

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket Number FV98-359]

Regulations Under the Perishable Agricultural Commodities Act (PACA); Renewal of License

AGENCY: Agricultural Marketing Service, USDA

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) invites comments on proposed revisions to the PACA Regulations to provide for a three-year license renewal period for retailers and grocery wholesalers, and provide all other licensees the option of renewing their licenses on an annual, biennial, or triennial basis. The PACA Amendments of 1995 (1995 Amendments) provided for the gradual elimination of license fees for retailers and grocery wholesalers over a three-year period ending November 14, 1998. The 1995 Amendments also gave the Secretary of Agriculture the authority to determine the interval for renewing licenses and asked the Secretary to take due account of savings to the program when determining the appropriate intervals for license renewals.

DATES: Comments must be received by September 14, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to Charles W. Parrott, Assistant Chief, PACA Branch, Fruit and Vegetable Division, AMS, USDA, Room 2095-So. Bldg., P.O. Box 96456, Washington, D.C. 20090-6456, Email—charles_w_parrott@usda.gov. All comments should reference the docket number and the date and page number of this issue in the **Federal Register** and will be made available for public inspection in the PACA Branch during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Charles W. Parrott, Assistant Chief, PACA Branch, Room 2095-So. Bldg., Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 720-4180, Email—charles_w_parrott@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under authority of section 15 of the PACA (7 U.S.C. 499o).

Background

The Perishable Agricultural Commodities Act (PACA or Act) establishes a code of fair trading practices for the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The Act provides a forum to adjudicate private disputes that awards damages against licensees which fail to meet their contractual obligations in violation of the PACA. The Act also imposes a statutory trust on perishable agricultural commodities received but not yet paid for, products derived from those commodities, and any receivables or proceeds due from the sale of those commodities or products thereof for the benefit of unpaid suppliers or sellers. In these ways, the PACA protects growers, shippers, distributors, and retailers dealing in those commodities from unfair and fraudulent trade practices, and thus fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefiting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

In accordance with the 1995 Amendments, retailers and grocery wholesalers will no longer pay a license fee under the PACA after November 14, 1998, but will still be required to maintain a valid license. The 1995 Amendments also authorized the Secretary of Agriculture to determine the interval for renewing licenses for all licensees, taking into account the likely savings to the program. The House of Representatives Committee on Agriculture, in its report accompanying the 1995 Amendments, asked USDA to promptly examine the necessity for a yearly renewal requirement for retailers and grocery wholesalers in an effort to move toward multi-year licenses.

The proposed rule will shift retailers and grocery wholesalers—who will no longer pay license fees after November

14, 1998—to a triennial license renewal interval beginning on the effective date of this rule. We estimate that this will save the program over \$40,000 per year based on processing renewal applications from approximately 5,000 retailers and grocery wholesalers, at a cost of about \$8 per renewal.

Each of the remaining 10,000 licensees (commission merchants, brokers, wholesalers, processors, truckers, food service), all of which shall continue to pay license fees, will have the option of renewing their licenses on an annual, biennial, or triennial basis. The option will be available to both new license applicants and to existing licensees at the time of license renewal. By offering the multi-year renewal option to these licensees, we estimate savings to the PACA program could be as great as \$81,000/year (10,000 businesses paying license fees x \$8 cost to process renewal), depending on the number of fee-paying licensees that choose a multi-year renewal option.

As reflected in the proposed regulations, beginning on the effective date of this rule, all new licenses issued to retailer and grocery wholesaler applicants will be issued with a triennial renewal term. Retailers and grocery wholesalers that are currently licensed will be gradually shifted to a triennial license renewal term over the next three-year period. They would be notified of the change in their license renewal period through the normal renewal process. Under the current process, AMS mails each licensee a license renewal application at least 30 days prior to its PACA license anniversary date and notifies each licensee of the requirement that the license must be renewed by its anniversary date.

Staggering the new triennial renewal period for retailers and grocery wholesalers over a three-year period will guard against an inundation of renewal applications three years from now which would likely increase program administrative costs. The phase-in will be implemented as follows: During the first year of the phase-in period, retailers and grocery wholesalers holding current licenses ending in the digits "0," "3," "6," or "9," would renew their licenses on a triennial basis; retailers and grocery wholesalers holding licenses that end in

the digits "1," "4," or "7," would renew their licenses this year for a 2-year term, and thereafter on a triennial basis; and retailers and grocery wholesalers holding licenses that end in the digits "2," "5," or "8," would renew their licenses after one year, and thereafter on a triennial basis.

