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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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## Disputes and Dilemmas: Prevention is the Key

### Special Note:

- **National License Center now in Manassas, VA**  
- See new phone numbers on page 4

### Does the following scenario sound familiar?

You purchase a truckload of melons at a set price. By the time it arrives at your warehouse five days later, the market has dropped significantly. You contact the seller and ask if he can help you out. After some discussion back and forth, there is no firm agreement made, but the seller tells you, "Don't worry about it, I'll take care of you." Several months go by and you have put off paying the invoice, hoping to receive an adjustment from the seller. The next thing you know, the seller has filed a complaint against you with PACA for the full invoice amount. What went wrong?

### Or, how about this situation?

A load of potatoes that you purchased arrives at your place of business showing problems. You obtain a timely USDA inspection which shows that they failed to grade U.S. No. 1. You contact the seller immediately and claim a breach of contract. You were sure that you purchased the

potatoes on a U.S. No. 1, delivered basis, with the grade guaranteed to your dock. The shipper denies this and states that the terms were U.S. No. 1, F.O.B. and there is no breach. You are at an impasse. What do you do?

These are but two examples of many all-too-familiar circumstances where disputes and misunderstandings could have been prevented. In this issue, we will help you explore the steps you can take to clarify your terms and nail down a resolution to problem loads. The PACA offers many services to assist you in resolving disputes you may have and preventing them from occurring in the first place.



So, read on!

and vegetables to writing as soon as possible after the deal has been made and before the product is shipped. This is the surest method to minimize misunderstandings about the details of the contract. When both parties have a clear understanding of the contract, and have it before them in writing, the deal tends to stick even if market conditions change before the product arrives.

When an agreement is reached, how should it be confirmed in writing? That depends on the circumstances. The seller should immediately prepare an invoice setting forth the quantity,

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## Put It in Writing!

No one in the produce business needs to be told that the industry is highly competitive. The perishable nature of fruits and vegetables and the daily fluctuation of prices promote fast trading. Business deals are made rapidly and often involve loose and informal agreements. Reliance on a telephone discussion and the other person's word can save time, but errors cost money. With the advent of fax machines and electronic communications, trading members have the ability to immediately confirm their agreements in writing, helping to avoid contract disputes.

It has always been a good idea to convert the terms of purchase and sale agreements of fruits

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## Mediation or Litigation: A Matter of Choice

Ever been involved in a dispute and felt as if your position on the matter wasn't considered? Have you worried that your choice was between giving up or losing a valuable business partner? Would you like to be part of the decision-making process and preserve business relationships? PACA offers you that opportunity through a process called mediation.

### What is mediation?

Mediation is a voluntary and confidential process in which a trained, unbiased specialist helps each party examine their mutual interests, identify and consider options, and carefully consider possible solutions. The process provides a non-threatening, informal procedure as a step in resolving disputes. Mediators do not force a resolution but instead give each party the opportunity to explain their point of view and how they would like to see the problem solved.

Mediation is often beneficial because the parties have control over the outcome. In PACA formal proceedings or court cases, you lose ownership of the outcome because a judge or presiding officer makes the final decision. But in mediation, because you

are an active participant in the solution, both parties are often happy with the outcome. Furthermore, by mediating their dispute both parties can avoid the high costs in time, effort, and the legal expenses of formal action while preserving business relationships.

Here is an example of how a typical PACA mediation works. XYZ Produce Co. files an informal PACA complaint against your firm alleging failure to pay for three loads of cantaloupe. XYZ Produce alleges that your firm owes them \$6,600 for the loads in question. Your position is that the cantaloupe arrived with some serious quality problems and that you actually owe much less. A PACA mediator suggests that mediation might be helpful and both sides agreed. Through the mediation you and XYZ Produce identify the key issues and focus on interests, such as the fact that neither company wants to dissolve the business relationship. Together, you mutually decided that your firm will pay XYZ Produce \$4,000 and sign a contract making XYZ Produce your exclusive supplier for the following season

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## Put It in Writing!

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price and terms of sale, such as "F.O.B." or "delivered." Understanding the difference between these terms could mean the difference between a breach or no breach of contract.

If, for example, a shipper sells U.S. No. 1 potatoes on an "F.O.B." basis and the potatoes are transported under normal conditions and arrived with only a slightly higher percentage of decay than would be allowed for U.S. No. 1 potatoes, they would meet the contract even though they did not grade U.S. No. 1 at destination. A buyer must expect some normal deterioration while the load is being shipped. On the other hand, if the shipper sells potatoes as U.S. No. 1 "delivered," those potatoes must meet all quality and condition requirements of U.S. No. 1 grade upon arrival at the contract destination.

Written confirmations should also include any special requirements, such as grade, size and weight. Special warranties or conditions should also be spelled out. Sometimes, due to the prevalence of a specific type of defect in a commodity during a certain time of year in a regional area, shippers or their



associations may attempt to establish an agreement with their customers in which that defect, if scored on a USDA inspection, will not count towards establishing a breach of contract. The seller should confirm this agreement promptly. The buyer should check the documents promptly on receipt, and notify the seller if there are any discrepancies.

