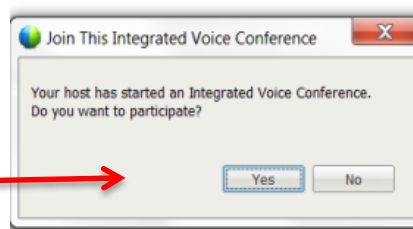


Agricultural Marketing Service

Creating Opportunities for American Farmers and Businesses

The webinar video and audio will be carried over the internet. The webinar system will guide you through normal audio set-up with pop up commands. Here are some additional instructions if you need help. **Music is playing to help with your sound check.**

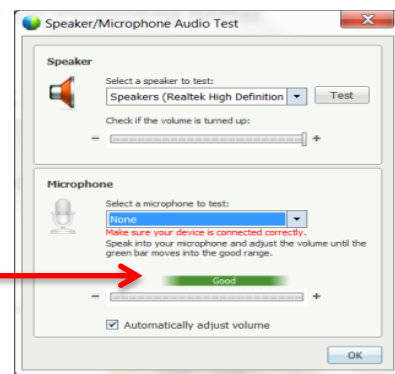
1. Click Yes
(to participate
in integrated
voice
conference)



2. Click OK
(your
microphone
has been
disabled)



3. Select &
Test Your
Speakers



Are your
computer
speakers
turned on?

Ask for help in
Q&A area.

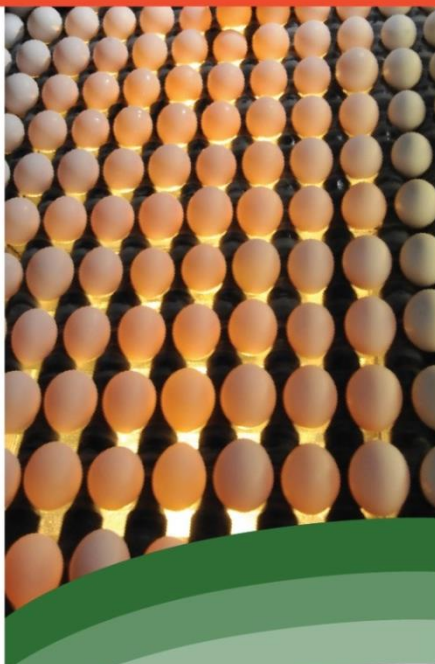




United States Department of Agriculture

Agricultural Marketing Service

Creating Opportunities for American Farmers and Businesses



Agricultural Marketing Service (AMS) Fruit and Vegetable Program

Presents...



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

www.ams.usda.gov/paca

Today's Host

Jeffrey Davis

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AMS Fruit & Vegetable Program
U.S. Dept. of Agriculture (USDA)

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Creating a Good Webinar Experience



Use “Q&A” area
to ask questions.
Enter questions in
small window and
hit “Send”.

Q&A

All (0)

Select a question, and then type your answer here. There is a 256 character maximum.

Send Send Privately...

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

Your Featured Speaker

Mary Mitchell

Senior Investigator/Mediator

U.S. Dept. of Agriculture (USDA)

AMS Fruit and Vegetable Programs

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www.ams.usda.gov/paca



PACA on the Internet

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

The screenshot displays the USDA Agricultural Marketing Service website. The header includes the USDA logo and navigation links such as 'About AMS', 'News & Announcements', 'Careers', 'Advanced Search', and 'A-Z Glossary'. A green navigation bar contains links for 'Market News', 'Rules & Regulations', 'Grades & Standards', 'Services', 'Resources', and 'Selling Food to USDA'. Below this, a breadcrumb trail reads 'Home > Rules & Regulations > PACA'. The main content area is titled 'Perishable Agricultural Commodities Act (PACA)' and features a list of links on the left: 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, and Report Unfair Trade Practices. The central text explains that the PACA was enacted to promote fair trade and protect businesses in the fresh and frozen fruits and vegetables industry. It also states that the AMS is responsible for administering PACA and offers related services. To the right, there is a large image of fresh produce in crates, a 'SHARE' button, and a video player with the title 'Watch a short video about PACA'. Below the video, a caption reads 'Learn about our grading & inspection services'.

