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 Parts 46 and 47

[Docket No. FV99–362]

RIN #0581–AB76

Perishable Agricultural Commodities Act: Increase in License and Complaint Filing Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) is proposing to amend the regulations under the Perishable Agricultural Commodities Act (PACA or Act) and the PACA Rules of Practice (other than formal disciplinary proceedings) to increase license and complaint filing fees. Specifically, the proposed revisions would increase the current annual license fee of $550 to $600 for very small businesses and would increase the license fee from $550 to $850 for all other licensees. Informal complaint filing fees would be increased from $60 to $100. This notice also announces USDA's intention to request an extension for and revision to a currently approved information collection for the Reporting and Recordkeeping Requirements under Regulations (Other Than Rules of Practice) under the PACA.

DATES: Comments must be received by April 17, 2000.

ADDITIONAL INFORMATION CONTACT: Charles W. Parrott, Acting Chief, PACA Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2095–So. Bldg., PO Box 96456, Washington, DC 20090–6456, phone (202) 720–2272. Email—charles.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 and posted on the internet at www.ams.usda.gov/fv/paca.htm.

SUPPLEMENTARY INFORMATION: This proposal 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 Amendments of 1995 (1995 Amendments) [1] increased the annual license fee from $400 to $550 (up to a maximum fee of $4000) for all licensees except retailers and grocery wholesalers, who were phased out of paying license fees over a 3-year period that concluded on November 14, 1998. Retailers account for approximately 30 percent of all PACA licensees, and provided about 35 percent of the program's revenue prior to being phased out of the license fee requirement.

The 1995 Amendments grant USDA the authority to increase fees through rulemaking after November 14, 1998, provided that the PACA program's operating reserves fall below 25 percent of the projected annual program costs. Because of the loss of revenue from retailers and grocery wholesalers over the past four years, PACA program budget projections for fiscal years 2000 and 2001 show that the program's assets will fall below the required 25 percent of projected expenditures in fiscal year 2001. Without a fee increase, the program will exhaust its reserves by the end of Fiscal Year 2003, and would soon need to begin reducing its level of services to the industry. Therefore, USDA is proposing an increase in the PACA license fee from $550 to $850. Branch fees would remain at $200 per branch, but the maximum fee would increase from $4,000 to $6,000. However, very small businesses would pay a license fee of $600. The parameters for a very small business to qualify for the $600 license fee will be further addressed when we discuss the effects that this proposed rule would have on small businesses. In addition, AMS would also raise the informal reparation complaint filing fee from $60 to $100. AMS would amend § 46.46 of the PACA Regulations and § 47.3 of the PACA Rules of Practice to reflect the proposed changes to the license and reparation complaint filing fees. In addition, the language in § 46.46 of the regulations regarding the phase-out of retailers and grocery wholesalers from paying license fees would be deleted, since the 3-year phase-out mandated by the 1995 Amendments has been concluded.

Additionally, a number of definitions would be amended in the regulations. Due to the reorganization of AMS, a definition of the "Fruit and Vegetable Programs" would be substituted for the definition of "Division," a definition of "Associate Administrator" would be substituted for the definition of "Deputy Administrator," and a definition of "Deputy Administrator" would be substituted for the definition of "Director." Additionally, the words "Program" and "Deputy Administrator" would be substituted for "Division" and "Director" respectively, wherever they appear in part 46.

Executive Orders 12866 and 12988

This proposed 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, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

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 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.*), AMS has considered the economic impact of this proposed

[1] P.L. 104–48, 109 Stat. 427(1995)

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 (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5,000,000.

The PACA is enforced through a licensing system and is user-fee financed primarily through a license fee. The PACA requires commission merchants, dealers, and brokers buying or selling fruits and/or vegetables in interstate or foreign commerce who meet certain threshold requirements to be licensed. There are approximately 16,695 PACA licensees. Separating licensees by the nature of business, there are approximately 5,800 wholesalers, 5,100 retailers, 2,000 brokers, 1,300 processors, 700 commission merchants, 420 food service businesses, 130 grocery wholesalers, and 40 truckers licensed under PACA. In addition, there are approximately 1,100 other licensees with multiple types of business. The PACA license is effective for three years for retailers and grocery wholesalers, and must be renewed on a triennial basis. The license for all other licensees is effective for up to three years. These licensees must also renew their licenses, but have the option of a 1-year, 2-year, or 3-year license term. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked by USDA (7 CFR 46.9 (a)–(h)). Many of the licensees may be classified as small entities.

Wholesalers, processors, food service companies, grocery wholesalers, and truckers are considered to be dealers and subject to a license when they buy or sell more than 2,000 pounds of fresh and/or frozen fruits and vegetables in any given day. Dealers whose fruit and vegetable purchases or sales do not exceed the 2,000 pound threshold are exempt from the license requirement. A retailer is considered to be a dealer and subject to license when the invoice cost of its perishable agricultural commodities exceeds $230,000 in a calendar year. Brokers, negotiating the sale of frozen fruits and vegetables on behalf of the seller, are exempt from licensing in any calendar year when the invoice value of the transactions are below $230,000.

