

# Agricultural Marketing Service

Creating Opportunities for American Farmers and Businesses

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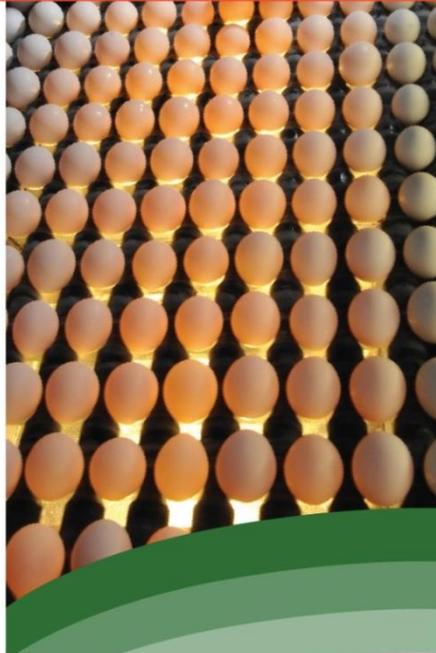




United States Department of Agriculture

# Agricultural Marketing Service

Creating Opportunities for American Farmers and Businesses



# Agricultural Marketing Service (AMS) Fruit and Vegetable Program

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Presents...



**A Breach of Contract is Established....  
Now What?**

[www.ams.usda.gov/paca](http://www.ams.usda.gov/paca)

# Today's Host

## ***Jeffrey Davis***

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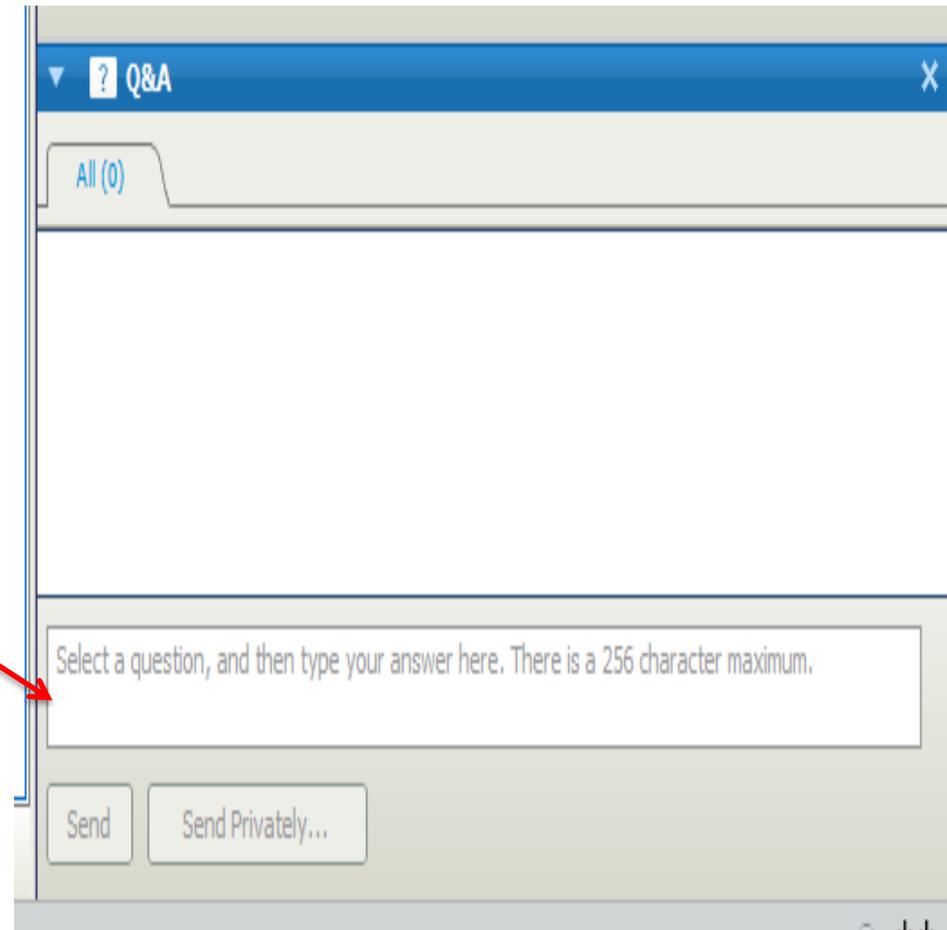
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# Creating a Good Webinar Experience



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# AMS Fruit & Vegetable Program

Help buyers and sellers market their fresh and processed fruits, vegetables, and other specialty crops. We:

