



United States Department of Agriculture  
Agricultural Marketing Service

# PACA Fact Finder

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## **What is the Perishable Agricultural Commodities Act?**

The Perishable Agricultural Commodities Act (PACA) establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. It protects growers, shippers, distributors, retailers, and others who deal in those commodities by prohibiting unfair and fraudulent practices.

## **Why do businesses that buy or sell fruits and vegetables need more protection than businesses in other industries?**

The produce industry is unique. Dealers handle a product that is very perishable and a 1- or 2-day delay in marketing can mean the difference between profit and loss. By spelling out the responsibilities of all parties, the PACA helps to promote the prompt marketing of produce, while still protecting buyers' and sellers' rights in the event of a contract dispute.

## **How is the PACA enforced?**

The PACA is enforced through a licensing system. Almost everyone involved in the marketing of commercial quantities of fresh and frozen fruits and vegetables in interstate or foreign commerce must maintain a valid PACA license. A produce trader found to have committed unfair trade practices may face a civil monetary penalty, license suspension, or in the most serious cases, license revocation.

## **How do I get a PACA license?**

Anyone with license questions or needing assistance in applying for a license may call the PACA Branch toll-free number, 800-495-7222.

## **Is anyone exempt from licensing requirements?**

Yes, growers are exempt as long as they sell only products that they have grown. Retailers and frozen food brokers representing sellers are exempt until they purchase or act as an intermediary in making the sale of \$230,000 or more worth of fruits and vegetables in a calendar year. Truckers who are only contract carriers do not need a license.

## **Is there a penalty for operating without a PACA license?**

Companies that operate without a valid PACA license are subject to fines of up to \$1,200 for each offense and \$350 each day the offense continues. Court injunctions can be issued against those who persist in operating without a license.

## How is the PACA program financed?

PACA license and complaint filing fees finance the administration of the program. No tax revenues are used to fund the PACA program.

## What responsibilities do I have as a PACA licensee?

The law requires that produce traders comply with the terms of their contracts. Sellers must ship the quantity and quality of produce specified. Buyers must accept shipments that meet contract specifications and pay promptly after acceptance. Prompt payment means payment within 10 days unless the buyer and seller, prior to the sale, agree in writing to extend the payment time.

## What can I do if I have a dispute with a supplier or a buyer over a business transaction?

The PACA Branch offers dispute resolution services to members of the produce industry. You can file a complaint if your transaction is unpaid or there is a dispute between you and the other party over the contract. The other party must be a licensee or subject to a license for a claim to be handled. The written complaint, accompanied by a \$100 filing fee, must be filed within 9 months from the date payment is due or damages are suffered.

One of PACA's informal complaint services includes mediation, where the PACA Branch attempts to help the parties resolve their differences. Informal mediation is an effective way to resolve disputes, since it places the resolution of the dispute directly in the hands of the interested parties by providing a forum where both sides can air their differences in a neutral atmosphere.

If the parties cannot reach an informal resolution, the complainant may file a formal complaint. A formal complaint is handled by the U.S. Department of Agriculture (USDA) in a manner similar to how a lawsuit is handled in a court of law. However, instead of a judge, the Secretary of Agriculture can issue an award plus interest based on the evidence in the case. Although there is a \$500 filing fee for a formal complaint, the complainant can recover the filing fee if an order is issued in its favor.

If a licensee fails to satisfy a PACA award, USDA will suspend the firm's license and restrict it from operating in the produce industry for up to 3 years.

## What are some unfair trade practices that usually result in claims being filed?

- Failure to pay promptly the agreed price of produce that complies with contract terms;
- Failure or refusal to account truly and correctly or to make full payment promptly for produce shipped on consignment or on joint account;
- Rejecting without reasonable cause produce bought or contracted to be handled on consignment;
- Failure to deliver the contracted produce in a timely manner and at the price and quality level specified in the purchase agreement; and
- Discarding, dumping, or destroying without reasonable cause any produce received to be sold on behalf of another firm.

**I have a prospective customer.  
Can I obtain information about the  
firm's PACA complaint history?**

Yes. You may call our toll-free number, 800-495-7222, to obtain general information about your prospective customer's PACA complaint and license history.

**Can I recover money from a firm that  
has gone out of business or has filed  
for bankruptcy protection?**

Yes. Under the PACA trust provisions, a buyer must hold its produce-related assets for the benefit of unpaid produce suppliers who have preserved their trust rights. In the case of a business failure, the debtor's trust assets are not available for general distribution to other creditors until all valid trust claims have been satisfied. Because of this, suppliers that file for trust protection have a far greater chance of recovering money owed them when a buyer goes out of business.

