

Proposed Rules

Federal Register

Vol. 72, No. 211

Thursday, November 1, 2007

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 47

[Docket Number AMS-FV-06-0217; FV07-376]

RIN 0581-AC72

Amendments to Rules of Practice Regulations Under the Perishable Agricultural Commodities Act (PACA) To Increase Reparation Complaint Filing and Handling Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) is proposing to amend the Rules of Practice under the Perishable Agricultural Commodities Act (PACA) (7 CFR part 47) to increase informal complaint filing fees and formal complaint handling fees. The proposal would increase from \$60 to \$100 the fee for filing an informal complaint; and would increase from \$300 to \$500 the fee for handling a formal complaint.

DATES: Written or electronic comments received December 31, 2007 will be considered prior to issuance of a final rule.

ADDRESSES: You may submit written or electronic comments to:

(1) PACA Complaint Fee Comments, AMS, F&V Programs, PACA Branch, 1400 Independence Avenue, SW., Room 2095-S, Washington, DC 20250-0242.

(2) Fax: 202-690-4413.

(3) E-mail comments to Dexter.Thomas@usda.gov.

(4) Internet: <http://www.regulations.gov>.

Instructions: All comments will become a matter of public record and should be identified as "PACA Complaint Fee Comments." Comments will be available for public inspection from the Agricultural Marketing Service at the above address or over the

Agency's Web site at: <http://www.ams.usda.gov/paca>. Web site questions can be addressed to the PACA Webmaster, Dexter.Thomas@usda.gov.

FOR FURTHER INFORMATION CONTACT: John Koller, Director, Dispute Resolution Section, 202-720-1442.

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

The Perishable Agricultural Commodities Act (PACA or Act) establishes a code of fair trade 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 trade 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.

The PACA program is financed by license and user fees and has an annual operating budget of approximately \$10 million. Currently, annual expenses exceed revenue by \$3 million, a disparity that is projected to increase each year by another 3 to 5 percent. Greater than half of the program's expenditures are payroll and related expenses, followed at a distant second by the cost of maintaining office space through rent, communications, and utility expenses. The PACA license and complaint filing fees have remained unchanged since 1995, in part due to a one-time Congressional appropriation of \$30.45 million deposited into the PACA reserve fund on October 1, 2000.

One of the most important functions of the Act is to require that PACA licensees fulfill their contractual obligations, and the Act provides a forum, before the Secretary, where firms that buy and sell fruits and vegetables can settle commercial disputes outside of the civil court system and recover damages for losses they have suffered. These cases are called reparation cases. In 1995, Section 6 of the PACA (7 U.S.C. 499f) was amended to require a \$60 filing fee for filing an informal reparation complaint and a \$300 handling fee for filing a formal reparation complaint with USDA under

the PACA. Section 6 of the PACA also authorized the Secretary of Agriculture to alter the filing and handling fees by rulemaking. During its January 2007 meeting, the Fruit and Vegetable Industry Advisory Committee (Committee) recommended to the Secretary that the fee for filing an informal reparation complaint be increased to \$100, and the handling fee for filing a formal reparation complaint be increased to \$500. The Secretary accepted the Committee's recommendation. This proposed rule would implement the Committee's recommendation by increasing from \$60 to \$100 the fee for filing an informal reparation complaint; and increasing from \$300 to \$500 the fee for handling a formal reparation complaint.

PACA Rules of Practice applicable to reparation complaint proceedings inform the industry of USDA's procedures and requirements for the handling of informal and formal complaints under the Act (7 CFR, Part 47). Section 47.3(a) of the current Rules of Practice (7 CFR 47.3(a)) requires that a \$60 filing fee accompany any written correspondence and related documents pertaining to the transaction(s) involved in the dispute before AMS can process and open an informal reparation complaint on behalf of the complainant.

When an informal reparation complaint is filed, AMS makes every effort to assist the parties in reaching a settlement of their dispute while gathering documents as part of its investigation. Mediation services are also offered to the parties throughout the informal handling of the complaint. If an informal settlement cannot be reached, however, the complainant is given the opportunity to file a formal reparation complaint. Section 47.6(c) of the current Rules of Practice (7 CFR 47.6(c)) requires that a complainant filing a formal reparation complaint pay a \$300 handling fee to AMS to initiate formal complaint proceedings. Under formal complaint procedures, USDA's Judicial Officer issues a binding decision in the case.

