Chapter 8

Federal Laws Regulating Agricultural Sales

This chapter considers federal laws that regulate the sales of certain agricultural products or commodities, specifically the Packers and Stockyards Act (PSA) and the Perishable Agricultural Commodities Act (PACA).

These laws are important in the producer association context because they are generally designed to regulate entities that deal in certain agricultural commodities. Depending on the type of relationship a producer has with the organization, these laws could directly affect the producer-association relationship because farmers may be selling to the organization or the organization may be acting as a sales agent for the farmer.

PSA and PACA apply to producers and joint producer associations who deal in livestock, poultry, and perishable agricultural commodities. Congress passed these laws because of the inherent disadvantage sellers of perishable goods have relative to buyers. Because of the perishable nature of the products, sellers need to market their products quickly to retain any value. This fact can lead to abusive tactics by the buyers, such as wrongfully claiming the products are of inferior quality. Another concern Congress attempted to address with these laws, especially PSA, is the relatively weak bargaining position sellers possess because of the concentrated nature of the buyers' market.

Packers and Stockyards Act

Any group purchasing livestock or poultry needs to determine if it is regulated under the Packers and Stockyards Act (PSA) (7 U.S.C. sections 181 to 229b). Sellers of livestock or poultry should also know what protections PSA provides them. Congress originally passed PSA to protect sellers of livestock and subsequently amended the Act to protect contract poultry growers and swine production contract growers.

What does the Act prohibit?

PSA prohibits unfair, unjustly discriminatory or deceptive trade practices by packers, live poultry dealers, market agencies, and dealers. Specifically, the Act prohibits any undue or unreasonable preferences given to any seller, apportioning the supply of

USDA GIPSA

Administration of the Act is performed by the Grain Inspection, Packers and Stockyards Administration (GIPSA) of USDA, and all matters of licensing, bonding and complaints under the Act are addressed by that agency. GIPSA maintains a national headquarters and three field offices with responsibility for administering Packers and Stockyards programs in various states.

USDA GIPSA Headquarters
1400 Independence Avenue SW
Washington, DC 20250
GIPSA violation hotline: (800) 998-3447

USDA GIPSA Atlanta Regional Office
Primary responsibility for poultry industry and oversees trade practice regulation in the following states: AL, AR, CT, DC, DE, FL, GA, LA, MA, MD, ME, NC, NH, NJ, NY, PA, RI, SC, TN, VA, VT, WV.
75 Spring Street Suite 230
Atlanta, GA 30303
(404) 562-5840

USDA GIPSA Denver Regional Office
Primary responsibility for the cattle industry and maintains trade practice regulation in the following states: AK, AZ, CA, HI, ID, KS, MT, NE, NV, NM, OK, TX, UT, WA, WY.
1 Gateway Center
3950 Lewiston, Suite 200
Aurora, CO 80011
(303) 375-4240

USDA GIPSA Des Moines Regional Office
Primary responsibility for the swine industry and maintains field staff in the following states: IA, IL, IN, KY, OH, MI, MO, MN, ND, SD, WI.
210 Walnut Street, Room 317
Des Moines, IA 50309
(515) 323-2579

animals if it creates a monopoly, and the manipulation of prices. Specific examples of unfair practices under PSA include paying with a bad check or not paying cash sellers promptly. In addition, short weighing is an unfair trade practice.

The Act provides a number of financial protections for sellers by requiring prompt payment, creating a trust in favor of unpaid cash sellers, and requiring certain entities to be bonded.

Who is regulated?

Exactly how an entity is regulated will depend on how it is classified under PSA. The potentially regulated entities are:

"Packer" means any person engaged in buying livestock for slaughter, who manufactures meat food products, or who markets meats in an unmanufactured form acting as a wholesale broker, dealer or distributor. A small scale farmer organization that gathers animals, contracts for slaughter, and markets the meat is classified as a packer.

"Dealer" means a person engaged in buying or selling livestock on his own account or as the employee or agent of the seller or purchaser. If an organization takes title to livestock before reselling it, the organization could be a dealer.