The 1995 Amendments grant USDA the authority to increase fees through rulemaking after November 14, 1998, provided that the PACA program's operating reserves fall below 25 percent of the projected annual program costs. The initial increase in receipts from fees collected following the enactment of the 1995 Amendments allowed the PACA fund to build up operating reserves. Those reserves peaked at $7.48 million in July 1998. However, due to the loss of revenue from retailers and grocery wholesalers over the past four years, PACA program budget projections for fiscal years 2000 and 2001 show that the program's assets will fall below the required 25 percent of projected expenditures in fiscal year 2001. Budget projections indicate that the program must generate approximately $9.101 million per year over each of the next five years for the program to stay above the 25 percent threshold. This equates to a $2.7 million per year increase in annual program revenues beginning with fiscal year 2000. Because 93 percent of the program's revenue is generated through the collection of license fees, a majority of these funds would have to be raised through an increase in license fees. Without a fee increase, the program will exhaust its reserves by the end of fiscal year 2003, and would soon need to begin reducing its level of services to the industry.

Accordingly, it will be necessary for USDA to implement a PACA fee increase in fiscal year 2001. A significant increase will be necessary to compensate for the loss of the license revenue from retailers and grocery wholesalers. When USDA proposed revisions to the PACA regulations implementing the 1995 Amendments (61 FR 47674, September 10, 1996), it noted that the next fee increase would need to be significant.

The following table outlines how the proposed fee increase would affect the PACA program's budget through fiscal 2006:

Year	Balance start of fiscal year	License & complaint fee revenue	Investment revenue	Total revenue	Projected costs	End of year	
						Reserve	Percent
2001	3,642,000	9,101,000	269,000	13,012,000	9,009,000	4,003,000	44
2002	4,003,000	9,101,000	450,000	13,554,000	9,153,000	4,401,000	46
2003	4,401,000	9,101,000	450,000	13,952,000	9,489,000	4,462,000	45
2004	4,462,000	9,101,000	415,000	13,978,000	9,816,000	4,162,000	41
2005	4,162,000	9,101,000	381,000	13,645,000	10,128,000	3,516,000	34
2006	3,516,000	9,101,000	346,000	12,963,000	10,351,000	2,612,000	25

USDA officials have discussed this issue with representatives from numerous trade associations, most of whom expressed a preference for a single, significant fee increase, rather than a series of smaller increases implemented over several years to maintain the 25 percent reserve balance. Taking that into account, USDA is proposing an increase in the PACA license fee from $550 to $850. Branch fees would remain at $200 per branch, but the maximum fee would increase from $4,000 to $6,000. The proposed fees would result in total collections of $9.1 million with a projected end-of-year reserve of approximately 44 percent for fiscal year 2001, or about $1.75 million above the level needed to achieve a reserve of 25 percent. With this revenue, AMS expects that the PACA program should have adequate financing through fiscal year 2006 when the reserve is again projected to fall below 25 percent. In order to moderate the financial burden for small businesses, AMS is also proposing that very small businesses with gross sales of less than $1 million per year pay a license fee of $600, a modest increase of $50 from the current $550 license fee. In order to qualify for the $600 license fee, AMS may require that a firm submit a copy of its last income tax return filed with the Internal Revenue Service. Because very small businesses have limited financial resources, USDA believes that such a fee structure is more equitable for those firms and should increase the likelihood the firms would voluntarily comply with the PACA licensing requirements.

Although license fees account for the majority of PACA's funding, the program also collects about 3.5 percent of its revenue from fees charged to firms that submit disputes to the PACA branch for resolution. Under section 6(a)(2) of the Act, the Secretary may alter the complaint filing and handling fees by rulemaking. In order to help offset the revenue loss from the lower license fee for very small businesses, USDA proposes that the informal reparation complaint filing fee be raised from $60 to $100. USDA believes that this will also place a larger percentage of the financial burden on those firms that directly use PACA dispute resolution services. Furthermore, USDA does not believe that a modest $40 increase in the complaint filing fee would affect the decision of a business, regardless of its gross sales, to seek to recover damages by filing an informal reparation complaint.

Given the preceding discussion, AMS has made an initial determination that the provisions of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces AMS' intention to request an extension for and revision to a currently approved information collection for the Reporting and Recordkeeping Requirements under Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act (PACA) (7 U.S.C. 499a–499t).

Title: Reporting and Recordkeeping Requirements Under Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

OMB Number: 0581–0031.

Expiration Date of Approval: April 30, 2001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent trade practices.

The law provides for the enforcement of contracts by providing a forum for resolving contract disputes, and a mechanism for the collection of damages from anyone who fails to meet contractual obligations and for excluding from the industry firms or individuals who violate the law's standards for fair business practices. In addition, the PACA imposes a statutory trust on licensees for perishable agricultural commodities received, products derived from them, and any receivables or proceeds due from the sale of the commodities for the benefit of produce suppliers, sellers, or agents that have not been paid.