- Develop U.S. Grade Standards
- Grade and Inspect product
- Collect and disseminate Market News reports and information
- Partner with Industry boards and committees to help overcome marketing barriers
- Facilitate fair trade and dispute resolution through enforcement of the Perishable Agricultural Commodities Act (PACA)

[www.ams.usda.gov](http://www.ams.usda.gov)

## ***Your Featured Speaker***

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### ***Mary Mitchell***

Senior Investigator/Mediator

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# PACA on the Internet

- <http://www.ams.usda.gov/rules-regulations/paca>

**USDA** United States Department of Agriculture  
Agricultural Marketing Service

Market News | **Rules & Regulations** | Grades & Standards | Services | Resources | Selling Food to USDA

Home > Rules & Regulations > PACA

Stay connected:

## Perishable Agricultural Commodities Act (PACA)

- Overview
- Licensing
- Licensing Fees
- Search PACA Licenses
- Employment & License Bonds
- Bond Restrictions & Requirements
- Good Delivery Guidelines
- PACA Trust
- Education & Training
- Common Terms
- Common Questions & Answers
- Top 10 Contracting Issues
- PACA Contacts
- Report Unfair Trade Practices

### Perishable Agricultural Commodities Act (PACA)

The Perishable Agricultural Commodities Act (PACA) was enacted at the request of the fruit and vegetable industry to promote fair trade in the industry. 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.

AMS is responsible for administering PACA and offers many PACA-related services to the produce industry. Our PACA experts receive hundreds of telephone calls

SHARE

**PACA**

Watch a short video about PACA

Learn about our grading & inspection services

## *Webinar Topics*

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- **PACA Overview**
- **The PACA Service Line**
- **FOB v. Delivered Terms**
- **Breach of Contract**
- **Damages**
- **PAS/Consignment**



## ***How Does PACA Work?***

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**Requires that dealers be licensed**

**Defines trade terms**

**Establishes fair business rules**

**Provides a forum for dispute resolution**

**PACA Service Line**

**1-800-495-7222, option #2**



## ***FAQ on the PACA Service Line***

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- **Is my customer licensed and do they have any complaints pending?**
- **Does the shipment make good delivery?**
- **My product was rejected, what should I do now?**
- **Is the product misbranded or was it misrepresented?**
- **Is the return reasonable?**

## ***PACA Customer Service Line***

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- Call **1-800-495-PACA (7222)**, then select option **#2**.
- Staffed by PACA experts (Spanish and Korean speakers on staff), 7 AM – 7 PM Mon – Fri (EST)
- Call about a load with a potential problem



## ***Good Delivery Webinar***

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### **Education and Training**

**<http://www.ams.usda.gov/rules-regulations/paca/education-training>** :

**Interpreting USDA Fruit & Vegetable Inspections: Does the shipment make good delivery?**

**[Presentation Materials](#)  
[Recording \(Dec 2013\)](#)**

## ***FOB (Free on Board)***

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- **The buyer receives the product at shipping point, usually through the carrier acting as its agent;**
- **The buyer assumes all risk of damage and delay in transit not caused by the seller; and**
- **The product is warranted by the seller to arrive at the contract destination without abnormal deterioration.**

## ***Delivered***

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- **Title to the produce remains with the seller until it is delivered to the buyer at the contract destination;**
- **The seller assumes the risk of loss and damage in transit not caused by the buyer; and**
- **The produce must meet contract requirements upon delivery at the destination agreed upon between the parties.**

### **Example**

**Grapes sold “U.S. No. 1 delivered New York City” must grade U.S. No. 1 on arrival in New York City.**

## ***Delivered versus f.o.b.***

|                     | <b>Delivered</b>   | <b>FOB</b>  |
|---------------------|--|---|
| <b>Transit Risk</b> | <ul style="list-style-type: none"> <li>• Seller is responsible for delivering the produce to the Buyer at destination.</li> <li>• Seller assumes all risks of loss and damage in transit.</li> <li>• Title passes to the Buyer upon unloading at destination.</li> </ul> | <ul style="list-style-type: none"> <li>• Seller is responsible for delivering the produce to the carrier at shipping point.</li> <li>• Buyer assumes all risk of damage and delay in transit.</li> <li>• Title transfers to the Buyer at the time of shipment.</li> </ul> |
| <b>Price</b>        | <ul style="list-style-type: none"> <li>• The Seller is paying for the freight, or using its own trucks and building the freight charges into the cost of the produce.</li> </ul>   | <ul style="list-style-type: none"> <li>• The Buyer hired the carrier and is taking direct billing for freight.</li> </ul>   |
| <b>Warranty</b>     | <ul style="list-style-type: none"> <li>• Warranty of suitable shipping condition does not apply.</li> <li>• Produce must meet contract specifications at destination.</li> </ul>   | <ul style="list-style-type: none"> <li>• Warranty of suitable shipping condition applies.</li> <li>• Seller warrants that the produce will arrive at the contract destination without abnormal deterioration</li> </ul>   |

