



**United States
Department of
Agriculture**

Agricultural
Marketing
Service

Fruit and Vegetable Programs-PACA Branch

**"Perishable Agricultural Commodities Act (PACA) -
Facilitating fair trade practices in the fruit and vegetable industry through education,
mediation, arbitration, licensing and enforcement"**

PACA Administrative Newsletter

Volume 2, Issue 1

January 1, 2006

Looking to the Future: Reorganization of the PACA Branch

Special points of interest found on PACA Web Page:

- PACA License Search Engine
- PDF Fillable License Application
- Protecting Your Trust Rights
- PACA Internet Training Program
- PACA Publications

The PACA Branch is undergoing some major changes. What this means to PACA licensees is that the future costs of the program will be lower while our level of service remains as good or better than ever before.

In February, two of the PACA Branch's five regional offices will be closed. The offices remaining open will be located in Virginia, Texas and Arizona. This new regional alignment will provide the most efficient and optimum service to the industry while reducing operating expenses by \$1 million a year. PACA complaints, investigations and phone inquiries for advice and information will continue to be handled by the three consolidated field offices.

To further enhance our ability to provide timely, efficient and accurate responses to telephone inquiries, a National Call Center is in the developmental phases.

Even with recurring savings resulting from this effort to streamline the operations of the PACA Branch, PACA license fees, which have remained unchanged since 1995, may have to be increased by 2009. The effort to consolidate the operations of the PACA Branch will help to mitigate this increase.

If you have any questions about the impact any of these changes may have, give us a call at any of our PACA Branch locations.

PACA Enforcement Actions, Part 1

Inside this issue:

Looking to the Future: Reorganization of the PACA Branch	1
PACA Enforcement Actions, Part 1	1
Coming Industry Training Seminars	2
Responsibilities of Growers' Agents	2
PACA Record Keeping Requirements	3
PACA On-Line Features	4
PACA Office Directory	4

This article is the first in a series to explain the process by which disciplinary actions are initiated, investigated, reviewed and pursued by USDA.

What are some examples of violations of PACA that may result in enforcement actions?

There are violations that commonly result in enforcement actions. For example, enforcement action can be taken if a company subject to the PACA:

- Fails to pay promptly and in full for fruits and vegetables.
- Fails to accurately account for, or pay the proceeds due to, the growers and shippers.

- Misrepresents produce as to grade, weight, size, label or quality.
- Creates false accountings.
- Alters USDA inspection certificates.
- Pays bribes to another business or a public official.

Written Notification

Before the PACA Branch may begin an investigation, someone must file a written complaint with USDA alleging that an individual or firm has violated the PACA. For example, a supplier's written notification could say that a customer has repeatedly failed to pay promptly for produce.

Continued on Page 2

Enforcement Actions, Part 1

Continued from Page 1

The identity of the person or firm that submits a written notification is confidential and cannot be disclosed by the Agency. Once USDA receives a written notification, USDA can initiate an investigation. When an investigation shows that an entity subject to the PACA has violated PACA requirements, action can be taken through USDA to suspend or revoke the firm's license or assess a civil penalty.

To learn more about using the PACA program services, call our toll-free number: 800-495-7222, or visit the PACA Web site at <http://www.ams.usda.gov/fv/paca.htm>.

Coming Industry Training Seminars New Schedule for 2006!

Training seminars are held to inform you of your rights and responsibilities under the PACA at the USDA Fresh Products Branch National Inspector's Development and Training Center in Fredericksburg, VA, in conjunction with courses in introductory and advanced produce inspection.



Here are the next scheduled dates for 2006:

- February 27-28 Introductory Class
- March 1-3 Advanced Class
- June 19-20 Introductory Class
- June 21-23 Advanced Class
- August 14-15 Introductory Class
- August 16-18 Advanced Class

For more information, call the United Fresh Fruit & Vegetable Association at 202-303-3400, or visit its Web site: www.uffva.org.

Responsibilities of Growers' Agents

Many growers hire sales agents to sell and market their crop. Although arrangements vary greatly, agents typically receive a percentage of the sales price as their commission, and may also be entitled to deduct other expenses. In addition to selling the produce, agents invoice and collect, deal with customers' claims, contract with carriers, and provide growers with a detailed accounting of the sales and expenses along with payment of the net proceeds.

Written Contract: The PACA requires, first and foremost, that the grower's agent have a written contract with its growers. The contract should clearly define the duties and responsibilities of both parties, and the range of authority granted to the agent in the marketing of the grower's product. Agents may also meet this requirement by providing the grower with a written statement of company policy *prior* to receiving

the first shipment of the grower's crop.

Accounts and Records: Once the terms are settled and the deal begins, the agent is obligated to prepare detailed and complete records to cover the disposition of the produce and the expenses incurred. Each grower's product must be identified from the time it is harvested or delivered to the agent, through the steps of packing, shipping and selling. Lot numbers or other means of identification are necessary to distinguish each grower's product.



Pooling: The agent and grower can agree that the grower's product will be pooled with that of others for the purpose of selling it. The grower's accounting must show how the pool sales prices and expense deductions are computed.

