



Agricultural Marketing Service

# Fruit & Vegetable Program News

Winter/Spring 2015

## Fruit and Vegetable Industry Advisory Committee

*Charles W. Parrott, Deputy Administrator, Fruit and Vegetable Program*



Chuck Parrott

[Agricultural Marketing Service](#) (AMS) Administrator Anne Alonzo and I are very pleased that Agriculture Secretary Tom Vilsack announced the formation of the [U.S. Department of Agriculture's](#) (USDA) [Fruit and Vegetable Industry Advisory Committee](#). AMS oversees the Committee, which advises the Secretary on issues affecting the fruit and vegetable industry.

When the Secretary re-chartered the Committee in 2013, he made it clear that USDA wanted to hear from all segments of the produce industry, including growers and shippers of all types and sizes, processors, wholesalers, distributors, retailers, and farmers market and cooperative representatives. The produce industry responded in a big way; more than 600 individuals were nominated or expressed interest in serving on the Committee. The Secretary selected 25 of these dedicated individuals to serve on the Committee. Thank you to all who volunteered.



Anne Alonzo

Originally chartered in 2001, the Committee meets up to twice annually. To date, its 14 meetings have generated more than 60 [statements and recommendations](#) on issues ranging from food safety to school nutrition to improving USDA programs. Many of the Committee's recommendations have been acted upon, allowing USDA to provide more efficient and cost-effective services and to be a stronger advocate for the produce industry. Here are a few examples of USDA's actions in response to Committee recommendations:

- USDA consolidated [Perishable Agricultural Commodities Act](#) (PACA) field offices from five to three regional locations, and centralized the PACA licensing function by establishing the PACA National License Center. You can reach the Center at 1-800-495-PACA (7222).
- USDA strengthened our relationship with other Federal Government agencies to develop consistent, effective food safety standards that are applicable to all produce, whether it is imported or grown anywhere in the United States. In 2009, USDA and the U.S. [Food and Drug Administration](#) (FDA) formalized a commitment to collaborate on new food safety rules. The agreement includes dedicating a senior-level AMS [Fruit and Vegetable Program](#) (F&V) employee to work with FDA's produce safety staff through 2018.

*Continued, see Advisory Committee on page 2.*

## Advisory Committee, from page 1.

While regulatory authority rests squarely with FDA, USDA has been able to provide an industry perspective from along the supply chain. This includes standards and guidance development; education and training; outreach; and, the development of strategies for research, implementation, and enforcement. We also are working to help our full range of stakeholders understand and comply with the final FDA regulations.

- USDA increased its outreach and educational offerings about the value of our services and tools offered to the produce industry. In addition to participating in trade shows and conferences and to providing this newsletter, F&V developed a webinar series that has provided information to more than 5,000 industry members to date.
- USDA amended the [PACA regulations](#) to preserve PACA Trust protection when sellers extend payment terms beyond 30 days in cases involving contractual default of buyers. The change allows a seller, supplier, or agent who has met the PACA Trust eligibility requirements to enter into a scheduled agreement for payment of the past due amount without foregoing trust eligibility if there is a default in payment as defined in the regulations.

Whether the recommendations have broad policy implications or are very specific to services USDA provides to the industry, the Committee's input helps us better serve you each day.

F&V administers the Committee, providing logistical oversight and guidance on processes and procedures required by the [Federal Advisory Committee Act](#). The Committee, under the leadership of the chair and vice chair it elects, determines its own agenda, goals, and objectives. It also receives updates from Federal and industry experts on a variety of issues. Once the Committee's recommendations are submitted and reviewed by the Secretary, they are posted on the AMS website at [www.ams.usda.gov](http://www.ams.usda.gov).

Over the next 2 years, we look forward to hearing from you and the Committee members about issues affecting the fruit and vegetable industry. Please feel free to reach out to the Committee members and, as always, contact me at 202-720-4722 or [charles.parrott@ams.usda.gov](mailto:charles.parrott@ams.usda.gov) if we can be of assistance in any way.



