

FLAG



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INCORPORATED

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VIA E-MAIL: [Dexter.Thomas@usda.gov](mailto:Dexter.Thomas@usda.gov)

PACA Complaint Fee Comments  
AMS, F&V Programs, PACA Branch  
Mr. John Koller, Director, Dispute Resolution Section  
1400 Independence Avenue, SW., Room 2095-S  
Washington, DC 20250-0242

Dear Mr. Koller:

Re: Comments on Proposed Rule — Amendments to Rules of Practice  
Regulations Under the Perishable Agricultural Commodities Act  
(PACA) to Increase Reparation Complaint Filing and Handling Fees,  
72 Fed. Reg. 61,820 (November 1, 2007)

Farmers' Legal Action Group, Inc. (FLAG), submits these comments on behalf of The Farmworker Association of Florida, Inc., concerning the proposed rule published at 72 Federal Register 61,820 (November 1, 2007) to increase reparation complaint filing fees under the PACA.

The Farmworker Association of Florida, Inc. (FWAF), is a membership organization of more than 6,330 farmworker families from predominantly Mexican, Haitian, African American, Guatemalan, and Salvadorian communities, which was begun in 1983 and incorporated in 1986. The organization's goal is to build a strong, multiracial, and economically viable organization of farmworkers in Florida by empowering farmworkers to respond to and gain control over the social, political, economic, and workplace issues that affect their lives.

FLAG is a nonprofit, public interest law center dedicated to the preservation of family farms. For more than two decades, FLAG has provided legal services to thousands of small and mid-sized family farmers throughout the nation in class action lawsuits, administrative proceedings, public education initiatives, and legislative technical assistance involving agricultural issues. FLAG has long worked to help farmers to understand their legal rights and responsibilities. More recently, FLAG has started working with beginning farmers who raise fruit and vegetable crops to assist them in understanding their legal rights under the PACA.

Many of FWAF's members are transitioning from the role of farmworker to that of beginning farmer. Along with this transition come the challenges common to all new farmers, including the challenge of marketing crops. In selling their fruits and vegetables, FWAF's members have repeatedly found that they must fight to receive full and prompt payment for their crops. Frequently, after accepting farmers' produce, the packinghouses which purchased the produce pay the farmers less than the promised price. In other instances, agents selling produce on the farmers' behalf refuse to pay the farmers altogether, claiming the produce was destroyed, but providing no proof of its destruction or that such destruction was warranted. At the same time, the agents charge the farmers for the services purportedly provided on their behalf. As a result, the farmers sometimes end up "owing" money to the agents and remain without any compensation for their crops.

For the PACA's protections to be meaningful, they must be accessible. However, unlike the Packers and Stockyards Act, which allows producers and growers to file a reparation complaint without charge, the PACA requires farmers to pay a filing fee to enforce their payment rights. At the same time, many of today's fruit and vegetable producers are beginning farmers who lack the monetary resources to pay the PACA reparation complaint filing fee. Nevertheless, as described above, it is precisely these beginning farmers who are most in need of the protections afforded by the PACA.

Therefore, as the Department considers increases in the PACA filing fees, FWAF urges it to simultaneously implement a provision providing that the filing fee shall be waived for those who cannot afford to pay it. Implementing such a provision will ensure that the important rights protected by the PACA remain accessible to all.

To ensure its programs are accessible to lower-income farmers, USDA has previously done exactly what FWAF requests it do here: implemented a fee waiver for those who cannot afford to pay filing and servicing fees. For example, in its crop insurance programs, USDA provides fee waivers to limited resource farmers (as defined in 7 C.F.R. 457.8) so that small-scale and lower-income farmers are assured access to those programs. The rights protected by the PACA are similarly fundamental to ensuring farmers can maintain their livelihood. Consequently, FWAF requests that just as the Department has in other program areas, it act here to protect farmers' ability to enforce their rights under the PACA, regardless of their financial status.

Thank you for your consideration of these comments.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

/s/ Jennifer Jambor

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