



PennState Law

Center for Agricultural
and Shale Law

PENNSYLVANIA DEPARTMENT OF AGRICULTURE  AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Understanding Agricultural Law Webinar Series

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Webinar Series

Understanding the Basics of

The Perishable Agricultural Commodities Act (PACA)

January 12, 2024

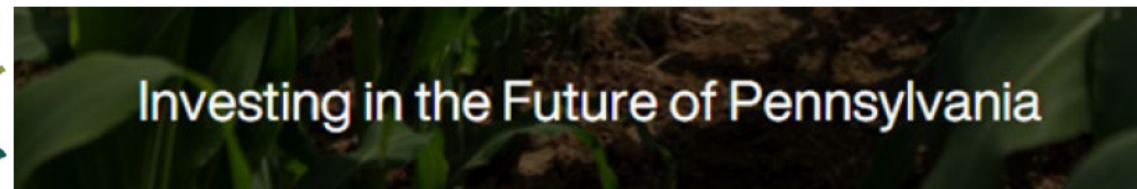
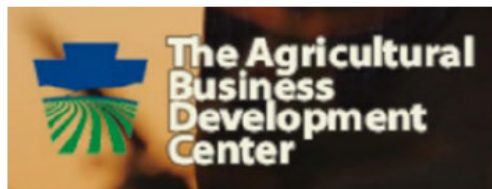




Understanding Agricultural Law

**A Legal Educational Series for General Practice Attorneys and
Business Advisors Representing Agricultural and Rural Clients**

This webinar series is specifically tailored to create subject matter literacy and competence on fundamental issues of agricultural law for attorneys, advisors, and service providers to agricultural producers and agri-businesses.





Understanding Agricultural Law Series:

Past Topics:

- Agricultural Labor Laws
- Leasing Farmland for Energy Development
- Local Land Use Regulation of Agriculture
- Statutory Protections for Ag Operations
- Agricultural Cooperatives
- Livestock Market Regulation
- Crop Insurance
- Federal & State Conservation Programs
- Licensing & Regulation of Direct Agricultural Product Sales
- Agricultural Finance
- PA's "Clean & Green" Tax Assessment Program
- Animal Confinement Laws
- Conservation Easements
- Landowner Immunity Statutes
- The Farm Credit System
- Milk Pricing
- Pesticides
- Seed Laws
- Fair Labor Standards Act (FLSA)

aglaw.psu.edu/understanding-agricultural-law/



Understanding Agricultural Law Webinar Series

Upcoming Topics:

Jan. 26, 2024 *Understanding the Basics of Food Labeling*

Feb. 26, 2024 *Understanding Clean & Green Separations and Split-offs: Leasing, Subdividing, or Selling Enrolled Land*

Mar. 22, 2024 *Understanding the Basics of Organic Production*

Mar. 22, 2024 *Understanding the Basics of Producer Protections for Buyer Default*

More upcoming programs from the Center for Agricultural and Shale Law.

Feb. 13, 2024 *Quarterly Dairy Legal Webinar—Overview of PA Milk Marketing Law (Beyond OOP)*

Mar. 6, 2024 **ACRE Law 101: Agriculture, Local Regulations, and Nutrient Management**

Apr. 16, 2024 *Quarterly Dairy Legal Webinar—Overview of U.S. State Milk Pricing Systems*

Register at <https://aglaw.psu.edu/events/>



Housekeeping

- This webinar is being recorded.
- Please use the Q&A feature for questions.
- Please fill out surveys.
- CLE credits:
 - Link to CLE form will be posted in the chat
 - Please fill out form ASAP
 - Listen for code word, enter code word in the form



Govt Regulation of Supply Chain Transactions

Supply Chain: How product gets from farmer/producer to processor or retailer.

- Series of legal arrangements create “links” in the supply chain on the path to the consumer.
- Does government have an interest in regulating these “contracts”?
- If so, which and how much should each “link” be regulated?
- Differences between animal production ag and row crop/specialty crop production and the commodity’s utilization dictates protections enacted.



