The Perishable Agricultural Commodities Act (PACA)

…as it applies to growers and wineries (and brokers) in Washington State.

The Perishable Agricultural Commodities Act (PACA) facilitates fair trading practices in the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. PACA helps ensure dealers of fresh and frozen fruits and vegetables get what they pay for and get paid for what they sell, including when their customers go out of business, declare bankruptcy, or simply refuse to pay for the fruits and vegetables received.

Much like you need a driver's license to operate a vehicle, the law requires a PACA license as proof to your customers and suppliers that you are a serious business person who can be trusted to honor the terms of your contracts. The PACA license is the key to ensuring traders meet contractual obligations under the law and abide by fair trading practices or face possible suspension or revocation of their license. This includes meeting contract specifications, paying all contracts promptly, and maintaining trust assets. A person knowingly operating without a license may face a penalty of up to $1,200 for each violation and up to $350 for each day the violation(s) continue.

PACA protections benefit a range of parties who are both buyers and sellers, including processors and brokers. It is generally agreed that fruit and vegetable traders need more protection than traders in other industries because the product is very perishable, and a one or two-day delay can mean the difference between profit and loss…so growers must ship the quantity and quality of produce specified in their contracts and wineries must accept shipments that meet contract specifications including payment.

PACA also provides procedures for resolving disputes outside the civil court system, and establishes a trust consisting of wineries' grape-related assets. If a winery goes bankrupt, growers that have preserved their trust rights can recover money owed to them before trust assets are made available to general creditors (including banks).

When PACA Applies…

The law requires most all buyers and sellers in the U.S. to have a PACA license in order to trade in fruits and vegetables. However, growers are exempt from the license requirement as long as they sell only products that are of their own production. Growers can be licensed if they so choose, on a voluntary basis, and must then comply with the PACA law. Growers note: if you use a broker, they too must be licensed. A broker negotiating contracts involving fresh and frozen fruits and vegetables between a buyer and a seller must be licensed under PACA.

PACA applies to a winery if it purchases more than 2,000 pounds of grapes (in any given day) that were grown outside the state (or country) where the winery is located like Oregon or Idaho. A winery is not subject to PACA if it processes only on-site, estate grown grapes or any grapes grown in Washington. PACA does not apply if a winery buys and crushes grapes and then ships the product out of state.

Remember, wineries that are subject to PACA are allowed the protections provided by the law but are also required to abide by the law's legal requirements.

License Fee and Mediation…

A PACA license costs $550 a year and provides a means of enforcement because it can be suspended or revoked if a buyer (winery) or seller (grower) is found to commit unfair trading practices. Practices may include:

- *rejecting grapes bought or contracted to be handled on consignment without reasonable cause*
- *failure to pay the agreed price of grapes that complies with the contract terms*
- *failure to pay promptly (within 10 days)*
- *misbranding/mislabeling of grapes shipped in interstate commerce*
- *misrepresentation of grapes shipped in interstate commerce*

PACA specialists are trained in mediation procedures to help parties resolve disputes outside the court system. Buyers and sellers are able to call in a PACA expert to help resolve any issues or disputes.

PACA Trust…

In 1995, PACA was amended to allow licensees to protect their trust rights by giving notice to debtors on their invoices as an alternative to the traditional notification by mailing a trust notice to the buyer.

Simply, if you sell grapes to wineries, the PACA trust provides financial security in the event your customer (winery) files for bankruptcy or goes out of business. Produce assets of a debtor (the winery) are not available for general distribution to creditors (including secured creditors like banks) until all valid produce trust claims have been paid. (Note: produce assets include wine or wine in process.) Growers that file for trust protection have a far greater chance of recovering money owed them.

Growers who decide to purchase a PACA license may preserve their trust rights by giving notice to the winery on their invoice. However, the grower must have the exact wording on the face of the invoice:

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, 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.

Growers who choose not to be licensed under PACA, or those licensees that do not want to include the statutory wording on their invoices may use the following method:

A written notice must be provided to the winery and must include a statement that it is a "notice of intent to preserve trust benefits," and must include the names and addresses of the seller, commission merchant, or agent, and the debtor; the date of the transaction, commodity, invoice price, payment terms, and the amount past due and unpaid. Notification must be given within 30 days from the day payment was due (i.e., payment must be made within 30 days from the due date of payment), or from receiving notification that a timely submitted payment was dishonored (i.e., bounced check or declined credit card). To qualify for trust protections, terms for payment cannot exceed 30 days from the date of acceptance of the product. Payment terms other than PACA prompt payment terms (usually 10 days) must be agreed upon by the parties to the transaction in writing before entering into the transaction.

If a grower has preserved their trust rights but gets no response from a winery, how does the PACA trust help them get paid? After a grower preserves their rights under PACA trust provisions, the winery should be holding the proceeds from the resale of that product 'in trust.' A grower can file an action in U.S. District Court seeking to enforce payment under the trust. It is common for a trust enforcement action to seek a temporary restraining order freezing the bank accounts of a winery until the trust creditor (grower) is paid. Many produce sellers have found this a very effective tool to recover payment.

For More Information: www.ams.usda.gov/paca