in interstate or foreign commerce. Certain unfair and fraudulent practices are prohibited. Penalties are provided for violation. The Act also provides for the award of damages against a person who fails to live up to his contract obligations.

Fruits and vegetables are highly perishable and require rapid harvesting, packing and distribution. As a result, the produce business is fast-moving, and financially hazardous. Persons engaged in this business are especially dependent on the honesty and good faith of those with whom they trade.

The produce industry realized the importance of a code of fair trading standards and the Perishable Agricultural Commodities Act was passed by Congress in 1930 at the industry's request. It has been amended a number of times to keep it up to date with changing trade practices. The U.S. Department of Agriculture is responsible for administering this Act.

Licenses Are Key to PACA Enforcement

Commission merchants, dealers, and brokers handling fresh or frozen fruits or vegetables in interstate or foreign commerce are required to be licensed under this Act.



"Dealers" under the Perishable Agricultural Commodities Act include shippers, wholesalers, retailers, truckers, and in some instances processors, who are engaged in the business of buying or selling these commodities in wholesale or jobbing quantities (totaling one ton or more during any day).

A retailer is subject to license when the invoice cost of all of his purchases of fresh and frozen fruits and vegetables during a calendar year exceeds \$90,000. In computing this dollar volume, all purchases of such commodities are to be counted regardless of the size of the lot involved or whether the transaction was in interstate, intrastate; or foreign commerce.

A frozen food broker who acts as independent agent negotiating sales for the vendor and whose only sales of perishable agricultural commodities consist of frozen fruits and vegetables is required to obtain a license when the invoice value of such sales exceeds \$90,000 in a calendar year.

All other brokers dealing in products covered by PACA must obtain a license when they engage in business.

Farmers or growers selling only fruits and vegetables they grow are not subject to license. However, if they also sell in interstate or foreign commerce produce grown by other farmers, they are required to have a license.

Truckers are not required to be licensed if they merely haul produce for freight charges, but if they buy and sell fruits and vegetables in interstate or foreign commerce, they must obtain a license.

All of the expenses of administering the PACA Act, except for the cost of legal services, are financed by the revenue from license fees.

The current license fee is \$36 per year.

The penalty for operating without a license when one is required is not more than \$500 for each offense and not more than \$25 for each day the offense continues. Other violations of the Act can result in the suspension or revocation of a license issued under the Act.

Inquiries on licensing or requests for license applications should be directed to one of the PACA offices listed on the last page of this leaflet.

Doing Business the PACA Way

One of the primary requirements of PACA is that all parties must comply with the terms of their contracts. Sellers must ship the quantity and quality of produce specified in their contracts and buyers must accept shipments which are offered for delivery in compliance with contracts. Receivers must pay promptly for purchased shipments, and, in the case of consigned shipments, issue accurate accountings and pay promptly the net proceeds due.

The regulations under PACA include definitions of standard trade terms which have been used by the industry for many years. These trade terms are specifically designed to assist in the buying and selling of fruits and vegetables. By becoming familiar with these terms and using them properly, shippers and dealers are able to draw up brief, accurate, written contracts which reduce the possibility of misunderstandings. The Act and the regulations are published in pamphlet form and copies may be obtained free on request.

Unfair Practices

The PACA prohibits certain practices which are defined as unfair. Some of these practices include:

Failure of a seller, without reasonable cause, to deliver produce sold or contracted to be sold;

Rejection, without reasonable cause, of produce purchased or contracted to be handled on consignment;

Failure to pay promptly the agreed purchase price of produce which complies with the terms of the contract;

Discarding, dumping or destroying of any produce received by commission merchants on consignment, without reasonable cause;

Failure or refusal to account truly and correctly and to make full payment promptly in connection with produce sold on consignment or on joint account.



Misbranding

Misrepresentations concerning the grade, quantity, weight, State of origin, etc., of fruits and vegetables in interstate commerce are prohibited. PACA does not require any particular markings on containers but those that are used must be accurate. Anyone shipping misbranded produce may find that the buyer is entitled to reject it or to correct the mis-

branding at the shipper's expense. A licensee who violates the law by misbranding is subject to disciplinary action by the USDA which can result in the suspension or revocation of his license.

Records

The PACA requires every licensee to prepare and maintain records which fully and correctly disclose all transactions involving his business. The regulations specify certain basic records which are required of licensees, depending on the nature of the business. For example, the following specific records must be maintained in addition to general records:

Growers' agents must prepare in writing a contract or agreement clearly defining the duties and responsibilities of both parties and the extent of the agents' authority in distributing the produce. Copies of the contract or agreement must be delivered to all parties involved.

Shippers must prepare and maintain records covering the receipt and disposition of all produce handled.

Brokers must prepare in writing and deliver promptly to all parties a properly executed confirmation or memorandum of sale setting forth all of the essential details of any contracts they negotiate.

Market receivers and commission merchants must maintain a receiving record showing all of the required information on each shipment received. Also, they must use lot numbers to segregate and identify different lots of produce which are being handled on consignment or joint account.

A good basic system of records is essential to the sound management of any business. Properly prepared contracts and good records serve to minimize disputes. Furthermore, in a dispute, these records can help the injured party prove his claim.