"Market agency" means anyone who buys and sells livestock on commission. If a marketing organization is simply an agent for the sale, they will be regulated as a market agent.

Short weights are unfair practices

In a "sting" operation, USDA sold three test lots of hogs to the defendants, who owned a stockyard, and concluded the defendants were engaged in a practice of weighing livestock at less than their true and correct weights and were not issuing scale tickets as required. USDA filed an administrative complaint against the defendants arguing the short weighing was an unfair practice and a violation of PSA. After an administrative hearing, the administrative law judge decided the defendants violated the Act. The defendant appealed to the Fifth Circuit Court of Appeals. The court found there was substantial evidence the defendants engaged in unfair trade practices in violation of PSA by "short weighing" animals delivered by sellers and by not furnishing scale receipts as required.

Livestock Marketers Inc. v. U.S., 558 F.2d 748 (5th Cir. 1977).

"Swine contractor" means a person who pays another to raise and care for hogs under a production contract.

"Live poultry dealer" generally means a poultry integrator that pays someone else to raise their poultry for slaughter.

Buyers of what kinds of animals are regulated by PSA?

People who deal in livestock and poultry are regulated by PSA. The statute defines livestock to mean only cattle, sheep, swine, horses, mules or goats. The definition does not include bison, elk, llama, deer or other quadrupeds, exotic, or farm-raised game animals. Poultry means only chickens, turkeys, ducks, geese, and other domestic fowl. It does not include exotic fowl. It is not clear whether the definition of poultry includes ratites such as ostrich, emu, or farm-raised game birds. Only those who deal in "poultry for slaughter" are regulated. This phrase has been interpreted to mean those who process birds that were not raised primarily for slaughter, such as breeder hens, are not regulated by PSA.

What is unfair under the Packers and Stockyards Act?

A case involving a turkey farmer's claim that a processor violated the PSA through its use of turkey contracts raised the issue of what "unfair" means under PSA. The processor offered individual contracts that were both an agreement to sell poults (baby turkeys) to the farmer and buy the mature turkeys. The processor offered two types of contracts: (1) a floor contract guaranteed a minimum price but limited the upside potential, or (2) a performance contract that involved more risk to the producer but gave an opportunity to make more money. The contracts lasted only one year. During trial, the grower testified the processor's representative stated the grower would have a choice of either contract each year. After a number of years of signing floor contracts, the grower decided he wanted a performance contract, but the processor refused.

The case involved a number of alleged violations of the PSA, most prominently the turkey processor's refusal to offer the performance contract to the grower. The grower argued this was unfair and unjustly discriminatory because, among other things, other growers in the area were offered both kinds of contracts.

The court ruled that because the processor and grower entered into one-year contracts, nothing obliged the processor to offer any kind of contract to the grower. The court also determined PSA was not designed to minimize the processor's right to freedom to contract. For these reasons, the court found the processor did not violate the law refusing to offer the grower the performance contract.

Jackson v. Swift Eckrich, Inc., 53 F.3d 1452 (8th Cir. 1995).

Are small operations regulated?

Smaller operations are covered under some of PSA regulations and exempted from others. The Act's regulatory prohibition against unfair, deceptive, and unjustly discriminatory trade practices applies in all cases regardless of the size of the entity. In addition the Act requires careful record keeping by packers, live poultry dealers, market agencies and dealers regardless of their size. If a packer or buyer of live animals for slaughter has average annual purchases less than $500,000 per year, the packer is exempt from the provisions of the statutory trust. In the case of poultry, if a dealer's annual average purchases are less than $100,000 per year, the poultry dealer is exempt from the provisions of the statutory trust. In addition, packers do not have to be bonded if their annual purchases do not exceed $500,000.

What is an undue preference and how does it affect a producer marketing association?

PSA prohibits giving undue or unreasonable preferences to any particular person. The meaning of "undue preference" is not defined in either the statute or in the regulations. Because of this, whether a particular practice is an undue preference will be determined according to the facts of each case and within the public purposes of PSA. Generally, courts will look at whether the person had a valid business justification for providing the preference and whether the preference had an anticompetitive effect on the market.