*AMS Administrator Anne Alonzo (center, front row) and Deputy Administrator Chuck Parrott with the 2013-2015 [USDA Fruit and Vegetable Industry Advisory Committee](#).*

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# Fresh Produce Inspection 101

*Lorenzo A. Tribbett, Director, Specialty Crops Inspection Division*

[AMS Fruit and Vegetable Program's Specialty Crops Inspection Division](#) (SCI) provides inspection, food safety auditing, and quality assurance services from farm to table along the produce supply chain.

It's easy to tap into our nationwide network of 800 agricultural experts and 2,500 Federal-State partners for fresh produce inspection services. Just fax a completed [Request for Service \(Form FV-237\)](#), or call the [office nearest to the load to be inspected](#). You also can submit your request electronically by selecting "Submit and Close" at the bottom of the FV-237. SCI's goal is to provide service the day we receive your request.

We primarily base our inspections on [U.S. Grade Standards](#). The standards provide a uniform language that describes the quality and condition of commodities in the marketplace. We develop and revise the standards in partnership with industry so they reflect modern business practices. We also can base our services on customers' unique specifications.

During an inspection, we identify and record all quality and condition factors found in a load. A "quality and condition inspection" results in determination of a U.S. Grade. Quality defects are permanent flaws, such as misshapen or poorly colored fruit, that occur prior to packing and do not progress or change with time. Condition defects – such as surface discoloration, shriveling, and bruising – occur during packing or in transit and worsen with time. A "condition-only inspection" reports information only on condition defects and does not determine quality or a grade.

Once the inspection is complete, USDA issues a certificate that provides a summary of the results within minutes.

Our inspectors can report on the certificate any factor of the load that is considered relevant by the customer. Most Federal certificates are issued via email, providing results that are easy to read, store, and share with other financially interested parties. Any hand-written certificates are delivered in person or faxed to the customer. Also your official inspection certificate is evidence in [Perishable Agricultural Commodities Act](#) (PACA) proceedings.

After a certificate is issued, any party with a financial interest, including shippers, brokers, growers, and truck drivers, can request an appeal inspection if the party believes the original inspection does not accurately describe the condition of the lot. Appeals are performed by local supervisors and ruled on by senior headquarters management.

In addition to traditional inspections and certifications, we offer [additional services](#) that are tailored to meet individual customers' needs. [Good Agricultural Practices/Good Handling Practices](#) (GAP&GHP) food safety verification services allow your customers to quickly see, via our website, that your operation is compliant with an established and globally recognized food safety program. Our [Quality Monitoring Program](#) provides immediate, third-party monitoring of your product's quality based on your own set of required quality measurements. Both of these services offer the option of displaying a USDA seal on your retail packaging that is recognized by consumers as a symbol of your commitment to safe food handling and superior product quality.



*For more information about fresh produce inspection, please contact Lorenzo A. Tribbett at [lorenzo.tribbett@ams.usda.gov](mailto:lorenzo.tribbett@ams.usda.gov) or 202-720-5870.*

# Get To Know PACA: Online Training Resources

*Natalie Worku, Program Analyst, PACA Division*

The [Perishable Agricultural Commodities Act](#) (PACA) was enacted at the request of the fruit and vegetable industry to promote fair trade. PACA protects businesses dealing in fresh and frozen fruits and vegetables by establishing and enforcing a code of fair business practices and by helping companies resolve business disputes.

Whether you are new to the produce industry or need a refresher about PACA, the [Fruit and Vegetable Program's](#) PACA Division offers a range of free Internet-based training courses explaining the provisions of the Act. Some training material is also offered in Spanish and Korean.