Informal Complaints

Complaints alleging violation of PACA may be filed with USDA. Any financially interested party can file such a complaint under PACA, whether he holds a PACA license or not. To file a complaint, just address a letter to one of the five PACA field offices maintained by the Fruit and Vegetable Division of USDA's Agricultural Marketing Service. These offices are listed on the last page of this leaflet. Give the names and addresses of the parties involved, nature of the contract, commodity involved, and an explanation of the cause of the dispute. The amount of damages should be stated and the originals or copies of all papers relating to the transaction should be enclosed. If the matter requires urgent attention, such as rejection of a shipment at a terminal market, you can wire the details or telephone one of these offices and submit the supporting evidence later.

Your papers will be reviewed by one of the PACA investigators and, if there is a proper basis for a complaint, USDA will contact the other party and try to arrange an informal settlement. The great majority of the complaints filed under this Act are settled on an informal basis at a considerable savings in time, effort and expense to the parties involved. USDA makes no charge for its services in handling such complaints.

The law requires that complaints be filed within nine months from the time the cause of action accrues (for example, the date when payment was due). However, the sooner complaints are filed, the easier it is to arrange an informal settlement. It is frequently difficult or impossible to locate all parties to the dispute or assemble all the necessary evidence when complaints are filed long after the transaction occurred.



Formal Complaints

If amicable settlement cannot be arranged, and it appears that the facts warrant such action, the party claiming injury is given an opportunity to file a formal complaint. When the amount involved is over \$1,500 either party can request an oral hearing for the presentation of evidence. These hearings are handled somewhat like court proceedings. Cases involving smaller amounts are handled without an oral hearing under a shortened procedure in which the parties submit their evidence in writing.

At the conclusion of the proceedings, the Department will decide the case, which may involve the issuance of a reparation award. If the award is not paid or appealed by the respondent within the time specified in the order, his license is suspended automatically. When the license of a firm is suspended, the facts in the case are released to the press. A person who fails to pay or appeal a reparation order cannot continue in business and cannot be employed by another licensee without USDA approval. Therefore, such awards are usually more effective than a judgment obtained through court action.

Appeals From Reparation Awards

A person against whom a reparation order is issued may, within 30 days from the date of such order, file an appeal in a U.S. District Court. Also, if a reparation award is not paid, the person entitled to payment may file suit in court to reduce the award to a judgment.

How to Avoid Disputes

There are two simple things you can do to avoid disputes under the Perishable Agricultural Commodities Act.

First, you should check the financial status and reputation of anyone with whom you plan to do business. A large percentage of the claims filed under PACA involve failure to pay promptly for produce purchased. Bear in mind that a PACA license is not a guarantee of any firm's financial status or dependability. Except under certain conditions, surety bonds are not required of PACA licensees. Remember, also, that USDA can take action only against a person who is licensed or subject to license under the Act.

Second, when you reach an agreement on contract terms, get them down in writing. It doesn't need to be an elaborate document, but a brief, accurate memorandum sent to the other party to confirm the deal. That way, misunderstandings of prices or terms of the sale can be ironed out right away. And, unless the terms of a sale are fully stated in writing, you may not have the evidence you need to prove your claim in a dispute.



Ask Your PACA Representative

One of the most important aspects of administration of the PAC Act is that USDA representatives are available to counsel growers, shippers, and dealers on the problems they encounter under PACA--advising them on the protection the law affords and how they can use the services of USDA.

This counseling is available to anyone interested in the growing, packing, shipping or marketing of produce. No charge is made for this service, and many inquiries are received daily from industry members seeking advice on how to handle problems.

When you have a problem in buying or selling fruits and vegetables under the Perishable Agricultural Commodities Act, get in touch with the nearest PACA office listed on the last page of this leaflet, and outline your problem. You will be advised informally concerning your rights and responsibilities under the law.



PUBLICATIONS AVAILABLE:

Doing Business the PACA Way, AMS-358, January 1960. Series of short essays on sound trading practices.

The Grower and PACA, AMS-451, July 1961. Growers' rights and responsibilities under PACA.

Perishable Agricultural Commodities Act, 1930, and Regulations (Other than Rules of Practice) under the Act. Text of the Act and the regulations.

To file complaints or obtain information about activities under the Perishable Agricultural Commodities Act, contact any of the following offices of the:

Regulatory Branch
Fruit and Vegetable Division
Agricultural Marketing Service
U.S. Department of Agriculture

Washington, D.C. 20250
Room 2092
South Agriculture Building
Phone: Area Code 202
L.D. REpublic 7-4118*
Local DUdley 8-2272 or 4180

Chicago, Illinois 60607
Room 1119, U.S. Custom House
610 S. Canal Street
Phone: Area Code 312
L.D. WAbash 2-0684*
Local HArrison 7-6910
Extension 323 or 324

Fort Worth, Texas 76102
Room 1020, Texas and Pacific Bldg.
Phone: Area Code 817
L.D. EDison 5-1630*
Local EDison 5-4211
Extension 401 or 423

Los Angeles, California 90015
1031 South Broadway
Room 1002, Western Pacific Building
Phone: Area Code 213
L.D. 749-8796*
Local 688-3195

New York, New York 10013
346 Broadway, Room 312
Phone: Area Code 212
L.D. REctor 2-3193*
Local REctor 2-8000
Extension 754 or 755

Winter Haven, Florida 33880
352 Avenue - D, N.W.
Phone: Area Code 813
CYpress 3-1091

* Answered only by an investigator competent to handle complaints.