This means a producer association will usually be able to provide preferences to members without worrying about violating PSA.

What is the PSA bond?

PSA requires certain regulated entities to obtain a bond before USDA will allow them to do business. The PSA bond is a financial instrument a packer obtains from a private bond company stating the bond company will meet the packer's financial obligations to pay sellers of livestock if the packer is unable to do so. Bond companies usually have to pay on the bonds only when the packer enters into bankruptcy.

Who must obtain a bond?

Packers must be bonded if their annual average purchases exceed $500,000. If the packer is required to post a bond, the amount of coverage is based on the average value of livestock the packer purchases. The minimum bond amount is $10,000.

Market agencies and dealers must also be bonded. Bonding requirements do not apply to live poultry dealers or swine contractors.

What is the statutory trust?

PSA establishes a "statutory trust in favor of unpaid cash sellers" that provides a remedy for cash sellers to receive payments from packers and live poultry dealers who become insolvent. The statute requires all livestock, proceeds from the sale of livestock, inventories, and receivables be held in trust for the benefit of unpaid cash sellers. Only packers with average annual sales of over $500,000 and live poultry dealers with average annual sales of over $100,000 are subject the statutory trust provisions.

What is an unpaid cash seller?

Unless the statutory trust provisions are expressly waived in writing, all sellers are defined as "cash sellers." This means a cash seller who fails to receive a payment or receives a payment that is dishonored is an "unpaid cash seller."

How does an unpaid cash seller claim against the trust?

If a cash seller is not paid promptly, the unpaid cash seller must give written notice to the packer or live poultry dealer and the Secretary of Agriculture. To preserve an interest in the trust, the unpaid seller must provide notice within 30 days from the final date payment was due or 15 days after the seller receives notice a bank draft has been dishonored. If the cash seller does not act to preserve an interest in the trust, it is lost.

What does "prompt payment" mean in relation to PSA?

"Prompt payment" in the case of livestock means payment in full before the close of the day following purchase, transfer and possession of the live animals, or, if the carcasses are subject to a grade and yield pricing, not past the close of business on the day the price is determined on the carcass.

In the case of poultry, "prompt payment" means payment in full before the close of the day following purchase. If the poultry is produced under a growing arrangement, payment must be made before the fifteenth day following the week in which the poultry is slaughtered.

May a packer buy livestock on credit?

A packer may buy livestock on credit, but it must make sure the seller waives the right to prompt payment and the waiver must be in writing.

The following acknowledgement is required if a packer purchases livestock on credit.

> On this date I am entering into a written agreement for the sale of livestock on credit to __________________, a packer, and I understand that in doing so I will have no rights under the trust provisions of sections 206 or 207 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 196-197, Pub. L. 94-410), with respect to any such credit sale. The written agreement for such selling on credit
>
> __ Covers a single sale
> __ Provides that it will remain in effect until ____________
> __ Provides that it will remain in effect until canceled in writing by either party
>
> Date______________
>
> Signature__________

Are there record keeping requirements under PSA?

The Act requires all entities, regardless of size, to keep records that fully and correctly disclose all transactions in the business.

How is the Act enforced?

Depending on the type of regulated entity involved and the alleged violation, injured parties and USDA may bring actions against regulated entities. Fines for violations are a maximum of $11,000 for each violation. Regulated entities may also be liable to injured parties for the damages caused by violations of the Act. USDA can bring an administrative action against packers, dealers, market agencies, and swine production contractors. The Department of Justice can file a complaint against live poultry dealers in federal district court.

Injured parties can file a claim in federal district court against packers, live poultry dealers, and swine production contractors. Those injured by dealers or market agencies can seek reparations in a USDA administrative action.