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: [Facebook] [Twitter] [YouTube] [Email] [RSS]

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

Watch a short video about PACA

Learn about our grading & inspection services

Webinar Topics

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



How Does PACA Work?

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

- **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

- 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

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)

- **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

- **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.

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

Damages for Goods Sold

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

Typical Damage Calculation:

Value of goods if they had been as warranted

(minus)

Value of goods as accepted

=

Damages

Value of Goods as Warranted

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

Value of Goods as Warranted - Alternate Measure

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

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 |
| | | | |
| Gross Total | 4080 | | \$8,220.00 |

| Charges | |
|-------------------|------------|
| | |
| Inspection | \$164.60 |
| | |
| Net Total | \$8,055.40 |

Value of Goods as Accepted - Alternate Measure

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

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

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

| | |
|----------------|--------------------|
| Damages | \$24,910.00 |
|----------------|--------------------|

| | |
|------------------------|--------------------|
| Invoice Amount: | \$31,980.00 |
|------------------------|--------------------|

| | |
|---------------------|----------------------|
| Less Damages | (\$24,910.00) |
|---------------------|----------------------|

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

| | |
|---------------------------|-------------------|
| Amount Due Seller: | \$6,945.00 |
|---------------------------|-------------------|

Damage Calculation - No Market Quotes Available

Limes: FOB price (\$43.00) Freight price (\$2.00)

Value of Limes is as Warranted = 50 bins @ \$45.00 \$2,250.00

Reasonable Value \$2,250.00

Less Gross Proceeds Account of Sales \$1,420.00

Damages **\$830.00**

Invoice Amount: \$2,150.00

Less Damages **(\$830.00)**

Less inspection fee: **(\$125.00)**

Amount Due Seller: \$1,195.00

Damage Calculation - Market Quotes/ Percentage of Defects

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% | <u>\$8,236.80</u> |
|-----------------------------------|-------------------|

| | |
|----------------------------|-------------|
| Value of Tomatoes Accepted | \$29,203.20 |
|----------------------------|-------------|

| | |
|--------------------------------|-------------|
| Value of Tomatoes as Warranted | \$37,440.00 |
|--------------------------------|-------------|

| | |
|---------------------------------|--------------------|
| Less Value of Tomatoes Accepted | <u>\$29,203.20</u> |
|---------------------------------|--------------------|

| | |
|----------------|-------------------|
| Damages | \$8,236.80 |
|----------------|-------------------|

| | |
|-----------------|-------------|
| Invoice Amount: | \$31,980.00 |
|-----------------|-------------|

| | |
|--------------|---------------------|
| Less Damages | (\$8,236.80) |
|--------------|---------------------|

| | |
|----------------------|--------------------------|
| Less inspection fee: | <u>(\$180.96)</u> |
|----------------------|--------------------------|

| | |
|--------------------|-------------|
| Amount Due Seller: | \$23,562.24 |
|--------------------|-------------|

PAS (Price After Sale) or Open

- **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

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

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

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

Average Market News price for Limes:

380 cartons x \$25.00= **\$9,500.00**

Less 18% condition defects

(.18 x \$9,500) **(\$1,710.00)**

Fair Market Value:

\$7,790.00

Less 20% profit and handling

(.20 X \$7,790) **(\$1,558.00)**

Less freight:

(\$900.00)

Less inspection fee:

(\$400.00)

Amount Due Seller:

\$4,932.00

Consignment

- **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

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 | | | | <u>(\$75.00)</u> | |
| Net Proceeds | | | | \$188.87 | |

Improper Accounting

| <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

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

Questions?

Mary Mitchell

Senior Investigator/Mediator

PACA Customer Service Line
1-800-495-PACA (7222), then
select option #2.

