

# 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 No. FV05-373]

#### Regulations Under the Perishable Agricultural Commodities Act (PACA)

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Agricultural Marketing Service (AMS) is issuing this advance notice of proposed rulemaking in response to concerns raised by the industry that sellers may lose their status as trust creditors when using electronic data interchange (EDI) for invoicing. Comments are being sought from the public, but in particular, buyers and sellers of fruit and vegetables and vendors/software developers of EDI systems, as to whether to issue new or amended regulations and if so, the substance of such regulations.

**DATES:** Submit written or electronic comments on or before March 16, 2006.

**ADDRESSES:** You may submit written comments to:

(1) EDI Comments, AMS, F&V, PACA BRANCH, 1400 Independence Avenue SW., Room 2095-S, Washington, DC 20250-0242.

(2) Fax: 202-720-8868.

(3) E-mail comments to [Dexter.Thomas@usda.gov](mailto: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 EDI 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/fv/paca.htm>. Web site questions can be addressed to the PACA Webmaster, [Dexter.Thomas@usda.gov](mailto:Dexter.Thomas@usda.gov).

#### FOR FURTHER INFORMATION CONTACT:

Karla Whalen, Section Head, Trade Practice Section, or Phyllis Hall, Senior Marketing Specialist, Trade Practice Section, 202-720-6873.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Perishable Agricultural Commodities Act (PACA) establishes a code of fair trading practices in 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. The PACA also provides a forum to adjudicate private disputes, with awards against a licensee who fails to meet contractual obligations in violation of the PACA. Additionally, the law imposes a statutory trust on perishable agricultural commodities received and accepted but not yet paid for, products derived from those commodities, and any receivables or proceeds due from the sale of those commodities or products for the benefit of unpaid suppliers or sellers.

In the case of a business failure or bankruptcy of an entity subject to PACA, the debtor's inventory and receivables (PACA trust assets) are not property of the estate and are not available for general distribution to creditors other than PACA creditors who have preserved their trust rights until all valid PACA trust claims have been satisfied. Because of the statutory trust provision, PACA trust creditors who have preserved their trust rights, including sellers outside of the United States, have a far greater chance of recovering the money owed them when an entity subject to PACA goes out of business. The PACA trust provisions protect producers and all other firms trading in fruits and vegetables as each buyer of perishable agricultural commodities in the marketing chain becomes a seller in its own turn.

In 1995, the PACA was amended to provide that licensed sellers of fresh and frozen fruits and vegetables may provide notice to buyers of their intention to preserve trust benefits by including specific language on invoice and billing documentation. The required language reads: "The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust

authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received." (7 U.S.C. 499e(c)(4)).

The PACA regulations were amended in 1997 to state that electronic transmissions are considered "ordinary and usual billing and invoicing statements" within the meaning of section 5(c)(4) of the PACA. (7 CFR 46.46(5)). Under current regulations, PACA licensed unpaid sellers or suppliers of fresh and frozen fruits and vegetables may provide notice to buyers of their intention to preserve their trust rights by including the specified language contained in section 5(c)(4) of the PACA on their billing or invoicing statements, whether paper documentation or electronic transmissions (including electronic data interchange or EDI). Alternatively, as provided in the PACA and regulations, sellers (licensed or non-licensed) may satisfy the notice requirement by sending the buyer a separate detailed notice by mail of their intent to preserve trust benefits within thirty (30) days of payment default. Whichever method of notice is used, in order to preserve trust benefits, payment terms may not exceed 30 days.

Since the amendment to the regulations, a number of produce sellers have voiced concern that their PACA trust rights may not be preserved if: (1) The buyer/buyer's agent either willfully or through oversight does not receive the entire electronic transmission (*i.e.*, EDI invoice); (2) the buyer/buyer's agent does not download the trust information; (3) the buyer/buyer's agent does not opt to receive the information; (4) the buyer/buyer's agent does not buy the data field that allows the inclusion of the trust language; or (5) the EDI service provider does not translate the field that contains the trust language. Additional concerns have been expressed that the alternate method of trust notice (*i.e.*, separate trust notice letter) is not being accepted by some buyers who require EDI invoicing. These are of grave concern since a seller may not know if the required trust

notice has been transmitted or received through EDI. Others in the industry have expressed concern about being charged a fee by the buyer to accept the notice to preserve their trust benefits through EDI or, about being charged a fee if they send a paper invoice or separate trust notice.

#### Agency Request for Information

AMS is soliciting comments on PACA trust rights in connection with EDI invoicing so that the Agency will be able to provide greater direction to the industry of how PACA trust rights can be preserved when invoicing electronically. In particular, AMS invites comments and information regarding how the Agency may best provide regulatory clarification or direction. Comments are specifically invited on: (1) The types of problems that may need to be addressed by new regulatory language; (2) any technological barriers and solutions; (3) any additional costs likely to be associated with appropriate regulations, and opinions regarding who should bear such costs; (4) whether the Agency should by regulation define EDI methods that must be made available by licensed buyers, (*i.e.*, creating a separate field for trust notice in EDI); (5) should buyers be required to accept separate notices (*i.e.*, electronic or paper PACA trust) without restriction or charge; and (6) other related issues and suggestions.

This notice provides a 45-day comment period for interested parties to comment on the need for amending the regulations. Should AMS conclude, based on the comments received, that the purposes of the PACA would be advanced through new or revised regulations, the Agency will develop a notice of proposed rulemaking that will be published in the **Federal Register** with a request for comments in accordance with 5 U.S.C. 553.

#### Executive Orders 12866 and 12988

This advance notice of proposed rulemaking 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 advance notice of proposed rulemaking 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 advance notice of proposed rulemaking.

#### Effects on Small Business

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact on 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 (SBA) (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000. There are approximately 15,000 firms licensed under the PACA, many of which could be classified as small entities.

The proposed regulations, if found to be necessary, would clarify how to preserve the trust benefit when using EDI. The use of EDI would provide companies an electronic alternative to paper documentation to give notice of intent to preserve trust rights, thereby reducing the time and expense associated with preserving trust rights under the PACA.

**Authority:** 7 U.S.C. 499o.

Dated: January 24, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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**BILLING CODE 3410-02-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-NE-62-AD]

RIN 2120-AA64

#### Airworthiness Directives; Rolls-Royce plc RB211 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) for Rolls-Royce plc (RR) models RB211-535E4-37, RB211-535E4-B-37, RB211-535C-37, RB211-535E4-B-75, RB211-535E4-C, and RB211-22B-02 turbofan engines. That AD currently requires inspecting certain high pressure (HP) turbine discs, manufactured between 1989 and 1999, for cracks in the rim cooling air holes, and, if necessary, replacing the discs with serviceable parts. This proposed

AD would require the same inspections, and would reduce the compliance times for eddy current inspection (ECI) for the RR RB211-22B-02 engines. This proposed AD results from the manufacturer reducing their recommended compliance times for inspections on RB211-22B-02 engines. We are proposing this AD to prevent possible disc failure, which could result in an uncontained engine failure and damage to the airplane.

**DATES:** We must receive any comments on this proposed AD by March 31, 2006.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-NE-62-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

- By fax: (781) 238-7055.

- By e-mail: [9-ane-adcomment@faa.gov](mailto:9-ane-adcomment@faa.gov).

You can get the service information identified in this proposed AD from Rolls-Royce plc, PO Box 31, Derby, England; telephone: 011 44 1332-249428, fax: 011 44 1332-249223.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7178, fax (781) 238-7199.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2000-NE-62-AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the