Rules and Regulations

Federal Register

Vol. 63, No. 223

Thursday, November 19, 1998

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: Final rule.

SUMMARY: The Department of Agriculture (USDA) is revising 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.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Charles W. Parrott, Assistant Chief, PACA Branch, Room 2095-So. Bldg., Fruit and Vegetable Programs, 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) establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent practices. In this way, the law 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 to the PACA, 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 it's report accompanying the 1995 Amendments, asked USDA to examine promptly the necessity for a yearly renewal requirement for retailers and grocery wholesalers in an effort to move toward multi-year licenses.

A proposed rule to amend the regulations was published in the **Federal Register** on July 31, 1998 (63 FR 40842). The proposal provided for the shifting of retailers and grocery wholesalers to a mandatory three-year license renewal period and provided the option of multi-year licensing to all other licensees. Comments on the proposed rule were to be submitted by September 14, 1998. AMS received six comments.

This final rule gradually shifts retailers and grocery wholesalers to a triennial license renewal interval. Each of the remaining 10,000 licensees (commission merchants, brokers, wholesalers, processors, truckers, food service), all of which will continue to pay license fees, have the option of renewing their licenses every one, two, or three years. The option is available to both new license applicants and to existing licensees when they renew their license.

Beginning on the effective date of this rule, all new PACA licenses issued to retailers and grocery wholesalers will be valid for three years. AMS has determined that this rule will become effective on December 1, 1998, in order to give AMS and all licensees sufficient time to prepare for the new renewal procedure. Retailers and grocery wholesalers that are currently licensed will be shifted to a three year license over the next three years. AMS will mail each exisiting retailer or grocery wholesaler licensee a license renewal application at least 30 days prior to its PACA license anniversary date and notify each one of its new 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 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,'' will renew their licenses on a triennial basis; retailers and grocery wholesalers holding licenses that end in the digits ''1,'' ''4,'' or ''7,'' will 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,'' will renew their licenses after one year, and thereafter on a triennial basis.

All remaining PACA licensees may choose to renew their licenses annually, biennially, or triennially. Licensees that choose biennial or triennial renewal will ''lock in'' the current license fee rate for a two or three-year period. This rule also provides for a refund of that portion of the license fee 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 will issue refunds only for the full years remaining on the license. To cover the administrative costs associated with processing the early termination of a license, USDA will assess the entity a $100 processing fee.

Comments

We received comments from North American Perishable Agricultural Receivers, Baltimore, Maryland; Western Growers Association, Newport Beach, California; Food Marketing Institute, Washington, D.C.; Food Distributors International (FDI), Falls Church, Virginia; National Grocers Association, Reston, Virginia; and Nardella, Inc., Philadelphia, Pennsylvania. All of the commentors strongly support the Department of Agriculture (USDA) proposal to amend 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 for one, two, or three years.

In its favorable comment, FDI, however, questions the provision in the proposed rule that USDA would assess an entity a $100 processing fee for the early termination of a multi-year PACA license if the licensee was required to obtain a new license because of a change in legal status, ceased business operations, or whose license terminated because of bankruptcy. FDI states that USDA sets forth no rationale why the costs of early termination of a license is more than eight times USDA's $8 cost of renewing a license. In addition, FDI argues that in instances involving bankruptcy, USDA is claiming an asset of a bankrupt, i.e. a portion of the receivable refunded license fee. Such an asset, FDI states, should be returned to the bankrupt estate to ensure payment of claims against the estate—some of which may have arisen under PACA for which trust protection was not preserved.

USDA disagrees with FDI and believes that a $100 processing fee for early termination of a multi-year license is justified in that the refund request must be handled outside of the normal cycle of renewals and terminations. Early termination of a license includes updating agency records to show the reasons for early termination, preparing refund documentation for the National Finance Center along with an audit trail to verify that the refund was made, validating claims, responding to inquiries and disputes, and providing notice to trade publications that circumstances warranted the early termination of a firm's license. Because of the special handling required to refund multi-year license fees when an early termination occurs, USDA believes that the $100 processing fee is justified. USDA believes that the $100 fee is minimal in comparison to the net amount of $450 or $1000 that would be refunded to the licensee holding a biennial or triennial license. In any event, the multi-year license option is not mandatory for all licensees. An applicant or licensee that does not want to risk losing a $100 processing fee because of early termination of its license does have the option of annual renewal. Finally, USDA does not believe that the costs incurred by one licensee because of early license termination should be borne by all licensees. Under the circumstances, USDA is making no change to the final rule based on this comment.

