



Agricultural Marketing Service
Fruit and Vegetable Programs

Perishable Agricultural Commodities Act

Presented by : **Travis Hubbs**
Primary Investigator/Mediator
PACA Division, Eastern Regional Office

The PACA...facilitating fair trade practices in the fruit and vegetable industry through education, mediation, arbitration, licensing and enforcement.





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What is PACA?

- Perishable Agricultural Commodities Act
- Federal law enacted in 1930
- Regulates interstate & foreign commerce
- Framework for fair trading practices
- Approximately 15,000 firms licensed





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PACA History

- Extreme perishability of product
- Inconsistent state laws and programs
- Increase in transportation options coast to coast (refrigerated rail and truck)
- Easy environment for unscrupulous dealers





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Challenges in the Produce Industry

- Rejections, market decline, overstock,
- Inadequate record keeping
- Failure to account truly and correctly
- Refusal to pay and “slow pay”
- Misbranding and misrepresenting product
- Bankruptcies— “Snowball Effect”
- Unscrupulous entrants/fraud





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PACA Headquarters

Washington, DC

National License
Center
Manassas, VA

Dispute
Resolution
Branch
Washington, DC

Investigative
Enforcement
Branch
Washington, DC

Tucson, AZ
Field-Office

Fort Worth, TX
Field-Office

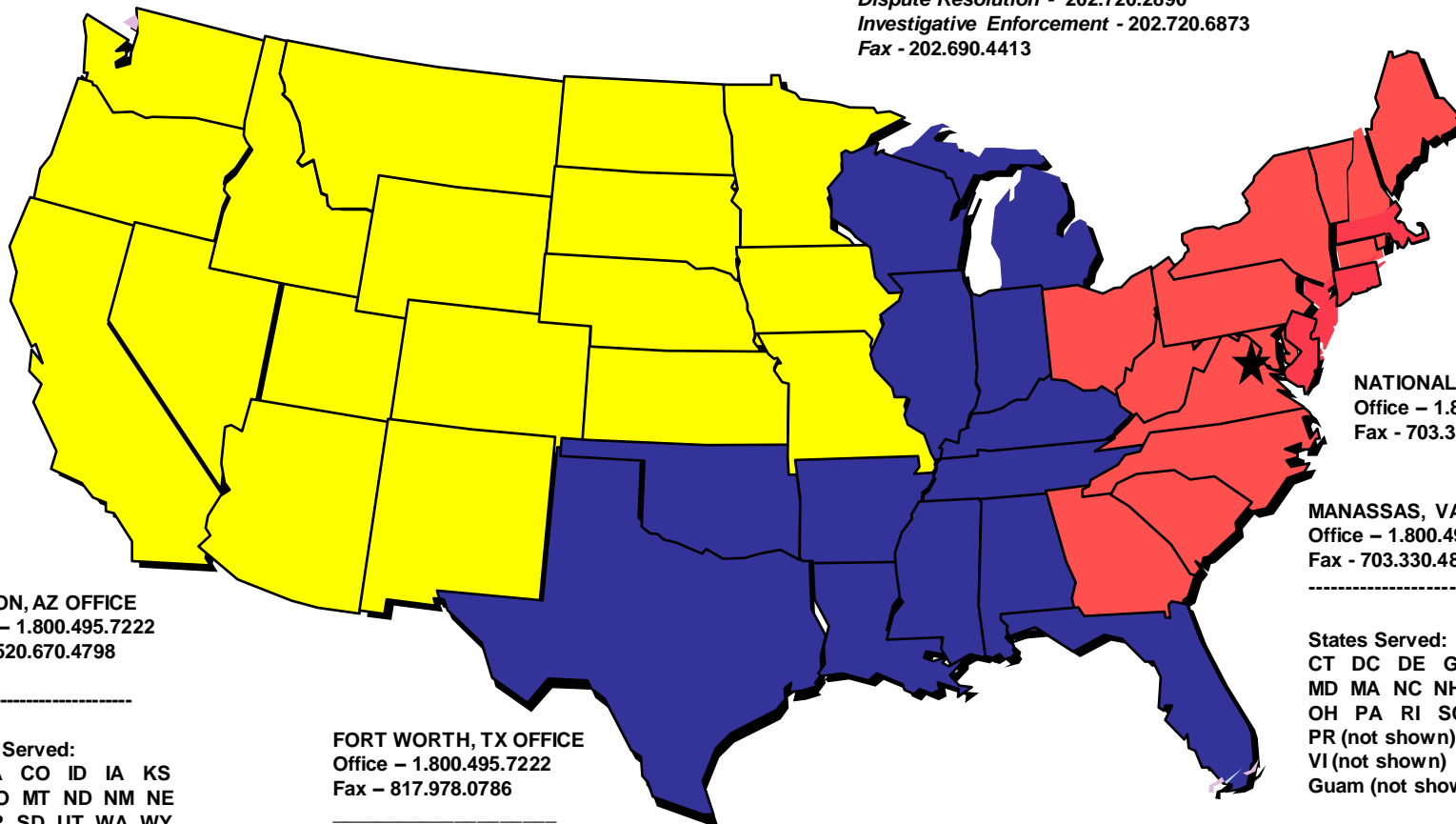
Manassas, VA
Field-Office



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PACA Offices

PACA Division HEADQUARTERS
Washington, DC 20250-0235
Toll Free – 1.877.622.4716
Office of the Director - 202.720.4180
Dispute Resolution - 202.720.2890
Investigative Enforcement - 202.720.6873
Fax - 202.690.4413



TUCSON, AZ OFFICE
Office – 1.800.495.7222
Fax – 520.670.4798

States Served:
AZ CA CO ID IA KS
MN MO MT ND NM NE
NV OR SD UT WA WY
AK (not shown),
HI (not shown)

FORT WORTH, TX OFFICE
Office – 1.800.495.7222
Fax – 817.978.0786

States Served:
AL AR FL IL IN KY MI
MS OK TN TX WI LA

NATIONAL LICENSE CENTER
