



United States  
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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

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## PACA Mediation Service

### Special points of interest:

- PACA Violator Search Feature on PACA Web Page
- PACA Internet Training Program
- Coming Industry Training Seminars

The PACA Branch offers mediation services to help produce traders reach mutually agreeable settlements. Mediation is an effective way to resolve disputes, since it places the resolution of the dispute directly in the hands of the interested parties. It provides a way to settle differences outside the legal system and strengthens business relationships by providing a forum where both parties can air their views in a neutral atmosphere.



All PACA Branch personnel who handle disputes are trained in mediation, and can mediate your dispute upon request provided both parties agree. Since the PACA first began offering this service, it has successfully mediated many cases that might otherwise have required costly litigation to resolve. Most important, mediation leaves the resolution of the dispute in your hands—not in the hands of a judge.

Furthermore, there is no additional cost to mediate a dispute beyond the initial \$60 fee required for filing a PACA claim.

When a dispute occurs between produce firms and a complaint has been received, the PACA Branch will offer to mediate the dispute. Mediations can be conducted informally through a telephone conference call, or through a face-to-face meeting in a location acceptable to all parties. During mediation, PACA personnel will act as a neutral party whose focus will be on helping the parties achieve a settlement. Also, as

technical experts, they are available to advise the parties of their rights and responsibilities under the PACA.

For more information about this service, or to arrange for mediation of a commercial dispute, contact any PACA Branch office.

### Inside this issue:

PACA Mediation Service	1
Timely Inspections Play Crucial Role	1-2
Coming Industry Training Seminars	2
Frequently Asked Questions	3
Terms of Sale - F.O.B., Suitable Shipping Condition	3
PACA On-Line Features	4
PACA Office Directory	4

## Timely Inspections Play Crucial Role in Deciding PACA Cases

Most produce receivers realize that getting a timely USDA inspection is usually the key to obtaining an adjustment in the contract price on a load of produce that has arrived at a receiver's warehouse with problems. So, it is a big deal that the issue of timely inspections is still commonly misunderstood among many produce traders. What confuses most receivers about getting a "timely inspection" is how the term is interpreted under the PACA.

We all know that the timing of an inspection is

crucial because the fruit and vegetable industry deals with highly perishable products that can deteriorate substantially in a short time depending on factors such as the temperature and maturity of the product. Frequently, we are asked if the PACA requires inspection within 24 hours of arrival. In fact, there is no mention of any such "24-hour rule" in the law. However, notice of rejection must be given to the seller or shipper within 8 hours of arrival of a truck shipment.

Continued on Page 2



*“...the longer it takes to make the inspection, the less reliable the inspection results are in establishing the condition of the product at the time of arrival...”*

## Timely Inspections Play Crucial Role in Deciding PACA Cases

Continued from Page 1

What constitutes a timely inspection varies, depending on the durability of the commodity, availability of inspection services, the handling of the product while in transit, and other relevant factors.

An inspection is too late when it is too remote in time to accurately reflect the condition of the product at the time of arrival. Due to the inherently perishable nature of fruits and vegetables, the longer it takes to make the inspection, the less reliable the inspection results are in establishing the condition of the product at the time of arrival.

Naturally, an important factor in determining timeliness of inspection results is the type of product itself. An inspection taken on a more durable commodity, such as potatoes, 2 - 3 days after arrival might still be timely depending on the nature of the defects. However, an inspection taken on strawberries the same 2-3 days after arrival might not be sufficient to establish a breach of contract, because it would not reflect the condition of the strawberries on arrival due to the highly perishable nature of strawberries.

What if the receiver requests an inspection on Friday morning but the inspection service cannot conduct the inspection until Monday morning? The results of this inspection would have to be considered in connection with the fact that the load arrived 3 days earlier. If the product just barely fails to meet contract terms as a result of condition defects, the inspection

would not be sufficient to show that a breach of contract had occurred because in all probability the product continued to deteriorate over the weekend. However, if the defects found on Monday were way out of line with what would be considered a normal amount of deterioration, the inspection could be considered sufficient to establish a breach of contract by the shipper. One note of caution; in order for the results from Monday's inspection to be considered, the produce should be maintained at the appropriate temperature while waiting to be inspected.

A buyer who wants to protect itself should look at the product while it was still on the truck and, if there are problems with the load, request an inspection immediately. If the product has already been unloaded when a problem is detected, the inspection should still be requested immediately, before any part of the load is sold. The buyer should not wait on instructions from the shipper before calling for the inspection. The burden of proof to show a breach of contract rests squarely with the buyer, who can best establish a breach of contract by obtaining a federal inspection as soon as possible.

Whenever questions arise about the timeliness of inspections or what the results of an inspection mean in terms of a breach of contract, remember that you can always contact any PACA office for help in determining where you stand.