Executive Orders 12866 and 12988

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The final rule is not intended to have retroactive effect. The final 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 final 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 final rule establishes a 3-year renewal cycle for all retailers and grocery wholesalers licensed under the PACA. Given that those PACA licensees will now renew their licenses every three years rather than annually as is currently required, we anticipate that they will 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 will, like the retailers and grocery wholesalers, be reduced if they choose the biennial or triennial renewal options. We believe that their greatest savings will result from choosing the triennial renewal option, with a lesser degree of savings resulting from the biennial renewal option.

Finally, we believe that that all fee-paying licensees would indirectly benefit from the cost savings realized from these revisions to the PACA program, which is funded through the fees paid by licensees. Any cost savings to the program will 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 final 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 recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is 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) are added to read as follows:

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

* * * * *

(j) Beginning on December 1, 1998, the renewal period for new licenses issued to retailers and grocery wholesalers is three years.

(k) Beginning on December 1, 1998, 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 December 1, 1998, 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 for 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: November 13, 1998.

Larry B. Lace,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–30906 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 130

[Docket No. 98–070–3]

Closure of Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are closing the Harry S Truman Animal Import Center (HSTAIC) and amending the animal import regulations to remove all provisions related to HSTAIC. The facility, which has been used for high risk imports, such as ruminants from countries where foot-and-mouth disease exists, has been chronically under used and has never generated enough revenue to be self-sufficient.

EFFECTIVE DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3276; or e-mail: gary.s.colgrove@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Harry S Truman Animal Import Center (HSTAIC) is an offshore, maximum biosecurity animal import facility owned and operated by the Animal and Plant Health Inspection Service (APHIS), an agency of the United States Department of Agriculture. It is the only facility of its kind in the United States.

On August 10, 1998, we published in the **Federal Register** (63 FR 42593–42596, Docket No. 98–070–2) a proposal to close HSTAIC and amend the animal import regulations in 9 CFR parts 93 and 94, and the user fee regulations in 9 CFR part 130, to remove all provisions related to HSTAIC.

We solicited comments concerning our proposal for 60 days ending October 9, 1998. We received three comments by that date. One was from an individual; the other two from industry associations.

One comment, from an industry association, was completely supportive of our proposal to close HSTAIC.

The other industry association comment agreed that HSTAIC needs to close, but voiced two concerns.

The first concern was that there will be greater incentive to smuggle llamas and alpacas into Chile from other regions, with the risk that foot-and-mouth disease (FMD) or new diseases would appear in Chile. Chile is currently free of FMD, while other regions in South America are not. Llamas and alpacas from Chile can enter the United States without having to go through quarantine in HSTAIC. Without HSTAIC, llamas and alpacas from regions where FMD exists would not be directly imported into the United States.

We believe this situation is unlikely to lead to more smuggling of animals into FMD- and rinderpest-free regions, such as Chile. Since HSTAIC was dedicated in 1979, only 11 shipments of imported camelids have been quarantined in the facility. Demand for llamas and other camelids in the United States is now shrinking. As demand shrinks, so does the incentive for smuggling animals. Under these circumstances, we believe there is no significant risk.

The commenter's second concern was that any alternative high security import facility maintain high standards for safety and humane care. We agree completely. We are considering alternatives for importing ruminants and swine from regions where FMD or rinderpest exists. No alternative would be acceptable if high standards for safety and humane care were not included.

One comment objected to our proposal to close HSTAIC. The commenter stated: (1) The United States needs to have a facility like HSTAIC, and the facility should not have to be self-sustaining; (2) we should modify HSTAIC just enough to keep it operational, and make major renovations and repairs later; and (3) we underestimated the cost of closing HSTAIC.

As we explained in our proposed rule (see 63 FR 42593), under the statute authorizing HSTAIC, the facility was intended to be self-sustaining. Unfortunately, this has never happened. Demand to use HSTAIC has never been high enough to make it self-supporting. Demand is now falling. Instead of live animals, germplasm—embryos and semen—is now imported for breeding. Under these circumstances, we do not believe HSTAIC is needed. Industry representatives appear to agree; both comments we received from industry associations supported our proposal to close the facility.

We could delay closing HSTAIC, as the commenter suggested. The State of Florida has extended our sewage permit until August, 2003 (this action took place after our proposed rule was published). However, the longer we delay closing the facility, the longer our operating losses will continue, and the more it will cost to close the facility. If the commenter is correct, that we have underestimated the cost to close the facility, then it is even more important that we act quickly to minimize our losses. To do this, we must close HSTAIC as soon as possible.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

HSTAIC is a maximum-security APHIS animal import center that provides quarantine services for animals which would otherwise be excluded because they are being imported directly from countries where high-risk diseases such as foot-and-mouth disease (FMD), rinderpest, African swine fever, hog cholera, and swine vesicular disease are