[Self-Guided Online Training](#). PACA's free online training course covers basic information you need to operate within the PACA. In addition to learning about your rights and responsibilities, you'll increase your understanding of trade terms, payment requirements, interpretation of Federal inspection certificates, and much more. Training is divided into 10 units, and each unit can be completed in less than 1 hour. Topics covered include:

- ↳ Trade Term Definitions
- ↳ Rights and Responsibilities
- ↳ Licensing
- ↳ Payment Requirements
- ↳ Resolving Commercial Disputes
- ↳ Record Keeping Requirements
- ↳ USDA Inspection Services
- ↳ How the PACA Trust Works
- ↳ Disciplinary Procedures and Consequences
- ↳ Misbranding and Misrepresentation

After reviewing the material for each unit, you can take an online test and get immediate feedback on what you've learned. Once you've satisfactorily completed all 10 units, you'll receive an email notification that you have successfully completed the course.

[Webinars](#). PACA [webinars](#) are designed to increase access to USDA tools and resources for those growing, packing, shipping, and selling fruits and vegetables. Participation in the webinars is free, and recordings of previous versions are available on our website 24/7. USDA regional offices can also offer localized webinars for individualized company training needs.

[Website](#). PACA's website offers useful information about PACA licensing, filing reparation claims, good delivery guidelines, fair trade enforcement, and a complete version of the PACA statute and regulations. Informative articles and interviews are also available in the [Frequently Asked Questions](#) section.

If you would like more information, have questions about any PACA training, or would like to request a brochure, please contact us at 1-800-495-PACA (7222), ext. 2. You can also check out our website at [www.ams.usda.gov/paca.htm](http://www.ams.usda.gov/paca.htm).



*Natalie Worku can be reached at [Natalie.Worku@ams.usda.gov](mailto:Natalie.Worku@ams.usda.gov) or 202-205-4887.*

# Training Solutions for the Produce Industry

*Randle Macon, Associate Director,  
Inspection Services*

The USDA [Specialty Crops Inspection Division](#) (SCI) partners with [United Fresh Produce Association](#) to provide industry participants with a [Produce Inspection Training Program](#). This unique program is designed to provide anyone involved in the produce supply chain – from grower to retailer – with hands-on instruction from USDA Master Trainers who are credentialed by the [American Society of Training and Development](#).



SCI also independently provides industry training to produce companies whose employees need more specific commodity training.



*Randle Macon can be reached at [Randle.Macon@ams.usda.gov](mailto:Randle.Macon@ams.usda.gov) or 202.720.0298.*

# Growers, Are You Protected? What Your Agent Can and Can't Do For You Under the PACA Trust

*Gary Nefferdorf, Deputy Director, PACA Division*

An agent selling produce on behalf of a grower is required to preserve the grower's right to [Perishable Agricultural Commodities Act \(PACA\) trust benefits](#) by filing a timely notice of intent to preserve trust benefits with the buyer of the produce. Once this is accomplished, the grower's entitlement to trust benefits is protected, right? Wrong!

In July 2010, the (9th Circuit) U.S. Court of Appeals affirmed a district court ruling holding that a grower whose agent filed a timely notice to preserve trust benefits with the buyer was not entitled to the benefits of the trust because the grower had not given its own notice of intent to preserve trust benefits.

That case also specified another point in [PACA law](#). Growers who deal with a collect and remit agent must preserve their rights to trust benefits by filing appropriate notices with the agent. More recently, a bankruptcy court (Eastern District North Carolina) stated there is substantial authority that a supplier must give notice of its intent to preserve trust benefits on its own behalf, regardless if that supplier's agent provided trust notice.

Now that you are aware that growers must preserve their PACA Trust protection by filing a timely notice of intent to preserve trust benefits with their agent, you must also know the correct procedure for doing so.

Growers don't typically invoice their agents, and only [PACA licensees](#) may preserve their trust benefits by placing the required trust language on their invoice (*see boxed text to the right*). As growers are not required to be licensed, they must send their agent a separate notice of intent to preserve trust

benefits within 30 days from the date the payment was due. Unless the grower and its agent have a written agreement stating otherwise, PACA provisions for growers' agents require that prompt accounting and payment be made within 30 days after the goods are received for sale.

