



United States Department of Agriculture

Agricultural Marketing Service



PACA

Fact Finder

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. The PACA 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 perishable product and even a 1- or 2-day delay in marketing can mean the difference between profit and loss. By spelling out the responsibilities of all involved parties, the PACA helps promote the prompt marketing of produce, and protects the rights of buyers and sellers in the event of a contract dispute.

How is the PACA enforced?

The U.S. Department of Agriculture (USDA) PACA Division enforces the PACA through a licensing system. Nearly every trader involved in the marketing of commercial quantities of fresh and frozen fruits and vegetables in interstate or foreign commerce must have a valid PACA license. A produce trader who is found to have committed unfair trade practices may face a monetary penalty or other sanctions, license suspension, or in the most serious cases, license revocation.

How do I get a PACA license?

For information on obtaining a license, visit www.ams.usda.gov/paca or call the PACA Division at 800-495-7222.

Who needs a license? Who doesn't?

In general, wholesalers, processors, truckers, grocery wholesalers, and foodservice firms that buy or sell more than 2,000 pounds of fresh or frozen fruits and vegetables in any given day are required to be licensed under the PACA.

Commission merchants, brokers, or growers' agents who negotiate sales of fresh fruits and vegetables on behalf of others are required to be licensed on their first transaction.

Brokers who negotiate sales of only frozen fruits and vegetables on behalf of the vendor are subject to the PACA licensing requirements after the invoice value of total negotiated sales exceeds \$230,000 in a calendar year.

Retailers must obtain a PACA license once the invoice cost of fresh and frozen fruit and vegetable purchases exceeds \$230,000 in a calendar year.

Growers can apply for a PACA license but otherwise are exempt, so long as they sell only products they have grown.

Is there a penalty for operating without the required PACA license?

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

How is the PACA program financed?

The USDA PACA program is funded by license fees and complaint filing fees. No tax revenues are used to fund the PACA program.

What are my responsibilities 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 in the contract. Buyers must accept shipments that meet contract specifications and pay promptly after acceptance. Prompt payment is defined as payment within 10 days unless the buyer and seller agree, prior to the sale, in writing, to different payment terms.

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

The PACA Division offers dispute resolution services to members of the produce industry. A party can file a complaint, if a transaction is unpaid or there is a dispute between the parties over the contract. The other party must be a licensee or operating subject to 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 was due or the damages were suffered.

The PACA Division's complaint services include informal mediation to help the parties resolve their differences. Mediation allows both parties to air their differences in a neutral environment and identify a resolution.

If parties cannot reach an informal resolution, the complainant may file a formal complaint. USDA handles formal complaints much like lawsuits are handled in a court of law. However, instead of a judge, the Secretary of Agriculture determines the outcome of the complaint, and can issue an award, plus interest, based on the evidence in the case. 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 the firm and its principals from operating in the produce industry for up to 3 years.

What types of unfair trade practices can 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.

Where can I get information about a firm's PACA license status or complaint history?

Visit www.ams.usda.gov/paca to verify whether a firm has a valid license. Call the PACA Division at 800-495-7222, for general information about a firm's PACA complaint history.

Can I recover money from a firm that has gone out of business or 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 when the buyer receives the goods, sellers must properly preserve their trust rights by meeting specific notification requirements. Produce sellers can preserve their eligibility for trust benefits by providing a trust notice that contains detailed information sufficient to identify the transaction to their selling agent or customer.

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, i.e., the produce debtor, with written notice of their intent to preserve trust benefits under the PACA within 30 days of 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. While I am not required to have a license, can I obtain a PACA license and use the alternative method of including the trust statement on my invoices to qualify for trust protection?

Yes, a grower with a PACA license is eligible to use the alternative method of including the trust statement on its invoices or other billing documents to qualify for trust protection.

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 the 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. If 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, a party can file a complaint under the PACA while pursuing a trust action with the court.

However, PACA may, in some cases, stay the PACA complaint pending resolution of the trust action.

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 of 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, to qualify for trust protection, the agreed-upon payment term cannot exceed 30 days from the date of acceptance.

What is a disciplinary action under the PACA?

USDA may penalize a licensee or an entity operating subject to license that repeatedly and flagrantly violates the PACA. Disciplinary action may include sanctions and/or the suspension or revocation of an individual's or firm's PACA license. In lieu of suspension or revocation, the Secretary of Agriculture may assess a civil penalty of up to \$2,000 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 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 a PACA 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?

Upon the suspension or revocation of a PACA license, both the firm and its responsibly connected individuals are automatically subject to licensing and employment restrictions that prohibit them from working or operating in the produce industry for a certain period of time. Individuals are considered to be responsibly connected if they are 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.

When a PACA license is suspended, or a licensee or individual fails to pay a reparation award resulting in sanctions, the firm or individual 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, unless a PACA-approved surety bond is posted.

After one year, responsibly connected individuals that were barred from employment as a result of a license revocation or sanctions based on findings of repeated and flagrant violations may be employed by a PACA licensee that posts a PACA-approved surety bond.

What are some common PACA violations that prompt the 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.

Does the produce industry support the PACA?

The industry developed and sponsored this law, and the PACA is broadly supported throughout the produce industry. The law 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?

Visit the PACA Division's website at:

www.ams.usda.gov/paca

The website contains information on licensing, current PACA licensees, resolving commercial disputes, mediation, reporting PACA violations, the PACA trust, PACA publications and announcements, and PACA's regional offices and staff contacts.

The USDA PACA Division also offers a free online training program that covers the basic information needed to comply with the PACA. To access the online training, click on the Education and Training link on the website.

For questions or additional information, call the PACA Division at 800-495-7222.



**USDA is an equal opportunity provider,
employer, and lender.**

July 2017