Continued on Page 3

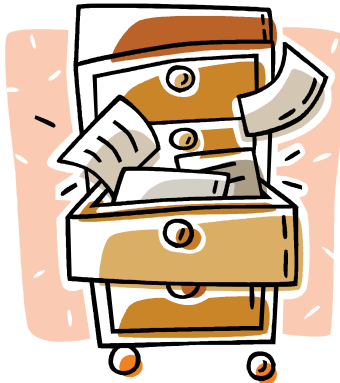
PACA Record Keeping Requirements

Proper record keeping is an insurance policy against trouble. Failure to maintain adequate records may be costly in two ways.

First, a licensee may lose money if a dispute arises and it cannot offer records to support its position, as in the following examples:

- A firm purchases a shipment of iceberg lettuce and either due to condition problems or market decline claims that a price adjustment was granted by the seller. The seller, however, disputes giving the adjustment and the buyer does not have enough proof such as a credit memo from the seller or a faxed confirmation of the credit allowance. Without supporting paperwork, the buyer may end up paying the original invoice price for the lettuce.
- A dealer is authorized to handle a shipment of mixed greens on a consignment basis for a grower. Having completed the sales, the dealer issues an account of sales to the grower. The grower feels that the returns are too low and requests an audit by the PACA Branch. The audit shows the documentation supporting some of the sales is missing and therefore the sales price for the undocumented sales is considered to be the average price of the documented sales. This may result in net proceeds that are higher than what was reported by the dealer to the grower, resulting in additional payment being due.

Both outcomes can be avoided by becoming familiar with the specific record keeping requirements which can be found in the



PACA and Regulations.

Second, all PACA licensees are required to prepare and maintain for 2 years records that fully disclose all transactions involved in their businesses. Most are records that any prudent merchant would normally keep, such as invoices, sales tickets, credit memos, memoranda of sale, freight bills and inspection certificates. If a licensee does not keep proper records, a disciplinary proceeding may be filed which could result in a license suspension.

Access to Records

While investigating a complaint under the PACA, a USDA representative may visit a licensee and ask that certain records be made available for review. If the licensee will not produce the records, the firm's license can be suspended until the records are made available.

Consequences of Failing To Maintain Records

In most cases, when it is discovered that a PACA licensee is failing to prepare and/or maintain the required records, the licensee is notified in writing of the violations and is given the opportunity to correct the identified deficiencies.

If the firm's records are still deficient after it has been given an opportunity to meet PACA requirements, the firm's license may be suspended.

If you have any questions on this topic or any other fair trade issue, please visit our Web site at <http://www.ams.usda.gov/fv/paca.htm>, or contact any of our PACA Branch regional offices listed in the Office Directory on Page 4.

Responsibilities of Growers' Agents

Continued from Page 2

Expenses: The agent and grower may agree on a flat per-package or per-weight fee to cover harvesting, packing and selling charges. This agreement should be reduced to writing so that both parties have a clear understanding of its terms. In the absence of such an agreement, the agent must detail its actual expenses in the accounting it issues to the grower, and its records must support those expenses.

Use of Other Sales Agents: The grower's agent is not entitled to use the services of brokers, commission merchants or auction companies to sell the grower's product, without specific prior approval from the grower contained in his written contract or other statement of company policy.

Price Adjustments: Any price adjustments that the agent grants his customers must be supported with documentation (such as destination USDA inspection certificates), unless the parties agree in their written contract or the statement of company policy that such documentation is not required.

Agent's Liability: The grower's agent can be held liable for any losses the grower suffers that are directly caused by the agent's negligence or failure to perform its duties. However, the agent is not responsible for non-payment of its customers unless it has guaranteed payment or been negligent in extending credit.

Trust Protection: The agent is required to negotiate contracts which preserve the grower's right to trust protection.



OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

Fruit and Vegetable Programs-PACA Branch

Our Web Address:
www.ams.usda.gov/fv/paca.htm

PACA Branch Office Directory

National Toll-Free Number:
800-495-7222

PACA On-Line Features

- PDF Fillable License Application
- PACA License Search Engine—Search for licensees by business name(s), principal(s), or branch/trade name.
- Perishable Agricultural Commodities Act and Regulations in English and Spanish
- F.O.B. Good Delivery Guidelines
- Internet Training Program
- Damage Claims
- Protecting your Trust Rights
- Past Issues of “PACA Administrative Newsletter”
- PACA Publications
- Office Directory

Washington, D.C.

AMS Fruit and Vegetable Programs, PACA Branch,
1400 Independence Avenue, SW, USDA Stop 0242,
Washington DC 20250-0242

Bruce W. Summers, Chief 202-720-2272
Lorenzo A. Tribbett, Asst. Chief 202-720-2272
Dispute Resolution Section 202-720-2890
License Section 202-720-2189
Trade Practices Section 202-720-6873
Toll Free: 877-622-4716

Tucson, Arizona

Jerry W. Taylor, Regional Director 520-670-4793
Toll Free: 888-639-0575
Fax: 520-670-4798

Fort Worth, Texas

Robert Parker, Regional Director 817-978-0777
Toll Free: 888-901-6137
Fax: 817-978-0786

Manassas, Virginia

817-978-0777
Toll Free: 888-639-9236
Fax: 703-330-4856

The U. S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternate means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

**Past issues of the “PACA Administrative
Newsletter” may be found at:
www.ams.usda.gov/fv/paca.htm**