Office – 1.800.495.7222
Fax - 703.330.4555

MANASSAS, VA OFFICE
Office – 1.800.495.7222
Fax - 703.330.4856

States Served:
CT DC DE GA ME WV
MD MA NC NH NJ NY
OH PA RI SC VT VA
PR (not shown)
VI (not shown)
Guam (not shown)





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How does PACA work?

- Mandatory licenses
- Defines common language
- Establishes fair business rules
- Provides a forum for dispute resolution
- Institutes enforcement mechanism





Mandatory License

- Dealers who buy or sell 2000 pounds or more on any day
- Retailers and frozen food brokers are exempt until they purchase or negotiate invoice sales of \$230,000 or more in a calendar year





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Who is required to maintain a PACA license?

- Wholesale Dealer
- Shipper
- Grower's Agent
- Broker
- Retailers
- Processor
- Commission Merchant





Who is Exempt?

- Growers who handle only their own product
- Truckers who haul for hire only
- Restaurants





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Operating Without A License

Any entity that operates subject to the Act without a valid and effective license is subject to a penalty of **\$1,200** for each such offense and up to **\$350** for each day it continues.





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“Good Delivery” Hotline

- Call **1-800-495-7222**, then select Option #2 for **FREE** assistance
- Staffed by Fruit & Vegetable experts (Spanish and Korean speakers on staff)
- Available 7AM – 7PM Mon-Fri (EST)
- Call upon delivery of a load with a potential problem





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PACA Professionals Help You

- Acceptance/Rejection
- “Rightful” vs. “Wrongful” rejections
- Responsibilities after rejection
- Acts of acceptance
- Breach of warranty
- Damage calculations





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PACA Licensee Ground Rules

- Generally, PACA requires that firms and individuals operating in the F&V industry live up to the terms of their agreements.
- Sellers **must ship the quantity and quality specified.**
- Buyers **must accept shipments that meet contract specifications.**