**What must sellers do to preserve  
their trust rights?**

Although the trust automatically goes into effect at the time the buyer receives the goods, sellers must properly preserve their rights by meeting specific notification requirements.

**What are the notification  
requirements?**

The law allows PACA licensees to qualify automatically for trust protection by including on their invoices or other billing documents the following statement: *"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."*

Unlicensed produce sellers must provide the buyer — the produce debtor — with a written notice of their intent to preserve trust benefits under the PACA within 30 days from the date that payment was past due or notification was received that a payment instrument was dishonored.

**I am a grower selling only produce  
that I grow. Although I am not re-  
quired to have a license, can I obtain  
a PACA license to take advantage of  
the alternative method of including  
the trust statement on my invoices to  
qualify for trust protection?**

Yes, any person can apply for a PACA license.

**How long are a seller's rights  
preserved?**

Trust claimants who preserve their trust rights by providing proper notice remain beneficiaries until paid.

**How is payment from trust assets  
enforced?**

The trust is a self-help tool that is separate and unrelated to filing a complaint under PACA. Trust beneficiaries may file an action in U.S. District Court to enforce payment from the trust immediately following a buyer's failure to pay promptly. In cases where the debtor is bankrupt, trust beneficiaries should file their claims for payment with the bankruptcy court.



### **If I file a trust claim with the court, can I still file a PACA complaint?**

Yes, pursuing a trust action with the court does not impede you from pursuing a complaint under PACA.

### **Can I agree to payment terms other than those in the PACA regulations and still qualify for protection under the trust?**

Although PACA prompt payment terms specify payment within 10 days from the date of acceptance, a buyer and seller may agree to extended terms as long as the agreement is made in writing prior to the transaction, and the terms are reflected on the invoice and all other billing documents. However, the agreed-upon payment terms cannot exceed 30 days from the date of acceptance to qualify for trust protection.

### **What is a disciplinary action under the PACA?**

USDA may penalize a licensee that repeatedly and flagrantly violates the PACA. A disciplinary action may result in a suspension or revocation of the firm's PACA license. In lieu of suspension or revocation, the Secretary of Agriculture may assess a civil penalty of up to \$2,200 for each violation or for each day the violation continues.

### **How does the USDA decide if a PACA license should be suspended or revoked as the result of a disciplinary proceeding?**

USDA considers the seriousness and the nature of the violation(s), the number of violations that took place, the length of time during which the

violations occurred, and the effect that the violations had on the produce industry. Revocation of the license is the most severe penalty that can be imposed.

### **How does a PACA license suspension or license revocation restrict a firm and/or its principals?**

Following the suspension or revocation of a PACA license, the firm and its responsibly connected individuals are automatically subject to licensing and employment restrictions, which prohibit those individuals and firms from working or operating in the produce industry for a certain period of time. A person is considered to be responsibly connected if he/she is an owner, a partner in a partnership, a member or manager in a limited liability company, or an officer, director, or holder of more than 10 percent of the stock of a corporation or association.

As long as the license is suspended, the firm cannot conduct business in the produce industry. Furthermore, none of the persons responsibly connected with the firm can engage in business under the PACA, nor can another PACA licensee employ them.

### **What are some of the common PACA violations that prompt USDA to take disciplinary action?**

- Failure to pay for produce purchased;
- Slow payment;
- Failure of a commission merchant or grower's agent to render accurate accountings and pay promptly the net proceeds due the shippers and growers;

- **Flagrant misbranding or misrepresentation of produce shipped in interstate or foreign commerce;**
- **Making false and misleading statements for a fraudulent purpose; and**
- **Employing a restricted person after receiving notice from the USDA that the employment is prohibited.**

### **This law puts strict regulations on the produce industry. Do you receive much industry resistance?**

The industry developed and sponsored this law, and the majority of industry members strongly support the PACA. The Act has been amended several times over the years to keep pace with changing trade practices.

### **Where can I get more information about the PACA program?**

You can visit our Web site at

**<http://www.ams.usda.gov/paca>**

for more information about the PACA program. Here you can find information about licensing, resolving commercial disputes, mediation, PACA publications, a list of current PACA violators, a digest of recent disciplinary decisions, and an office directory.

We also offer a free Internet training program that covers the basic information you need to know to operate within the PACA. After reviewing the course material, you'll take on-line tests that are scored automatically so you'll get immediate feedback. To begin training, click on the PACA Internet Training Program link located on our homepage.

If you have addition questions please call our toll-free number, 800-495-7222.



## **United States Department of Agriculture Agricultural Marketing Service**

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