Perishable Agricultural Commodities Act

The Perishable Agricultural Commodities Act (PACA) (7 U.S.C. sections 499a to 499t) is intended to promote fair trading practices in the fruit and vegetable industries. The law does this by licensing certain actors in these industries and requiring the licensees to abide by certain trade practices. The law also provides financial protection to sellers of fruits and vegetables from the PACA trust. USDA administers PACA. Much of the information below comes from a publication on the USDA PACA website called "PACA Factfinder." www.ams.usda.gov/fvpaca/FactFinder.htm.

USDA PACA branch offices

For questions related to PACA licenses, disputes, or anything else related to the Act, contact the nearest USDA PACA office.

USDA, AMS, F&V Programs
PACA Branch
P.O. Box 96456
Washington, DC 20090-6456
Telephone: (877) 622-4716 (toll-free)
Fax: (202) 690-4413

USDA, AMS, F&V Programs
PACA Branch
300 W. Congress Street, Box FB30
Tucson, AZ 85701-1319
Telephone: (888) 639-0575 (toll-free)
Fax: (520) 670-4798

USDA, AMS, F&V Programs
PACA Branch
Building A, Suite 360
Glen Ellyn, IL 60137-5832
Telephone: (888) 693-0423 (toll-free)
Fax: (630) 858-9304

USDA, AMS, F&V Programs
PACA Branch
622 Georges Road, Suite 303
North Brunswick, NJ 08920-3303
Telephone: (877) 471-7720 (toll-free)
Fax: (732) 846-0427

USDA, AMS, F&V Programs
PACA Branch
1200 East Copeland Road, Suite 404
Arlington, TX 76011-4938
Telephone: (888) 901-6137 (toll-free)
Fax: (817) 276-1968

USDA, AMS, F&V Programs
PACA Branch
8700 Centreville Road, Suite 206
Manassas, VA 20110-8411
Telephone: (888) 639-9236 (toll-free)

Who must obtain a PACA license?

Many joint producer operations that buy fruits and vegetables from members or negotiate sales on behalf of members will need to obtain a license. These are the three categories of licensees:

1. Anyone who buys or sells more than 2000 pounds of fresh or frozen fruits and vegetables in a given day. This includes wholesalers, processors, and food service firms.
2. Brokers or commission merchants. These firms negotiate the sale of fruits and vegetables on behalf of another person. If the negotiated sales of fruits and vegetables are less than $230,000 per year, a broker does not need to obtain a license.
3. Food retailers who purchase at least $230,000 of fruits and vegetables per year.

Growers who sell only products they have grown are exempt from the licensing requirements. Unless the organization itself raises the products, as opposed to its members, the organization would not fall under this exemption.

What is the penalty for operating without a license?

Firms that operate without a license are subject to fines of up to $1000 for each offense and $250 for each day the offense continues. A court can prohibit people from doing business who persist in operating without a license.

What responsibilities do PACA licensees have?

PACA helps enforce the marketing contract by requiring that firms comply with the contract and not take advantage of people who are in a vulnerable position because of the perishability of the product. PACA also requires sellers be paid within ten days after the buyer accepts the fruits or vegetables unless the buyer and seller, prior to the sale, agree in writing to extend the payment time. Licensees must keep records of all fruit and vegetable transactions.

What happens if there is a dispute concerning a transaction regulated by PACA?

PACA branch offices provide both informal and formal complaint services. Informal complaints can involve mediation which allows the parties to resolve the issue themselves. If the party is not satisfied with mediation, they can file a formal complaint that will be handled by USDA in much the same way a lawsuit is handled in court. USDA may award damages plus interest based on the damages proved in the case. There is a $300 filing fee for a formal complaint, but the complainant can recover the filing fee if an order is issued in its favor. USDA has the authority to suspend licenses for up to three years if a firm refuses to satisfy a PACA award.

What does it mean if a firm's license is revoked?

As long as the firm's liscense is suspended, it cannot do business in the produce industry. The suspension also applies to most owners, partners, managers, officers, and directors of the firm.

What are some typical unfair trade practices?

