

**NALC WEBINAR SERIES:**

**Demystifying PACA: Navigating Compliance and Best Practices in the Produce Industry**

**April 17, 2024, Noon EDT**



**Presenter:**

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Webinar will discuss the following topics:

**What is PACA?**

- Perishable Agricultural Commodities Act, 7 U.S.C. sec. 499
- Administered by United States Department of Agriculture
- Federal law established in 1930
- Prevent unfair and fraudulent conduct in the buying and selling of produce
  
- Code of Conduct
- Rules of Fair Trade For Produce Industry
- Licensing
- Complaint process

**Who is subject to PACA?**

- PACA licensees
- Dealers, commission merchants, brokers, grower's agents, processors, wholesalers
  - Buys or sells 2,000 pounds of produce in any day
- Retailers and frozen food brokers
  - Buys 2,000 in a day and buys \$230,000 in a calendar year

**PACA Unfair Conduct**

- Make, for a **fraudulent** purpose, any **false or misleading statement** in connection with any transaction involving any perishable agricultural
- Fail to **deliver** good under contract
- **Discard, dump, or destroy** without reasonable cause

- Unfair, unreasonable, discriminatory, or deceptive practice in connection with the **weighing, counting**
- **Misbranding or misrepresenting** – grade, quality, quantity, weight, size, pack, weight, age, state or country of origin [by word, act, mark, stencil, label, statement, or deed]
- Altering U.S.D.A. inspection certificates
- Fail or refuse truly and correctly to **account** and make full **prompt payment** for consignment sales or on joint accounts
- **Fail to promptly pay and maintain the trust assets [“PACA TRUST”]**

### **What commodities are covered?**

- Fresh and frozen fruits and vegetables
- Minimal processing

### **Produce in Interstate Commerce**

- Produce moves in (or in contemplation of) foreign or interstate commerce:
- Produce moves state to state
- Produce moves through another state during transit
- Buyer and seller are in different states
- Contract was made with the understanding that produce would move in foreign or interstate commerce

### **Prompt Payment**

- Purchase of produce
  - 10 days after produce is accepted
- Consignment Sales
  - within 10 days after the date of final sale with respect to each shipment, or within 20 days from the date the goods are accepted at destination, whichever comes first

### **Truly and correctly account**

- Consignment Sales
  - Dates of receipt
  - Dates of final sale
  - Quantities sold at each price
  - Agreed to deductions (costs, repacking, and adjustments)
  - Commission charges
  - Other information or disposition information
- Joint Account Transactions
  - + joint costs

### **Grower's Agent**

- Fiduciary relationship could include:
  - Supply seeding
  - Financing planting, harvesting, or packing
  - Marketing/selling
- Duties:
  - Written contract
  - Issue receipts by lot
  - Packing/grading with details of lost quantities
  - Account
  - Pay promptly
  - Maintain records
- Need grower's consent to
  - Sell outside market area
  - Consign produce, use brokers or commission merchants
  - File carrier claims
  - Purchase by a related company
  - Pooling
  - Grant adjustments

### **What is the "PACA Trust?"**

- 1984 PACA Amendments
- Creation of PACA Trust
- Trustee: the person responsible for managing the trust: owners, officers, principals. The trustee has the highest standard of care known as a *fiduciary* duty. [Buyer]
- Beneficiary: the person who will benefit from the trust. [Supplier]
- Trust Assets: the property belonging to the trust.

### **What are the PACA Trust Provisions**

- Buyer must hold in trust until supplier is fully paid:
  - all inventories of food or products derived from perishable agricultural commodities
  - any receivables or proceeds from the sale of such commodities or products

### **Trustee's fiduciary duties**

Trustee owes *fiduciary* duties to supplier:

- Trustees are principals of the company in control of money
- Trustee will be liable to the Trust Beneficiary for not maintaining sufficient assets to timely and fully seller's PACA trust claim.
- Depending on degree of control of PACA trust assets, principals of buyer cannot discharge debt

### **What are the PACA Trust Provisions**

- Seller's Rights:
- Puts sellers of fresh and frozen fruits and vegetables in a super priority status in PACA Trust Assets in the event their buyers become insolvent or file for bankruptcy protection

### **What are the elements of a valid PACA Trust claim?**

- Covered commodities
- Interstate commerce
- Buyer is licensed or subject to license
- No more than 30-day payment terms
- Notice to buyer of intent to preserve PACA trust rights

### **Preserving PACA Trust Rights**

- Separate notice to buyer within 30 days of when payment was due
- PACA license can send notice by including statutory language on face of invoices to buyer
- Electronic Data Interchange
  - Licensee meets notice requirements:
    - If electronic invoice contains statutory notice language
    - Electronic transmission can be verified – to buyer or a third-party electronic transaction vendor designated by the buyer
    - Buyer or its vendor must provide enough space on the electronic portal for statutory language – if not = violation of Section 2

### **What are PACA Trust assets?**

- Presumptively all the buyer's assets

### **Resolving Disputes**

- USDA
  - PACA Administrative Reparation Actions
    - Informal Complaint
    - Mediation
    - Formal Complaint
- Enforcing PACA Trust in U.S. District Courts
- Enforcing PACA Trust in Bankruptcy Courts
- Alternative Dispute Resolution
  - Private mediation
  - Arbitration
  - Produce Bluebook Services
    - Produce and *transit* disputes
  - Canadian - Fruit and Vegetable Dispute Resolution Corporation ("DRC")
    - Produce and *transit* dispute

- Member services: consultation, informal mediation, formal mediation or arbitration

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Disclaimer: The webinar presentation and this summary contain general information and are provided as a courtesy to attendees of National Agricultural Law Center’s webinar, “Demystifying PACA: Navigating Compliance and Best Practices in the Produce Industry” on April 17, 2024. It should not be considered legal advice or relied upon in any particular fact situation without consulting your legal counsel for specific advice.

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