## ***Damages for Goods Sold***

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**Buyer is liable for the contract price, less any provable damages.**

**Seller is entitled to contract price less provable damages.**

**Damages may exceed the contract price.**

## ***Determining Damages***

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### **Typical Damage Calculation:**

**Value of goods if they had been as warranted**

**(minus)**

**Value of goods as accepted**

**=**

**Damages**

## ***Value of Goods as Warranted***

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### **USDA Market News reports**

**Product of same size, variety, place of origin, and grade**

**First day the product was available for sale**

**Market in which the product was received**

**USDA Market News prices can be found online at:**

**[www.ams.usda.gov/fv/mktnews.html](http://www.ams.usda.gov/fv/mktnews.html)**

## ***Value of Goods as Warranted - Alternate Measure***

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**Delivered (FOB plus freight) cost**

**F.O.B. price plus estimated freight from USDA Market  
News Freight Rate Report**

**F.O.B. price**

## ***Value of Goods as Accepted***

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**BEST MEASURE:** Gross proceeds of a prompt and proper resale of the goods.

**\*\*Must be supported by a detailed account of sales\*\***

# Value of Goods as Accepted Cont.

## ACCOUNT OF SALE

**Date Received**      4/29/14  
**Shipper:**            USDA  
**P.O. or Lot #:**      12345  
**Commodity:**        Guatemala Mango 12ct.  
**Quantity Received:**            4080

| Date               | Quantity | Sales Per Case | Sub Total  |
|--------------------|----------|----------------|------------|
| 4/30/14            | 2000     | \$2.00         | \$4,000.00 |
| 5/1/14             | 400      | \$2.00         | \$800.00   |
| 5/1/14             | 720      | \$2.50         | \$1,800.00 |
| 5/2/14             | 240      | \$3.00         | \$720.00   |
| 5/4/14             | 720      | \$1.25         | \$900.00   |
|                    |          |                |            |
| <b>Gross Total</b> | 4080     |                | \$8,220.00 |

| Charges           |            |
|-------------------|------------|
|                   |            |
| <b>Inspection</b> | \$164.60   |
|                   |            |
| <b>Net Total</b>  | \$8,055.40 |

## ***Value of Goods as Accepted - Alternate Measure***

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**Percentage of defects disclosed by a USDA inspection**

**Inspection covers only a portion of the lot**

**Ex. 300 inspected out of 450 have 11% decay**

$$300 \times .11 = 33$$

$$33 / 450 = .07$$

# ***Incidental and Consequential Damages***

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## **Examples:**

**Inspection fee when the inspection discloses a breach of contract by the seller.**

**Costs associated with dumping the product when the inspection discloses that the product has no commercial value, provided the costs are properly documented.**

# ***Damage Calculation - Market Quotes/Acct of Sales Available***

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## **Average New York USDA Market News Price for May 3, 2011**

|                               |                |                    |
|-------------------------------|----------------|--------------------|
| <b>3120 Flats of Tomatoes</b> | <b>\$12.00</b> | <b>\$37,440.00</b> |
|-------------------------------|----------------|--------------------|

|                                       |                    |
|---------------------------------------|--------------------|
| <b>Value of Tomatoes as Warranted</b> | <b>\$37,440.00</b> |
|---------------------------------------|--------------------|

|  |                           |
|--|---------------------------|
| <b>Less Gross Proceed Account of Sales</b> | <b><u>\$12,530.00</u></b> |
|--|---------------------------|

|                |                    |
|----------------|--------------------|
| <b>Damages</b> | <b>\$24,910.00</b> |
|----------------|--------------------|

|                        |                    |
|------------------------|--------------------|
| <b>Invoice Amount:</b> | <b>\$31,980.00</b> |
|------------------------|--------------------|

|                     |                      |
|---------------------|----------------------|
| <b>Less Damages</b> | <b>(\$24,910.00)</b> |
|---------------------|----------------------|

|                             |                          |
|-----------------------------|--------------------------|
| <b>Less inspection fee:</b> | <b><u>(\$125.00)</u></b> |
|-----------------------------|--------------------------|

|                           |                   |
|---------------------------|-------------------|
| <b>Amount Due Seller:</b> | <b>\$6,945.00</b> |
|---------------------------|-------------------|