Govt Regulation of Supply Chain Transactions

- *Packers and Stockyards Act (P&S)* – livestock and poultry
- *Perishable Agricultural Commodities Act (PACA)* – fruits and vegetables
- Address disparity in bargaining power and information.
- Potential increased perishability at some stages.
- What recent impact from increase in contract growing and “vertical integration?”



Perishable Agricultural Commodities Act

- “**PACA**”: Primary federal law regulating the marketing of fruits and vegetables
- Enacted in 1930; 7 USC §§ 499a-499t ([Chapter 20A](#)); 7 CFR [Part 46](#)
- Similar in many respects to Packers and Stockyards Act
 - Impose fair dealing standards
 - Account for differences between livestock and F&V industries
- Administered by USDA’s Ag Marketing Service (AMS)
<https://www.ams.usda.gov/rules-regulations/paca>



Resources:



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Understanding the Basics of the Perishable Agricultural Commodities Act (PACA) **Resources**

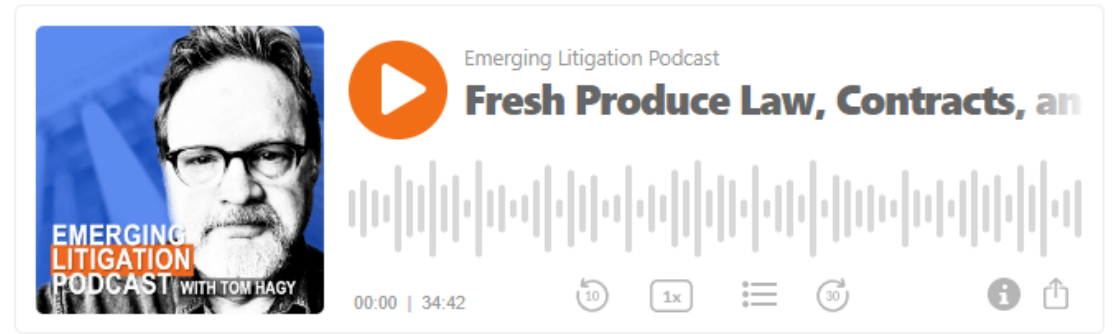
- <https://aglaw.psu.edu/wp-content/uploads/2024/01/20240112-RESOURCES-PACA.pdf>
- Overview: Nat'l Ag Law Center (NALC)'s [*Perishable Agricultural Commodities Act*](#), by Harrison Pittman, NALC Director.



Resources (cont.): Law Street Media: Emerging Litigation Podcast

[Fresh Produce Law, Contracts, and Risks](#) (with *Katy Esquivel, Esq.*)

[Also posted on LinkedIn](#)



According to the Department of Agriculture Americans consume 137 pounds of fresh produce per year. That not only fuels our bodies but also a \$146 billion industry. Produce starts to degrade immediately after harvest, so transporting fresh fruits and vegetables from farms to stores in a safe and timely manner poses numerous challenges.

What legal and reputational risks do growers, brokers, and shippers face? What laws come into play? What are the essential components of contracts among participants in the supply chain?

Listen to my interview with [Katy Esquivel](#), founder and principal attorney with [Esquivel Law Chartered](#). Katy focuses on trust enforcement cases under the Perishable Agricultural Commodities Act (PACA) and representation of stakeholders in the transportation industry. Katy represents transportation brokers and shippers in matters including drafting contracts, handling claims, and advising clients on evolving legal issues impacting their businesses. She also counsels growers and sellers. Katy has also successfully completed the Produce Safety Alliance Grower Training Course to ensure that she is up to date on the latest food safety standards within the industry. She earned her J.D. from St. Thomas University Benjamin L. Crump School of Law.