Typical violations include a buyer rejecting the product without reasonable cause or failing to pay promptly. Sellers could violate PACA by failing to deliver the produce in a timely manner or at the quality level agreed to in the purchase agreement. Any PACA licensee could violate PACA by basing a transaction on false records.

Does USDA have the ability to bring disciplinary actions:

If a firm repeatedly and flagrantly violates the Act, USDA may bring a disciplinary action and assess a civil penalty of up to $2000 for each violation.

These are some activities that typically lead to disciplinary actions

- Basing payment on inaccurate records;
- Flagrant misbranding; and
- Making false and misleading statements for a fraudulent purpose.

What is the PACA trust?

The PACA trust means a buyer must hold all of the produce and the proceeds of produce (the money received from the sale of produce) for the benefit of unpaid produce sellers who have preserved their rights in the trust.

To have a defendable interest in a PACA trust, a claimant must show (1) the goods in question were perishable agricultural commodities; (2) the commodities were received by a commission merchant, a dealer, or broker; and (3) the claimant preserved its rights under PACA within thirty days after payment became due.

How do sellers preserve rights in the trust?

Sellers of produce must provide the buyer with written notice of the seller's intent to preserve trust benefits under PACA within 30 days from the date payment was past due or notification was received that a check was dishonored by the bank. For sellers who are PACA licensees, USDA requires the following language to preserve the trust:

> "The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c)

Is a french fry a vegetable?

For PACA to apply to a person's business, the person must be dealing in perishable agricultural commodities. The statute defines this term to mean fresh or frozen fruits and vegetables. In the context of the PACA trust, this means someone will not be able to claim an interest in the proceeds of the goods unless they can prove the goods are a fruit or a vegetable. PACA regulations state that a product is no longer a fresh fruit or vegetable if it has been manufactured into a food of a different kind or character. (7 C.F.R. section 46.2). The regulations describe a long list of processes that only minimally affect the fruit or vegetable and therefore do not change the product into a different kind of food. The list includes such things as steaming, curing, chopping, refrigerating, or washing.

The issue of what products are perishable agricultural commodities often arises in bankruptcy. For example, in one case the bankruptcy court needed to determine whether a seller of battered french fries to Long John Silver's had an interest in the PACA trust. The court determined that although unbattered french fries had been held to be perishable agricultural commodities, battered fries are not because the batter changes the essential character of the product. Because the court decided the battered french fries were not covered under PACA, the seller could not claim an interest in the PACA trust.

In re Long John Silver's Restaurants, Inc., 230 B.R. 29 (D. Del. 1999).

> of the Perishable Agricultural Commodities Act, 1930 (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."

How do I receive payment from the trust?

You must file for payment under the trust in Federal District Court or in Federal Bankruptcy Court if the buyer has filed for bankruptcy. You do not file a complaint with USDA or undergo any type of mediation when enforcing your rights to the trust. Because the two complaint systems are separate, you can file both a trust claim in federal court and a PACA complaint with USDA for the same underlying facts.

Conclusion

Producer associations who deal in livestock and poultry or fruits and vegetables need to be aware how PSA and PACA might affect their business. These laws are generally designed to protect sellers of certain types of agricultural products and add legal requirements to businesses that deal in these goods. Many times regulated entities will be producer marketing associations.

Additional Internet Resources for
Federal Laws Relating to Agriculture

Packers and Stockyards Act

USDA Grain Inspection, Packers and Stockyards Administration (website)

- Overview of Packers & Stockyards Programs
- Livestock Sellers' Rights Under P&S Trust Provisions
- Live Poultry Growers' and Sellers' Rights Under P&S Trust Provisions
- Other GIPSA P&S Programs Publications and Brochures

National Agricultural Law Center (website)

- Packers and Stockyards Reading Room
- An Overview of the Packers and Stockyards Act (Kelley 2003)

Perishable Agricultural Commodities Act (PACA)

USDA Agricultural Marketing Service (website)

- PACA Branch Homepage
- PACA FactFinder
- PACA - A Valuable Tool for Growers

National Agricultural Law Center (website)

- Perishable Agricultural Commodities Act Reading Room

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