An appropriate notice for purposes of the PACA Trust (1) must be in writing; (2) must state that it is a notice of intent to preserve trust benefits; and (3) must include information that establishes for each shipment the name and addresses of the supplier (grower) and the debtor (agent), the date of the transaction, the commodity, terms of payment as appropriate, its price, and the amount past due and unpaid. Since agents receive the goods from the grower on consignment, the price may not be known, in which case an estimated price may be used.

For more information, please visit the PACA website at [www.ams.usda.gov/PACA](http://www.ams.usda.gov/PACA). You may also contact the PACA customer service line at 1-800-495-7222 ext. 2 for assistance. It is also advisable that you consult with an experienced private PACA attorney to review your PACA Trust protection business methodology to better ensure your rights in any unexpected court action.

"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."



*Gary Nefferdorf can be reached at  
[Gary.Nefferdorf@ams.usda.gov](mailto:Gary.Nefferdorf@ams.usda.gov) or  
202-720-2272.*

# Private Versus Government Inspections in Perishable Agricultural Commodities Act Claims

*Earl E. Elliott, Senior Marketing Specialist, USDA PACA Division*

In today's global marketplace, U.S. exporters of produce are often far removed from their crop's final destination. Although demand is strong for U.S. produce, monetary disputes can arise when a buyer outside of the country reports quality or condition problems to the U.S. exporter. The exporter may be caught in the middle between its U.S. supplier and the foreign buyer. If the parties have questions regarding breach of warranty or the dispute escalates, a claim could result in the United States under the [Perishable Agricultural Commodities Act](#) (PACA). This will likely require a timely and properly detailed independent inspection report and a transportation temperature report as evidence to aid in resolving the dispute.

In free-on-board sales, the suitable shipping condition warranty requires that produce arrive at its contract destination without abnormal deterioration under normal transportation conditions. Abnormal deterioration is determined based upon [U.S. Grade Standards](#) and [PACA good arrival guidelines](#).

To have evidentiary value in a PACA decision, all inspection reports and transportation temperature reports must be clearly written entirely in English or be accompanied by English translations certified under oath by a qualified court interpreter. In addition, all inspection reports should cover the following details:

- The date the produce became available for inspection or the inspection request date,
- The actual date of the inspection, distinguished from the date of the inspection report,
- A description of each produce lot and the number of packages inspected,
- Lot numbers and other package markings,
- The range of pulp temperature within each lot,
- Random sampling of at least 1 percent of the packages in each lot, and
- Defects listed separately with total percentages and range within each lot.

Properly detailed Government inspection reports are independent evidence of the quality or condition of produce. Properly detailed independent private inspection reports may suffice where Government inspectors are unavailable. If there is any possibility that a Government inspector will be unavailable, PACA recommends that all parties to a produce contract agree beforehand whether or not to be bound by an independent private inspection report. Issues can arise later where a party did not agree or if the inspection report lacks some of the details listed above.

PACA will likely honor timely independent private inspection reports that are properly detailed where:

- (1) Government inspectors were unavailable,
- (2) The parties agreed beforehand to be bound by an independent private inspection report,
- (3) There are no objections to an independent private inspection report by any contractual party, or
- (4) An independent private inspection report was sustained by a Government inspector.

If you have additional questions about the use of Government versus private inspection reports in international sales, please call the PACA Customer Service Line at (800) 495-7222, option 2, and speak to one of our subject matter experts.



*Earl Elliott can be reached at  
[Earl.Elliott@ams.usda.gov](mailto:Earl.Elliott@ams.usda.gov) or  
202-507-3610.*

# Produce Pilot Ready To Take Root in Schools

*Nate Sudbeck, AMS Commodity Procurement Program Specialist*

Whether it's trying on a new pair of shoes or eating a different item from your favorite restaurant, there's always a feeling of excitement when you try something new. Here at [USDA's Agricultural Marketing Service](#) (AMS), we get that same feeling when we are able to create new opportunities for our Nation's producers. That's why we're excited to announce that AMS and our sister agency—USDA's [Food and Nutrition Service](#) (FNS)—have launched a new [pilot program for the procurement of unprocessed fruits and vegetables](#).