Putting contract terms in writing is a necessity that does not end with the original contract. When a "trouble load" arrives, the seller and buyer often agree that a change from the original contract is necessary. Lacking written confirmation of the new contract, however, they sometimes can't agree months later on what changes were made. Vague promises such as "We will work it out later," or "Do the best you can and we will take care of you," often lead to disputes. An amended agreement should clearly spell out how the load is to be handled or if a price adjustment was made. If the amended agreement is not disputed promptly, you will have good evidence of a firm agreement.

Remember, oral contracts, although they can be held legally binding, are notoriously hard to prove in court. An oral contract without the documents to back it up is virtually unenforceable. In most cases, PACA formal decisions give considerable weight to written agreements which are prepared and issued in a timely manner.

Bottom Line: timely and written confirmation of contract agreements can minimize misunderstandings, help avoid dollar losses, and improve business relationships.

## Understanding the Tomato Suspension Agreement

One area of dispute that comes up from time to time in claims turned over to PACA involves the Tomato Suspension Agreement. We receive many calls from buyers who purchase tomatoes from shippers in Nogales, Ariz. Commonly asked questions include: What is the Tomato Suspension Agreement and why is it important to PACA licensees? Does the Suspension Agreement cover all transactions of Mexican tomatoes? Or, is each contract treated separately? If I buy a load of Mexican tomatoes from a company that imported them from a grower in Mexico, can the seller hold me or my customer to the terms of the Suspension Agreement? How are the rules of the Suspension Agreement applied when there are problems with a load of tomatoes at destination?

The Tomato Suspension Agreement is an agreement reached between the U.S. Department of Commerce and Mexican tomato growers in 1996, which resulted in the suspension of an anti-dumping investigation by the U.S. government that could have resulted in the imposition of high tariffs on imported Mexican tomatoes. The Suspension Agreement specifies minimum sale prices for imported tomatoes, and sets the conditions under which claims may be

made by buyers when the product arrives in bad shape.

In 1999, the Department of Commerce published an industry-wide notice, clarifying the conditions under which the PACA Branch would enforce the terms of the Suspension Agreement. In brief, the PACA Branch will enforce any agreement made between seller and buyer where both parties agree to be bound by the terms of the Suspension Agreement.

It is important to remember that a buyer must be notified by the seller and agree to the terms of the Suspension Agreement prior to entering into the contract in order for it to be enforceable.

The terms of the Suspension Agreement differ from PACA regulations and definitions in important ways.

First, the Suspension Agreement allows a fixed amount of specified defects to exist before a damages claim can be made against a load of tomatoes, whether the

shipment travels across the country or across the street from seller to buyer. For F.O.B. sales, this differs from the PACA policy of allowing increasing amounts of condition defects the longer the product is in transit. In addition, only those condition defects in the Commerce Department's list can be scored as Suspension Agreement defects. Any defects that appear on an inspection certificate, but not on that list, are not allowable under the Suspension Agreement, including an unlimited amount of quality defects.

Finally, the Suspension Agreement has very specific and restrictive means for claiming damages when the product arrives at destination in poor condition. PACA policy allows the buyer more flexibility in calculating damages from a breach of contract. You can find more information about the terms of the Suspension Agreement at <http://ia.ita.doc.gov/tomato/new-agreement/02-31618.txt>.

If you have questions about this topic contact any of the PACA regional offices for further clarification.



## Mediation or Litigation: A Matter of Choice

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so that both partners could profit from doing future business together.

Remember, nothing in mediation is forced. Both parties willingly agree to the settlement reached in this example. The mediator helps the parties develop and agree upon a realistic, workable solution to their problem based on their needs and interests. Mediation is confidential. Discussions between the mediator and other parties cannot be used for other purposes, as in court proceedings, in the event that a solution is not reached.

### What are the benefits of PACA mediation?

- You get heard.
- You help shape the outcome.
- You preserve business relationships.

- You recover damages sooner.
- You avoid risks of formal proceedings where there are no guarantees about how formal proceedings will be decided.
- There is no additional charge outside of your \$60 initial filing fee.



### How long does mediation take, where is it held, and how do I go about requesting it?

Mediations can take from 1 hour to several sessions depending on the complexity of the issues involved. Arrangements can be made to meet at a neutral location that is acceptable to both parties. Or for your convenience, we can even mediate through teleconferencing. You can request mediation by contacting any PACA regional office.



**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 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
- F.O.B. Good Delivery Guidelines
- Interactive Training Course
- Protecting Your Trust Rights
- Damage Claims
- Most Commonly Used Trade Terms and Definitions
- Perishable Agricultural Commodities Act and Regulations
- Frequently Asked Questions
- Office Directory

**Send any PACA questions, comments or feedback to:**  
**[Bruce.Summers@usda.gov](mailto:Bruce.Summers@usda.gov)**

### 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  
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

Basil Coale, Regional Director 703-331-4550  
Toll Free: 888-639-9236  
Fax: 703-330-4856  
National License Center 703-331-4570  
Fax: 703-330-4555

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