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Grower's Agent Prompt Accounting

- Must account for initial shipment within 30 days after receipt of goods
- Final accounting for season shall be made within 30 days from last shipment





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Responsibilities of the Grower's Agent under the PACA

- Maintain a valid PACA license
- Written contract with the grower and maintaining adequate records
- List functions that both agent and grower will perform and the charges
- Issue receiving receipts to grower, file PACA trust notices for grower, account to the grower





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Common Complaints

- Failure to pay for product
- Failure to account truly and correctly
- Failure to ship or deliver
- Ineffective rejection
- Wrongful rejection
- Misunderstood contract terms





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Dispute Resolution



- Three-tier system:
 1. Phone advice
 2. Informal complaint process
(Mediation)
 3. Formal complaint process
(Judge's Order)





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Avenues of Resolution



- Informal Complaints
 - Informal settlement
 - Mediation
 - No judicial involvement
- Formal Complaints
 - Documentary procedure
 - Oral hearing
 - Judicial orders and license suspensions





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Dispute Resolution

- FY 07-11, PACA handled 8,039 industry complaints
- FY 07-11, PACA's Dispute Resolution Services resolved **\$102,413,867** to the benefit of the produce industry
- FY 07-11, **91%** of Informal Complaints were settled < 4 months!





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Who May File Complaints?

- Growers, or a financially interested party
- Associations, on behalf of their members
- Attorneys, on behalf of their clients
- Sales agents
- Grower's agents on behalf of shippers





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Filing an Informal Complaint

- Submit transaction information and invoice in writing expressing your desire to file an informal complaint
- Must be faxed, mailed, or emailed
- Include a \$100 filing fee; payable by check or credit card
- Must be filed within 9 months of the transaction or cause of action





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Informal Complaint Worksheet

INFORMAL COMPLAINT TO BE FILED UNDER
THE PERISHABLE AGRICULTURAL COMMODITIES ACT

Complainant Party: _____ Date: _____
 Company Name: _____ Contact Person: _____
 Address: _____ Phone No: _____
 _____ Fax No: _____
 PACA License No.: _____ Email: _____

Complainant To Be Filed Against:
 Company Name: _____ Contact Person: _____
 Address: _____ Phone No: _____
 _____ Fax No: _____
 PACA License No.: _____ Email: _____

If there is a dispute, or the complaint does not involve unpaid invoices, please state your claim below. You may also attach a separate letter describing the dispute. Please be sure to include copies all relevant documents, such as invoices, passings, bills of lading, and inspections. If a broker was involved, please provide name and address of the broker, along with copies of the confirmation of sale, and/or any other documents issued by the broker.

Please Provide Your Written Evaluation Below:

Please use the table below to list the unpaid invoices. If you require more space you may use a separate sheet of paper to list the invoices and amounts due.

Invoice No.	Date Shipped	Invoice Amount	Amount Paid	Balance Due
Total Claim Amount:				

Documents and items required with this complaint:

- \$100 Filing Fee. Please make checks payable to "USDA-AMS"
- Include copies of supporting transaction documents such as: Invoices, Revised Invoices, Passings, Account Statements, Credit Memorandums, Payment Term Agreements, Contracts, Bills of Lading, Confirmations of Sale, and Inspection Certificates.

Please Note: Complaints received without the Filing Fee cannot be processed.