The new pilot program—established by the [2014 Farm Bill](#)—is part of USDA's continued commitment to create and expand opportunities for our Nation's fruit and vegetable producers. The pilot will open doors for American producers, giving them an additional opportunity to supply quality fresh fruits and vegetables to schools in up to eight States.

In addition to helping American producers, the program will allow schools to purchase unprocessed produce from eligible suppliers with entitlement funding, while leveraging existing commercial distribution channels and school relationships with growers, produce wholesalers, and distributors. Although the pilot doesn't limit the produce to just local purchases, it does offer an opportunity for schools to expand their use of locally produced fruits and vegetables. With [Farm to School Census](#) results showing that 56 percent of school districts that bought local food would like to buy more in the future, the ability to purchase more local foods is an important aspect of the new program.

As with any great new menu item, USDA is ready to spread the word. FNS [invited States to apply](#) to participate in the pilot by September 30, 2014. AMS is accepting applications for [eligible vendors](#) on an ongoing basis, but we encourage people to begin the process as soon as possible so that their applications can be reviewed and approved well in advance.

Both agencies recently held conference calls—one for states and school food authorities and another for vendors looking to supply food. These conference calls are one of the ways that USDA is being transparent about the process and the opportunities that are available through the pilot program.

Last fiscal year, AMS purchased more than 272 million pounds of fresh fruits and vegetables. The new produce pilot program will increase these figures, expanding the opportunity for qualified vendors to supply fresh, quality fruits and vegetables to schools.



*Nate Sudbeck can be reached at [nate.sudbeck@ams.usda.gov](mailto:nate.sudbeck@ams.usda.gov) or 202-720-3052.*

USDA remains committed to finding new ways for people to enjoy the quality products grown by our Nation's fruit and vegetable producers. We are also excited about the opportunities created by the pilot and the quality foods it will help bring to our Nation's schoolchildren. USDA will continue working with the produce industry and our Nation's schools to build on this successful partnership. For questions about the vendor qualifications to participate in the new [pilot program for the procurement of unprocessed fruits and vegetables](#), please contact me at 202-720-3052 or [nate.sudbeck@ams.usda.gov](mailto:nate.sudbeck@ams.usda.gov).

**AMS Fruit and Vegetable Program News** is a newsletter written and produced by the staff of AMS Fruit and Vegetable Program for the produce industry.

Send your comments to newsletter editor  
Christopher Purdy at [christopher.purdy@ams.usda.gov](mailto:christopher.purdy@ams.usda.gov).

# Fruit and Vegetable Program Webinar Series

*Christopher Purdy, Business Development Specialist,  
AMS Fruit and Vegetable Program*



[AMS Fruit and Vegetable Program](#) hosts an ongoing series of webinars designed to provide practical information about our programs and services and to introduce our staff members who support the produce industry. To date, thousands of industry members across the United States and around the world have participated in these free interactive webinars. Topics covered include the [Perishable Agricultural Commodities Act \(PACA\)](#), how to sell fruits and vegetables to the USDA, preparing for a food safety audit, getting the most from [Fruit and Vegetable Market News](#), fresh produce market inspection basics, and much more. You can visit the [AMS Fruit and Vegetable Program Webinar Library](#) to listen to all of our webinar recordings.

In addition to providing helpful information for produce industry members, we recently launched a webinar series to support staff who buy and handle fruits and vegetables for schools, food banks, co-ops, food hubs, farmers markets, hospitals, and other institutions. Recently, we rolled out a new webinar mini-series, “Learn the Language of Produce,” that is designed to increase the knowledge and comfort level of buyers and receivers of bulk fruits and vegetables. AMS’ webinar speakers will provide tips on how to buy, receive, and handle bulk produce safely and efficiently.



*For information about upcoming  
webinars, please contact  
Christopher Purdy at 202-720-3209  
or [christopher.purdy@ams.usda.gov](mailto:christopher.purdy@ams.usda.gov)*

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