## Coming Industry Training Seminars

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:

- June 6-10, 2005
- August 22-26, 2005
- September 26-30, 2005

For more information, call us toll free at 877-622-4716.

## Frequently Asked Questions About PACA

### What happens after I file my PACA claim?

Once the PACA Branch office receives your complaint, it will gather the relevant facts from all parties involved in the dispute and assist in reaching a settlement, including an offer to mediate the dispute. The PACA Branch handles more than 2,000 such cases each year. We resolve about 75 percent of these claims informally. However, if informal settlement is not possible and the complainant elects to pursue the matter through formal proceedings, USDA can issue a binding decision and order.

Although it costs an additional \$300 to obtain a formal ruling, you can recover this fee from the other party if you prevail.

### I am a broker, but don't "handle" any produce. Do I need a license?

Generally, a broker negotiating contracts involving fresh and frozen fruits and vegetables shipped in interstate or foreign commerce between a buyer and a seller must be licensed under the PACA. The exception to this requirement is made for a frozen food broker negotiating only the sales of frozen fruits and vegetables on behalf of the vendor. These brokers are not required to be licensed until the value of the contracts exceeds \$230,000 in a calendar year.

## Terms of Sale: "F.O.B." and "Suitable Shipping Condition"

"F.O.B." means that the commodity is placed "free on board" the carrier at shipping point in suitable shipping condition, and that the buyer assumes all risk of damage and delay in transit not caused by the seller. This means, for example, that if a load is wrecked or stolen in transit, the buyer must pay the invoice price to the seller and file a claim with the carrier to recover damages. Under F.O.B. terms, the seller guarantees that the product, when loaded onto the carrier, is in "Suitable Shipping Condition."

"Suitable Shipping Condition," or what is commonly referred to as the warranty of suitable shipping condition, is applicable only in F.O.B. sales, and means that the produce, at the time of shipment, is in a condition which *if handled under normal transportation conditions* will assure delivery at the contract destination without abnormal deterioration.

The underlined words in the above definition imply that since fruits and vegetables are perishable, some amount of deterioration is normal and can be expected. This means that it is possible that a product which grades U.S. No. 1 at shipping point could arrive at destination with total defects exceeding the limits established in the U.S. Grade Standards and still meet the terms of the F.O.B. contract.

*For example*, suppose a load of bell peppers shows 4 percent scars and 4 percent turning red at shipping point, for a total of 8 percent defects. The peppers would grade U.S. No. 1 at that time, since the U.S. Grade Standards allow 10 percent defects. After a normal 4- to 5-day trip across the country, an inspection at destination shows 4 percent scars, 6 percent turning red, and 1 percent decay. The



peppers now have 11 percent defects and do not meet U.S. No. 1 standards. However, 11 percent defects would not show that the peppers were abnormally deteriorated, since there are only 3 percent additional condition defects since shipment.

The italicized words in the above definition imply that when transportation conditions are not normal, the warranty of suitable shipping condition is not applicable.

*For example*, suppose a load arrives late and a USDA inspection made at destination shows considerable condition problems in the product, along with high temperatures. Following the standard that abnormal transportation voids the warranty of suitable shipping condition, the buyer would pay the shipper in full and take up the matter of damages with the carrier.

There are, however, three instances where a buyer may claim damages for a breach of warranty by the seller despite the existence of abnormal transportation conditions:

1. When a seller loads product on a carrier with obviously faulty or inadequate equipment, or misloads the product in such a way as to block air flow; or
2. When the nature of the damage found at destination is such that it could not have been caused by or aggravated by the faulty transportation service; or
3. When the defects appearing at destination are so extensive and/or advanced that they would have been present even if transportation conditions had been normal. *Example*: A load of cantaloupes arrives one day late, with good temperatures and showing 35% decay. The decay is too extensive to have been caused by the late delivery.



**OFFICIAL BUSINESS**  
**PENALTY FOR PRIVATE USE \$300**

Fruit and Vegetable Programs-PACA Branch

**Our Web Address:**  
[www.ams.usda.gov/fv/paca.htm](http://www.ams.usda.gov/fv/paca.htm)

**PACA On-Line Features**

- PACA Violator Search Engine
  - Search for violators, including persons under employment and licensing restrictions, by business name(s) or individuals
- PACA License Search Engine
  - Search for licensees by business name(s), principal(s), or branch/trade name
- Perishable Agricultural Commodities Act and Regulations
- F.O.B. Good Delivery Guidelines
- Internet Training Program
- Past Issues of "PACA Administrative Newsletter"
- Office Directory

**Past issues of the "PACA Administrative Newsletter" may be found at:**  
[www.ams.usda.gov/fv/paca.htm](http://www.ams.usda.gov/fv/paca.htm)

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

**PACA Branch Office Directory**

National Toll-Free Number:  
800-495-7222

**Washington, D.C.**

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