

Agricultural Marketing Service, USDA

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when the licensee is found guilty in a Federal Court of having violated section 14(b) of the Act.

(e) Under section 8(b) of the Act a license can be suspended or revoked if the licensee continues to employ any person in violation of the provisions of this section. Also, if any licensee is authorized to employ any person under a bond in accordance with this section and is notified by the Director subsequently to provide a bond in an increased amount and fails to provide such a bond within the time specified, approval of employment shall automatically terminate.

(f) Under section 8(c) of the Act a license can be revoked for any false or misleading statement, or through a misrepresentation or concealment or withholding of facts in connection with an application for a license.

(g) Under section 9 of the Act a license can be suspended if the licensee fails to keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business including the true ownership of such business by stock-holding or otherwise.

(h) Under section 13 of the Act a license can be suspended:

(1) If the licensee refuses to permit inspection of his records or of any lot of produce under his ownership or control; or

(2) If the licensee, subsequent to a determination in a formal disciplinary proceeding that it has violated the prompt payment provision of Section 2(4) of the Act, refuses to permit an inspection of its accounts, records and memoranda to insure that it is in compliance with the prompt payment provision of section 2(4) of the Act or fails or refuses to furnish, maintain, or adjust a surety bond in a form and amount satisfactory to the Secretary.

(i) Under section 4(a) of the Act, at least 30 days prior to the anniversary date of a valid and effective license, the Director shall mail a notice to the licensee at the last known address advising that the license will automatically terminate on its anniversary date unless an application for renewal is filed supplying all information requested on a form to be supplied by the Division, and unless the renewal fee (if

any is applicable) is paid on or before such date. If the renewal application is not filed and/or the renewal fee (if required) is not paid by the anniversary date, the licensee may obtain a renewal of that license at any time within 30 days by submitting the required renewal application and/or paying the renewal fee (if required), plus \$50. Within 60 days after the termination date of a valid and effective license, the former licensee shall be notified of such termination, unless a new license has been obtained in the meantime.

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

(k) Only a commission merchant, broker, or dealer holding a multi-year license, prior to phase out of this option, will receive a refund if business operations cease or a change in legal status occurs that requires issuance of a new license prior to the next license renewal date. If a refund is due, it will be issued for any remaining full-year portion of advance fee paid, minus a \$100 processing fee.

[28 FR 7067, July 11, 1963; 28 FR 7287, July 17, 1963, as amended at 44 FR 50576, Aug. 29, 1979; 62 FR 15087, Mar. 31, 1997; 63 FR 64172, Nov. 19, 1998; 75 FR 51919, Aug. 24, 2010]

§ 46.10 Nonlicensed person; liability; penalty.

Any commission merchant, dealer, or broker who violates the Act by engaging in business subject to the Act without a license may settle its liability, if such violation is found by the Director not to have been willful but due to inadvertence, by submitting the required application and paying the amount of fees that it would have paid had it obtained and maintained a license during the period that it engaged in business subject to the Act, plus an additional sum not in excess of two hundred and fifty dollars (\$250) as may be determined by the Director.

[62 FR 15087, Mar. 31, 1997]

§ 46.11 What constitutes valid license, form and use.

Each license shall bear a serial number, the names in which authorized to conduct business, type of ownership, if the business is individually owned, the

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name of the owner; if a partnership, the names of all general partners; if a limited liability company, the names of all members, managers, officers, directors and holders of more than 10 percent of the ownership stake, and the percentage of ownership in the company held by each such person; if a corporation or association, the names of all officers, directors, and shareholders of more than 10 percent of the outstanding stock and the percentage of stock held by each such person; the facsimile signature of the Deputy Administrator, the seal of the Department and shall be duly countersigned. The licensee may place upon his stationery, trucks, or business sign an inscription indicating that he is licensed under the Act, but such inscription must not be of such form or arrangement as to be deceptive or misleading to the public, nor shall any such inscription be displayed or used unless the person using the inscription has a license valid and effective at the time.

[28 FR 7067, July 11, 1963; 28 FR 7287, July 17, 1963, as amended at 65 FR 24854, Apr. 28, 2000]

§ 46.12 Forms of inscriptions.

The following inscriptions, for use with or without the license number, meet the foregoing requirements and may be used by licensees: "Licensed by the U.S. Department of Agriculture under the Perishable Agricultural Commodities Act", or "Licensed under the PACA."

§ 46.13 Address, ownership, changes in trade name, changes in number of branches, changes in members of partnership, and bankruptcy.

The licensee shall:

(a) Promptly report to the Director in writing;

(1) Any change of address;

(2) Any change in officers, directors, members, managers, holders of more than 10 percent of the outstanding stock in a corporation, with the percentage of stock held by such person, and holders of more than 10 percent of the ownership stake in a limited liability company, and the percentage of ownership in the company held by each such person;

(3) Any deletions or additions of trade names;

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(4) Any change in the number and address of any branches or additional business facilities, and;

(5) When the licensee, or if the licensee is a partnership, any partner is subject to proceedings under the bankruptcy laws. A new license is required in case of a change in the ownership of a firm, the addition or withdrawal of partners in a partnership, or in case business is conducted under a different corporate charter, or in case a limited liability company conducts business under different articles or organization from those under which the license was originally issued.

(b) Obtain approval from the Director prior to using any trade name.

[44 FR 50576, Aug. 29, 1979, as amended at 65 FR 24855, Apr. 28, 2000]

ACCOUNTS AND RECORDS (GENERAL)

§ 46.14 General.

(a) Every commission merchant, dealer, and broker shall prepare and preserve for a period of two years from the closing date of the transaction the accounts, records, and memoranda required by the Act, which shall fully and correctly disclose all transactions involved in his business. Licensees shall keep records which are adapted to the particular business that the licensee is conducting and in each case such records shall fully disclose all transactions in the business in sufficient detail as to be readily understood and audited. It is impracticable to specify in detail every class of records which may be found essential since many different types of business are conducted in the produce industry and many different types of contracts are made covering a wide range of services by agents and others. The responsibility is placed on every licensee to maintain records which will disclose all essential facts regarding the transactions in his business.

(b) Every commission merchant, dealer, and broker shall prepare and preserve records and memoranda required by the Act which shall fully and correctly disclose the true ownership and management of such business during the preceding four years. Such records shall include the number and location of all branches or additional