



Federal Law Protects Farmers' Rights to be Paid for Fruit and Vegetable Crops

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NOTE: These materials provide a very general overview of protections for farmers under the Perishable Agricultural Commodities Act (the PACA). For more detailed information, contact Farmers' Legal Action Group or consult an attorney with experience in this area of law. This outline may be reprinted for educational purposes only so long as Farmers' Legal Action Group is credited when reprinting.

As a farmer selling fruit and vegetable crops, your right to be paid is typically governed by your agreements with the buyers of your produce. However, you have certain rights beyond those agreements under a federal law called the Perishable Agricultural Commodities Act, or "the PACA."

What is the Perishable Agricultural Commodities Act?

The PACA is a federal law designed to ensure fair business dealings in the produce industry. Generally, the PACA requires sellers to actually deliver the quantity and quality of produce they agreed to provide buyers. In turn, the PACA requires buyers to accept and pay for produce shipments where sellers have lived up to their end of a bargain.

How is the PACA enforced?

The United States Department of Agriculture (USDA) enforces the PACA through a licensing system and through regulations that allow USDA to force buyers to pay farmers for their produce. The agency authorized to enforce the PACA and investigate complaints of violations is USDA's Agricultural Marketing Service (AMS), which has a special PACA Branch. **The USDA's PACA Branch has a toll-free number (800-495-7222) that you can call to report possible violations of the PACA or ask general PACA questions.**

- In general, anyone who buys or sells commercial quantities of fruits and vegetables must maintain a PACA license. Farmers who sell only their own produce are not required to have a PACA license.
- If produce buyers or sellers violate the PACA requirements, USDA may suspend or revoke their license, prohibiting them from working in the produce industry.

- PACA violators may also be forced to pay monetary damages to farmers who were not paid according to the PACA requirements.

What does the PACA say about my right to be paid?

- The PACA requires that farmers be promptly and fully paid for their produce. Generally, **prompt payment means within 10 days from the date the buyer accepts produce.**
- Under the PACA, a buyer “accepts” produce by unloading it or by re-routing it to a different location than the agreed-upon delivery destination. A buyer’s failure to reject produce within a “reasonable time” is also considered acceptance of the produce. For fresh produce, buyers must typically notify farmers that they are rejecting delivered produce within 8 hours of delivery if the produce was shipped by truck, and within 24 hours of delivery if the produce was shipped by other means.

Under what circumstances may buyers reject produce and refuse to pay me?

- Generally, buyers may reject produce and refuse to pay for it if the delivered produce is not of the type, quantity, or quality the farmer agreed to provide, and the buyer follows proper rejection procedure within the time allowed.

What can I do if the buyer rejects my produce?

- If the buyer has properly rejected produce, the farmer might be required to take responsibility for the rejected produce and make arrangements to remove it from the buyer’s premises. However, if the buyer has improperly rejected the produce, the farmer might lose the right to claim money damages if the produce is taken back. Farmers who have questions about how to respond to a rejection of produce should call the USDA’s toll-free PACA number for more information: 800-495-7222.
- In some cases it may be possible to try to resell improperly rejected produce to another buyer and then recover from the original buyer any difference between the sale price with the original buyer and the substitute sale price. As described in detail below, the PACA provides an administrative process you may use to recover any money damages from buyers who wrongfully reject your produce.

Under what circumstances may sales agents destroy produce they agreed to sell on my behalf and refuse to pay me?

Many farmers hire agents to sell their produce for them. These agents typically receive a commission for their services. The PACA’s requirements concerning prompt

payment and the rejection of produce apply to sales agents. The PACA also imposes additional requirements on sales agents concerning their right to destroy produce that they claim cannot be sold because of its alleged poor quality.

- Under the PACA, agents who agree to sell produce on a farmer's behalf are generally prohibited from destroying that produce unless they can prove it has no commercial value or that a local health officer or other authorized official ordered them to destroy it.
- If an agent wrongfully destroys your produce, you may use the PACA's administrative process to recover money damages from that agent to compensate you for the reasonable value of your produce. The USDA Market News prices generally determine what is "reasonable." The USDA's Market News prices can be accessed through the USDA's Web site on the Internet at <http://marketnews.usda.gov/>.

What does PACA say about my right to be paid when a buyer goes out of business or files for bankruptcy?

- If a buyer goes out of business or declares bankruptcy, you may still recover the money owed to you if you preserved your rights under the PACA statutory trust.
- The PACA statutory trust requires the buyer to hold assets in trust until the produce seller is paid in full. The trust is a strong remedy for farmers because it allows them to collect their payments before other creditors. Because of this, farmers who file for trust protection have a much greater chance of recovering money owed them when a buyer goes out of business.
- To preserve your PACA trust rights, you must send the buyer a notice of your intent to preserve trust benefits **within 30 days from the payment due date** for each sales transaction. To ensure they preserve their rights under the PACA, many farmers make it a practice to send a notice of intent to preserve trust benefits to the buyer before payment is even due.

To preserve PACA trust rights, the notice must:

- State that it is a notice of intent to preserve trust benefits.
- Include your name and address as well as the buyer's name and address.
- State the payment date.
- Set forth the amount of money not paid or in dispute.

What can I do if I think a PACA violation has occurred?

Farmers who believe their payment rights under the PACA were violated may file a complaint with USDA's PACA Branch.

- If you want to seek **money damages** for a PACA violation, your complaint must be accompanied by a \$60.00 filing fee and must be filed within 9 months from the date payment was due.

A complaint for money damages must be in writing and should include:

- Your name and address and the name and address of the person or business you are seeking payment from.
- A description of the problem.
- The date the problem occurred.
- The amount of money not paid or in dispute.

Complaints for money damages should be mailed to USDA's PACA Branch office covering the state where the buyer's business is located. The contact information for the PACA Branch office covering Florida is as follows:

U.S. Department of Agriculture
Agricultural Marketing Service
Fruit & Vegetable Programs, PACA Branch
819 Taylor Street, Suite 8B02
Fort Worth, Texas 76102-9727

Business Hours: 8 a.m. - 4:30 p.m. Central Time

Telephone: 800-495-7222 (toll free)
817- 978-0777 (local)

Fax: 817- 978-0786

A list of the other PACA Branch offices and the geographic areas they cover can be found on the Internet at <http://www.ams.usda.gov/fvpaca/office.htm>. If you have questions about filing your complaint, call USDA's toll-free PACA number for more information: 800-495-7222.

- It is also possible to file a **disciplinary complaint** against a buyer, seeking suspension or revocation of the buyer's PACA license. There is no charge to file disciplinary complaints, and they may generally be filed within 2 years of a PACA violation. Disciplinary complaints may be filed anonymously and can be initiated by calling the USDA's PACA Branch.