The PACA is enforced through a licensing system and substantially through a license fee. All commission merchant, dealers, and brokers engaged in business subject to the PACA must be licensed. Retailers and grocery wholesalers must renew their licenses every three years. All other licensees have the option of a one, two, or three-year license term. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

The information collected from respondents is used to administer licensing provisions under the PACA. The records maintained are used to adjudicate contract disputes and administrative complaints filed against licensees to impose sanctions on firms and responsibly connected individuals who have engaged in unfair trade practices.

We estimate the paperwork and time burden on the above to be as follows:

Form FV–211 (or 211–1, or 211–2, or 211–3, or 211–4, or 211–5), Application for License: Average of .25 hours per application per response.

Form FV–231–1 (or 231–1A, or 231–2, or 231–2A), Application for Renewal or Reinstatement of License: Average of .05 hours per application per response.

Regulations Section 46.13—Letters to Notify USDA of Changes in Business Operations: Average of .05 hours per notice per response.

Regulations Section 46.4—Limited Liability Company Articles of Organization and Operating Agreement: Average of .083 hours with approximately 160 recordkeepers.

Regulations Section 46.18–Record of Produce Received: Average of 5 hours with approximately 14,700 recordkeepers.

Regulations Section 46.20—Records Reflecting Lot Numbers: Average of 8.25 hours with approximately 1,000 recordkeepers.

Regulations Section 46.46(d)(2)—Waiver of Rights to Trust Protection: Average of .25 hours per notice with approximately 100 principals.

Regulations Sections 46.46(f) and 46.2(aa)(11)—Copy of Written Agreement Reflecting Times for Payment: Average of 20 hours with approximately 2,000 recordkeepers.

Estimate of Burden: The total public reporting burden for this collection of information is estimated to average 3.85334 hours per response.

Respondents: Commission merchants, dealers, and brokers engaged in the business of buying, selling, or negotiating the purchase or sale of commercial quantities of fresh and/or frozen fruits and vegetables in interstate or foreign commerce are required to be licensed under the PACA (7 U.S.C. 499(c)(a)).

Estimated Number of Respondents: 11,209.

Estimated Number of Responses per Respondent: 2.7415.

Estimated Total Annual Burden on Respondents: 118,371 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Charles W. Parrott, Acting Chief, PACA Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2095–So. Bldg., PO Box 96456, Washington, DC 20090–6456. Email—charles.parrott@usda.gov. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice concerning reporting and recordkeeping requirements will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

List of Subjects

7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 47

Administrative practice and procedure, Agricultural commodities, Brokers.

For the reasons set forth in the preamble, 7 CFR parts 46 and 47 are 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 § 46.2, paragraphs (e), (f), and (g) are revised to read as follows:

§ 46.2 Definitions.

* * * * *

(e) *Associate Administrator* means the Associate Administrator of the Service, or any officer or employee of the Service to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated, to act in his or her stead.

(f) *Fruit and Vegetable Programs* means the Fruit and Vegetable Programs of the Service.

(g) *Deputy Administrator* means the Deputy Administrator of the Fruit and Vegetable Programs or any officer or employee of the Fruit and Vegetable Programs to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated by the Deputy Administrator, to act in his stead.

* * * * *

3. Section 46.6 is revised to read as follows:

§ 46.6 License fees.

(a) Retailers and grocery wholesalers making an initial application for license shall pay a $100 administrative processing fee.

(b) Commission merchants, brokers, and dealers (other than grocery wholesalers and retailers), provided that they do not meet specific criteria of a very small business as set forth in paragraph (c) of this section, shall pay an annual license fee of $850 plus $200 for each branch or additional business facility in excess of nine. In no case shall the aggregate annual fees paid by any such applicant exceed $6,000.

(c) To qualify as a very small business and pay a license fee of $600, the business must have had gross sales of $1,000,000 in the immediate preceding calendar year. Any applicant may be required to provide a copy of its most recent income tax return filed with the Internal Revenue Service as verification that its gross sales are less than $1,000,000. In no case shall the aggregate annual fees paid by any such applicant exceed $6,000.

4. Part 46 is amended by removing the word ''Deputy Administrator'' and adding in its place the words ''Associate Administrator'', everywhere they appear.

5. Part 46 is amended by removing the word ''Division'' and adding in its place the words ''Fruit and Vegetable Programs'', everywhere they appear.

6. Part 46 is amended by removing the words ''Director'' and ''Director's'', and adding in their place the words ''Deputy Administrator'' and ''Deputy Administrator's'' respectively, everywhere they appear.

PART 47—[AMENDED]

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

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

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

§ 47.3 Institution of proceedings.

(a) * * *

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

* * * * *

Dated: February 9, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–3424 Filed 2–14–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–343–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require repetitive inspections of the sliding tube subassembly on the main landing gear (MLG) to detect cracks, and replacement of a cracked subassembly with a new subassembly. This proposal also would eventually require a more extensive, one-time inspection of the same area and corrective actions, if necessary; which would terminate the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent cracking of the MLG sliding tube subassembly, which could result in collapse of the MLG.

DATES: Comments must be received by March 16, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–343–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–343–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–343–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.