Perishable Agricultural Commodities Act - Background

- Marketing of fruits and vegetables
 - Minimal personal contact with buyer
 - Perishable product
 - Short life
 - Special handling requirements
 - Seller has little bargaining power once product is shipped



Perishable Agricultural Commodities Act - Purposes

- Prevent unfair and fraudulent conduct in the marketing of perishable agricultural commodities
- Facilitate the orderly flow of perishable agricultural commodities in interstate and foreign commerce



Perishable Agricultural Commodities Act

- *Threshold requirements for application of PACA*
 - Regulated Entity
 - Perishable Agricultural Commodity (PAC)
 - Interstate or Foreign Commerce



Perishable Agricultural Commodities Act

- Regulated entity:

- **Dealer** - Any person engaged in the business of buying or selling in wholesale any PAC; Not a dealer if less than \$230,000 purchased solely for retail sale.
- **Commission merchant** - Any person engaged in the business of receiving in interstate commerce any PAC for sale, on commission, or for or on behalf of another.
- **Broker** - Any person engaged in the business of negotiating sales and purchases of any PAC in interstate commerce for or on behalf of the vendor or purchaser.



- A “**dealer**” is “any person engaged in the business of buying or selling in wholesale or jobbing quantities . . . any perishable agricultural commodity” that has an invoice value in any calendar year in excess of \$230,000.00, subject to several exceptions. 7 U.S.C. § 499a(b)(6). One of the exceptions states that a person who sells a perishable agricultural commodity of their own raising does not constitute a dealer. *Id.*
- A “**commission merchant**” is “any person engaged in the business of receiving . . . any perishable agricultural commodity for sale, on commission, or for or on behalf of another.” 7 U.S.C. § 499a(b)(5).
- A “**broker**” is a person engaged in negotiating sales and purchases of perishable agricultural commodities either for or on behalf of the seller or buyer. 7 U.S.C. § 499a(b)(7). A person who is “an independent agent negotiating sales for or on behalf of the vendor” is not considered a broker. However, if “sales of such commodities negotiated by such person are sales of frozen fruits and vegetables having an invoice value not in excess of \$230,000.00 in any calendar year.” *Id.* See also 7 U.S.C § 499a(b)(3), (8) (defining “interstate or foreign commerce”).



Perishable Agricultural Commodities Act

- Perishable agricultural commodity:
 - Statutory definition – “. . . fresh fruits and fresh vegetables of every kind and character.”
 - Regulatory definition provides much more specificity.



(4) The term "**perishable agricultural commodity**"-

(A) Means any of the following, whether or not frozen or packed in ice: Fresh fruits and fresh vegetables of every kind and character; and

(B) Includes cherries in brine as defined by the Secretary in accordance with trade usages.

[7 U.S.C. § 499a(b)(4)]

(u) **Fresh fruits and fresh vegetables** include all produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage, but does not include those perishable fruits and vegetables which have been manufactured into articles of food of a different kind or character. The effects of the following operations shall not be considered as changing a commodity into a food of a different kind or character: Water, steam, or oil blanching, battering, coating, chopping, color adding, curing, cutting, dicing, drying for the removal of surface moisture; fumigating, gassing, heating for insect control, ripening and coloring; removal of seed, pits, stems, calyx, husk, pods rind, skin, peel, et cetera; polishing, precooling, refrigerating, shredding, slicing, trimming, washing with or without chemicals; waxing, adding of sugar or other sweetening agents; adding ascorbic acid or other agents to retard oxidation; mixing of several kinds of sliced, chopped, or diced fruit or vegetables for packaging in any type of containers; or comparable methods of preparation.

[7 CFR §46.2]



Perishable Agricultural Commodities Act

- Interstate or foreign commerce – a “2-part” definition

7 U.S.C. §499a(b)(3) : The term "interstate or foreign commerce" means commerce between any State or Territory, or the District of Columbia and any place outside thereof; or between points within the same State or Territory, or the District of Columbia but through any place outside thereof; or within the District of Columbia.

7 U.S.C. §499a(b)(8): A transaction in respect of any perishable agricultural commodity shall be considered in interstate or foreign commerce if such commodity is part of that current of commerce usual in the trade in that commodity whereby such commodity and/or the products of such commodity are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where sale is either for shipment to another State, or for processing within the State and the shipment outside the State of the products resulting from such processing. Commodities normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this chapter.



