



Fair Trade Practices Program



Perishable Agricultural Commodities Act

What is the Perishable Agricultural Commodities Act? How is the PACA enforced?

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 trade practices. A produce trader found to have committed unfair trade practices may face a monetary penalty, license suspension, or in the most serious cases, license revocation.

Who needs a PACA license?

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 must have a valid PACA license. In general, firms that buy or sell over 2,000 pounds of fresh or frozen fruits and vegetables in any given day are required to be licensed. Commission merchants, brokers, or growers' agents who negotiate sales of fresh fruits and vegetables on behalf of others are required to be licensed before their first transaction. Brokers who negotiate sales of only frozen fruits and vegetables on behalf of vendors 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 are not required to have a license, if they only sell products that 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 for each offense and for each day the offense continues. Court injunctions can be issued against those who continue to operate without a license.

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 ten days after acceptance unless the buyer and seller agree, prior to the sale and 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 and mediation 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 party filed against must be licensed or operating subject to license, and the written complaint, accompanied by a \$100 filing fee, must be filed within nine months from the date payment was due.

If parties cannot reach an informal resolution, the complainant may file a formal complaint. USDA handles formal complaints similar to how 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, which can be recovered if an order is issued in the complainant's 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 three years.

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 or pending complaints. You can also call the PACA Division at 800-495-7222; or download the PACA App on the Google Play Store or App Store.

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

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. To qualify for PACA trust protection, payment terms cannot exceed 30 days.

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.”

Non-licensed 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.

How is payment from trust assets enforced?

The trust is a tool 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.

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 for each violation or for each day the violation continues.

What are some examples of PACA violations that would prompt the USDA to take disciplinary action?

- Failure to pay, or failure to pay promptly, for produce received;
- Flagrant misbranding or misrepresentation of produce shipped in interstate or foreign commerce; and
- Making false and misleading statements for a fraudulent purpose.

Where can I get more information about the PACA program or obtaining a PACA license?

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 offers free online training covering entities' rights and responsibilities under 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.