INFORMAL COMPLAINT TO BE FILED UNDER
THE PERISHABLE AGRICULTURAL COMMODITIES ACT

If you prefer, you may pay the filing fee with a credit card. If so, please provide the following information:

Check Type of Credit Card: ___ Visa ___ MasterCard ___ American Express ___ Discover

Indicate Credit Card Charge Amount: ___ Informal, \$100 ___ Formal, \$500 ___ Other, \$ _____

Account No: _____ Expiration Date: _____

Card Holder Name: _____ Card Holder Signature: _____
(Please Print or Stamp on Card)

Daytime Phone No: _____ Contact Name: _____

USDA PACA Field Offices:

www.ams.usda.gov/paca

U.S. Department of Agriculture
AMS, F&V Programs, PACA Branch
Tucson Federal Building, Room 7 T
300 West Congress Street
Tucson, AZ 85701-1319
Telephone: 800-495-7222 (toll free) Ext. #5
Fax: 520-670-4798
States Served: AZ, CA, CO, ID, IA, KS, MN, MO,
MT, ND, NM, NE, NV, OR, SD, UT, WA, WY, AK, HI

U.S. Department of Agriculture
AMS, F&V Programs, PACA Branch
819 Taylor Street
Suite 8B02
Fort Worth, Texas 76102-9727
Telephone: 800-495-7222 (toll free) Ext. #4
Fax: 817- 978-0786
States Served: AL, AR, FL, IL, IN, KY, LA,
MI, MS, OK, TN, TX, WI

U.S. Department of Agriculture
AMS, F&V Programs, PACA Branch
8700 Centreville Road, Suite 206
Manassas, VA 20110-8411
Telephone: 800-495-7222 (toll free) Ext. #3
Fax: 703-370-4856
States Served: CT, DC, DE, GA, ME, MD, MA, NC,
NH, NJ, NY, OH, PA, RI, PR, SC, VA, VI, VT, WV, Guam



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Mediation Services

- A **process** in which an **impartial third party** assists disputants in finding a **mutually acceptable solution** to their conflict
- Voluntary & Confidential
- PACA has trained, experienced personnel in both Mediation & Negotiation skills
- **YOU** control your own destiny!





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Mediation Services: **BENEFITS**

- Parties in dispute achieve greater satisfaction and immediate closure
- Parties more likely to live with the agreement
- Does **not** place blame
- Increased possibility of future business relations
- Eliminates **cost of litigation** or processing a formal complaint on all parties involved





Enforcement

- PACA may only take action after **WRITTEN** notice from outside the branch is received.
- Examples of unfair trade practice include:
 - Fraud
 - Non-payment
 - Employing people under employment restrictions
 - False & Misleading Statements
 - Misbranding/Mislabeled





Enforcement

- The PACA Division has the authority under the law to take “responsibly connected” individuals out of the produce industry for a specific time:
- 1st year – complete ban from produce work
- 2nd year – eligible to return to work with approval from the Secretary, secured with bonding provided by employer





How does the PACA Trust work ?

- A buyer's insolvency or bankruptcy does not affect its liability
- Gives priority status to suppliers
- Requires buyers to maintain statutory trust on received product not yet paid for.
- The Trust applies to all fruit and vegetable purchases
- Non-licensees and foreign entities are protected too





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What are PACA Trust assets ?

- Fruit and vegetable inventory
- Products derived from fruit and vegetables
- All receivables/proceeds from the sale of these fruits and vegetables





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Requirements for Trust Protection

- Payment terms other than 10 days must be in writing & may not exceed 30 days
- Notification to the buyer within 30 days
- Two methods to provide notice





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Providing Trust Notice

- Licensee via “magic language” on invoice or customary billing instrument
- Non-licensee via separate written notice providing material terms of the transaction
- See more details on our website at [**www.ams.usda.gov/paca**](http://www.ams.usda.gov/paca)





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What is the “Magic Language”?

The perishable agricultural commodities listed on this invoice are sold subject to 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.





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How is payment enforced under the PACA Trust?

- File in U.S. District Court
- If debtor is bankrupt, file a claim with the bankruptcy court





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Service Provided to Growers & Producers

- Financial protection under Trust Provisions
- Advice concerning contract terms & U.S. Grade Standards
- Forum to settle and mediate disputes
- Auditing of a licensee's records to verify accountings (sales & expenses)
- Promote fair trade between firms





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Perishable Agricultural Commodities Act (PACA)

1-800-495-7222

www.ams.usda.gov/paca