Perishable Agricultural Commodities Act

Basic provisions of PACA

- Licensing – all dealers, brokers and commission merchants must obtain PACA License from USDA AMS; \$1000 penalty plus \$250 per day for failing to do so.
- Prohibition of Unfair Conduct.
- Remedies / Sanctions.



7 U.S.C. § 499d provides grounds for the Secretary's ***refusal to issue a license***:

- (1) those who have previously had a PACA license revoked within the two years prior to the pending application;
 - (2) those who have flagrantly or repeatedly engaged in unfair conduct defined by the PACA;
 - (3) those who have violated other sections of Title 7 of the U.S. Code; or
 - (4) those who were officers or partners of any previous enterprise that has been adjudicated or discharged as bankrupt within the three years prior to the pending application.
 - (5) The Secretary may also withhold the issuance of a license pending an investigation of the applicant for prior violations under the PACA.
- A commission merchant, dealer, or broker that can demonstrate to the Secretary that its ***failure to obtain a license "was not willful but was due to inadvertence"*** may be permitted by the Secretary to settle the matter "by the payment of fees due for the period covered by such violation and an additional sum, not in excess of \$250" 7 U.S.C. § 499d.
 - If the Secretary determines that a commission merchant, dealer, or broker has violated any of the unfair conduct provisions, it may ***suspend*** the violator's license "for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender." 7 U.S.C. § 499h.



Perishable Agricultural Commodities Act

- **Unfair conduct:**

- Unfair, unreasonable, discriminatory, or deceptive practices
- Failing to comply with terms of contract without reasonable cause
- Discarding, dumping, or destroying without reasonable cause
- Failing to make full payment
- Misrepresenting characteristics of PACs
- Fraudulently altering federal inspection certificate
- Substituting other goods for goods that have been federal inspected



A full listing of the “**unfair conduct**” that a commission merchant, dealer, or broker is prohibited from engaging in is set forth at [7 U.S.C. § 499b](#). Examples:

- “to engage in or use any unfair, unreasonable, discriminatory, or deceptive practice in connection with the weighing, counting, or in any way determining the quantity of any perishable agricultural commodity received, bought, sold, shipped, or handled”
- “to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity”
- “to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction”
- “to fail or refuse truly and correctly to account and make full payment promptly” for any transaction.



Perishable Agricultural Commodities Act

- Remedies / Sanctions

- Reparations – complaint filed in USDC or with USDA AMS to recover.
- USDA AMS License Disciplinary proceedings – warning letter, fines, license suspension or revocation.
- Statutory trust
 - Provides seller with a “priority” to the proceeds of the sale
 - Sale proceeds held in trust
 - One primary application of the statutory trust is in bankruptcy context



PACA's "Statutory Trust" – 1980 amendment

7 U.S.C. §499e(c)(2): “[p]erishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by such commission merchant, dealer, or broker in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents.”

- **“floating trust” concept** – When a controversy arises as to which assets are part of the PACA trust, the buyer has the burden of establishing which assets, if any, are not subject to the PACA trust. The PACA beneficiary only has the burden of proving the amount of its claim and that a floating pool of assets exists into which the produce-related assets have been commingled.
- Trust assets are not part of bankruptcy estate because the buyer has no equitable interest in them; akin to “super-priority.”



CAVEAT: Seller's Obligations To Preserve the Statutory Trust Benefit

1. Agreed payment due date must be in transaction paperwork and must be \leq 30 days max. for the trust to be enforceable.
2. To preserve it's trust interest the buyer must provide **written notice** to buyer to preserve the trust assets w/in 30 days of (a) the due date of a delinquent payment; or (b) a failed payment instrument (ex: bounced check).
3. Alternative to #2: Include on relevant invoice:

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 (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.



Thank you for joining us!

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CENTER MISSION AND BACKGROUND

Center programs are funded in part by the Commonwealth of Pennsylvania through the Pennsylvania Department of Agriculture. The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation's leading source of agricultural and food law research and information.

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