In Fiscal Year 2007, there were 1,418 informal reparation complaints and 325 formal reparation complaints filed with AMS under the PACA. Over 91 percent of the informal complaints filed under the Act were resolved informally within 4 months. These complaints involved produce transactions valued at over

\$17.5 million. USDA issued formal decision and orders in 322 cases involving award amounts totaling approximately \$5.6 million. The largest award issued by USDA in Fiscal Year 2007 ordered payment of over \$257,000 to a fruit and vegetable dealer.

In Fiscal Year 2006, AMS received 1,559 informal reparation complaints of which 92 percent were resolved informally within a 4-month timeframe. In Fiscal Year 2006, informal settlements exceeded \$18.7 million. There were 300 formal reparation complaints filed under the Act that year.

AMS does not expect this proposal to raise a significant amount of revenue for the PACA program (estimated at \$144,000 annually), but by increasing the fees for filing informal and formal reparation complaints, AMS believes that the burden for financing the PACA program is shifted more towards those who benefit directly from using PACA program services.

Executive Orders 12866 and 12988

This proposed 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.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform, and 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 that must be exhausted prior to any judicial challenge to the provisions of this proposed 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 part 121) as those with less than 500 employees. The PACA requires all businesses that operate subject to its provisions to maintain a license issued by USDA. There are approximately 14,500 PACA licensees, a majority of which may be classified as small entities.

Over the past 4 years, the number of informal and formal reparation complaints filed with AMS under the

PACA has gradually decreased. AMS believes that this decrease is due in part to enhanced PACA customer service focused on educating members of the produce industry of their rights and responsibilities under the PACA, as well as increased efforts to settle informal reparation complaints through mediation.

It is doubtful that any barrier to the use of USDA's PACA reparation procedure would be created by raising the filing and handling fees for informal and formal reparation complaints. Most complaints involve produce transactions valued in the thousands of dollars, making the proposed increase from \$60 to \$100 for filing an informal reparation complaint insignificant by comparison. In addition, the handling fee for filing a formal reparation complaint is recoverable as part of the amount awarded by USDA if the complainant prevails in the case. AMS believes that those who wish to initiate formal proceedings in a reparation case would consider the proposed increase in the formal reparation complaint handling fee from \$300 to \$500 to be insignificant as well.

Given the preceding discussion, AMS has determined that the provisions of the proposed rule would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR Part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements that are covered by this proposed rule were approved under OMB number 0581-0031 on October 5, 2004, and expire on October 31, 2007.

E-Government Act Compliance

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 47

Administrative practice and procedure, Agricultural commodities, Brokers.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR part 47 as follows:

PART 47—[AMENDED]

1. The authority citation for part 47 is revised to read as follows:

Authority: 7 U.S.C. 499f; 5 U.S.C 553; 7 CFR 2.22(a)(1)(viii)(L), 2.79(a)(8)(xiii).

2. In § 47.3, paragraph (a)(4) is revised as follows:

§ 47.3 Institution of proceedings.

- (a) * * *
(1) * * *
(2) * * *
(3) * * *

(4) The informal complaint shall be accompanied by a filing fee of \$100 as authorized by the Act.

* * * * *

3. In § 47.6, paragraph (c) is revised as follows:

§ 47.6 Formal complaints.

* * * * *

(c) Service upon respondent; proof of service. Upon receipt by the Fruit and Vegetable Programs of the formal complaint, the accompanying papers and the \$500 handling fee authorized by the Act, a copy thereof shall be served by the Fruit and Vegetable Programs upon the respondent in accordance with Sec. 47.4 of this Part. If the complaint is not in the proper form, the Fruit and Vegetable Programs shall return it and inform the complainant of the deficiencies therein.

* * * * *

Dated: October 26, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7-21477 Filed 10-31-07; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Parts 103, 204, 214 and 299

[DHS Docket No. USCIS-2005-0030; CIS No. 2302-05]

RIN 1615-AA16

Special Immigrant and Nonimmigrant Religious Workers; Reopening the Public Comment Period

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule; extending and reopening the public comment period.

SUMMARY: U.S. Citizenship and Immigration Services announces the extension and reopening of the public comment period for the proposed rule entitled "Special Immigrant and Nonimmigrant Religious Workers." The