As proposed, the regulations will provide all remaining licensees with the option of renewing licenses on an annual, biennial, or triennial basis. By choosing the biennial or triennial renewal option, licensees would "lock in" the current license fee rate for a two or three-year period, thus guarding against paying any additional license fees resulting from a fee increase during that interval. The proposed regulations also provide for a refund of any unused annual license fees to those firms required to obtain a new license due to a change in legal status (e.g.: a partnership of two becomes a partnership of three individuals; a sole proprietor incorporates; or a firm re-incorporates), and to those firms that cease business operations or whose license terminates because of bankruptcy. In those instances, USDA would issue refunds only for the full years remaining on the license. For example, a wholesaler that obtains a three year license and then ceases business operations within the first year of the license would be issued a refund of license fees for years two and three. However, to cover the administrative costs associated with processing the early termination of a license, USDA would assess the entity licensee a \$100 processing fee.

Executive Orders 12866 and 12988

This rule, issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 et. seq.), as amended, has been determined to be not significant for the purposes of Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et. seq.), USDA has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory

actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000. The PACA requires all businesses that operate subject to its provisions maintain a license issued by USDA. There are approximately 15,700 PACA licensees, a majority of which may be classified as small entities.

In accordance with the PACA Amendments of 1995, retailers and grocery wholesalers will no longer pay a fee to be licensed under the PACA after November 14, 1998. The proposed regulations would establish a 3-year renewal cycle for all retailers and grocery wholesalers licensed under the PACA. Given that those PACA licensees would renew their licenses on a triennial rather than an annual basis as is currently required, we anticipate that they would have lower administrative costs and a reduction in their record keeping and reporting burden.

In addition, we project that the administrative costs and record keeping requirements for the remaining fee-paying licensees would, like the retailers and grocery wholesalers, be reduced if they choose the biennial or triennial renewal options. We believe that their greatest savings would result from choosing the triennial renewal option, with a lesser degree of savings resulting from the biennial renewal option.

Finally, we project that all fee-paying licensees would indirectly benefit from the cost savings realized from the proposed revisions to the PACA program, which is funded through the fees paid by licensees. Any cost savings to the program would help delay the need for an increase in fees to fund the program.

Accordingly, based on the information in the above discussion, USDA has determined that the provisions of this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104-13), the information collection and record keeping requirements covered by this proposed rule were approved by OMB on April 1, 1998, and expire on April 30, 2001.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is proposed to be amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. In § 46.9, paragraphs, (j), (k), and (l) would be added, as follows:

§ 46.9 Termination, suspension, revocation, cancellation of licenses; notices; renewal.

* * * * *

(j) Beginning on [the effective date of the final rule] the renewal period for new licenses issued to retailers and grocery wholesalers is three years.

(k) Beginning on [the effective date of the final rule] commission merchants, brokers, and dealers (other than grocery wholesalers and retailers) who are new or existing licensees, may choose to renew their licenses on an annual, biennial, or triennial basis. In the event that the holder of a multi-year license ceases business operations or undergoes a change in legal status that results in the issuance of a new license prior to the next license renewal date, a refund will be issued of any remaining full-year portion of advance fee paid, minus a \$100 processing fee.

(l) Retailers and grocery wholesalers who are existing licensees as of [the effective date of the final rule] will be phased into the three year renewal process during the succeeding one-year as follows:

(1) Licenses held by retailers and grocery wholesalers ending in the digits "0," "3," "6," or "9," will be renewed on a triennial basis.

(2) Licenses held by retailers and grocery wholesalers ending in the digits "1," "4," or "7," will be renewed after two years and thereafter on a triennial basis.

(3) Licenses held by retailers and grocery wholesalers ending in the digits "2," "5," or "8," will renew their licenses after one year and thereafter on a triennial basis.

Dated: July 27, 1998.

Robert C. Keeney,
Deputy Administrator, Fruit and Vegetable Programs.

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