## ***Damage Calculation - Market Quotes/ Percentage of Defects***

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### Average New York USDA Market News Price for May 3, 2011

3120 Flats of Tomatoes                      \$12.00                      \$37,440.00

Value of Tomatoes as Warranted                      \$37,440.00

Less Percentage of Defects of 22%                      \$8,236.80

Value of Tomatoes Accepted                      \$29,203.20

Value of Tomatoes as Warranted                      \$37,440.00

Less Value of Tomatoes Accepted                      \$29,203.20

**Damages**                      **\$8,236.80**

Invoice Amount:                      \$31,980.00

Less Damages                      **(\$8,236.80)**

Less inspection fee:                      **(\$180.96)**

Amount Due Seller:                      \$23,562.24

## ***PAS (Price After Sale) or Open***

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- **Not defined under the PACA.**
- **Treated as sales with all terms fixed except the price.**
- **Not to be confused with consignment, which is not a sale.**

## ***Reasonable Price***

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**The two primary sources for determining a reasonable price for goods sold price after sale or open are:**

- **A detailed account of sales; or**
- **USDA Market News**

## ***Account of sales***

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**From the account of sales gross proceeds deduct:**

- **20% handling and profit**
- **Out of pocket expenses such as inspection and freight (if incurred)**

## ***USDA Market News***

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**If a detailed account of sales is not available, then we use the receiving market news quotes (or comparable):**

- **Calculate fair market value (USDA Market News quotes x total quantity of packages shipped)**
- **Multiply by total average defects (from inspection certificate)**
- **Subtract this result from fair market value to get reasonable value**
- **Subtract 20% handling & profit and out of pocket expenses such as inspection and freight**

## ***USDA Market News Returns***

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|   |                            |
|---|----------------------------|
| <b>Average Market News price for Limes:</b>             |                            |
| <b>380 cartons x \$25.00=</b>                           | <b>\$9,500.00</b>          |
| <b>Less 18% condition defects<br/>(.18 x \$9,500)</b>   | <b><u>(\$1,710.00)</u></b> |
| <b>Fair Market Value:</b>                               | <b>\$7,790.00</b>          |
| <b>Less 20% profit and handling<br/>(.20 X \$7,790)</b> | <b><u>(\$1,558.00)</u></b> |
| <b>Less freight:</b>                                    | <b><u>(\$900.00)</u></b>   |
| <b>Less inspection fee:</b>                             | <b><u>(\$400.00)</u></b>   |
| <b>Amount Due Seller:</b>                               | <b>\$4,932.00</b>          |

## ***Consignment***

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- **Owner of the product (consignor) authorizes the recipient (consignee) to sell the produce on its behalf;**
- **Title to the produce remains with the consignor;**
- **Consignee must promptly resell the produce and prepare a detailed account of sales; and**
- **Consignee is liable to the consignor for the proceeds collected from the sale of the produce less expenses and a reasonable commission.**

## ***Proper Accounting***

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### Lot #38-105 Ctns Limes-Received 4/3/15

| <u>Date sold</u>          | <u>Lot #.</u> | <u>Comm.</u> | <u># Units</u> | <u>Price</u> | <u>Total</u>  |
|---------------------------|---------------|--------------|----------------|--------------|---------------|
| 4/3/15                    | 38            | Limes        | 50             | \$ 10.00     | \$ 50.00      |
| 4/4/15                    | 38            | Limes        | 25             | 9.50         | 237.50        |
| 4/5/15                    | 38            | Limes        | 30             | 9.00         | <u>270.00</u> |
| Gross Proceeds            |               |              |                |              | \$557.50      |
| Less 15% commission       |               |              |                | (\$83.63)    |               |
| Less freight @ \$2.00 ea. |               |              |                | (\$210.00)   |               |
| Less Inspection fee       |               |              |                | (\$75.00)    |               |
| Net Proceeds              |               |              |                | \$188.87     |               |

## ***Improper Accounting***

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| <u>Comm.</u>               | <u># Units</u> | <u>Sales</u>       |
|----------------------------|----------------|--------------------|
| Limes                      | 105            | \$557.50           |
| Less commission & expenses |                | <u>(\$ 368.63)</u> |
| Net Proceeds               |                | \$188.87           |

## *In Summary*

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- **F.O.B versus Delivered**
- **P.A.S/Open**
- **Consignment**

## *Questions?*

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***Mary Mitchell***

Senior Investigator/Mediator

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select option #2.**

