

# Proposed Rules

Federal Register

Vol. 68, No. 52

Tuesday, March 18, 2003

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 1219

[Doc. No. FV-03-702-PR]

#### Hass Avocado Promotion, Research, and Information Order; Termination of the Definition of "Substantial Activity"

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The purpose of this proposed rule is to seek comments on the proposed termination of the definition of "substantial activity" in the Hass Avocado Promotion, Research, and Information Order (Order). The definition relates to the eligibility of importers to serve on the Hass Avocado Board (Board). This action is expected to increase the number of importers eligible to serve on the Board.

**DATES:** Comments must be received by May 19, 2003.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to:

[malinda.farmer@usda.gov](mailto:malinda.farmer@usda.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: [www.ams.usda.gov/fv/rpdocketlist.htm](http://www.ams.usda.gov/fv/rpdocketlist.htm).

**FOR FURTHER INFORMATION CONTACT:** Julie A. Morin, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room

2535-S, Washington, DC 20250-0244; telephone (202) 720-6930, fax (202) 205-2800, or e-mail [julie.morin@usda.gov](mailto:julie.morin@usda.gov).

**SUPPLEMENTARY INFORMATION:** The Hass Avocado Promotion, Research, and Consumer Information Order (Order) [7 CFR part 1219] became effective on September 9, 2002 [67 FR 56895]. It was issued under the Hass Avocado Promotion, Research and Information Act of 2000 (Act) [7 U.S.C. 7801-7813].

#### Executive Orders 12866 and 12988

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

In addition, this proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

#### Regulatory Flexibility and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine

the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. AMS has examined the impact of this proposed rule on small entities.

There are approximately 6,000 producers, 200 importers, and 100 first handlers covered by the Hass avocado program. The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of \$750,000 or less annually and small agricultural service firms as those having annual receipts of \$5 million or less. Importers and first handlers would be considered agricultural service firms. Using these criteria, most producers and importers covered by the program would be considered small businesses, and most handlers would not.

In order to serve as an importer member on the Board, an importer is defined as a person who is involved in, as a substantial activity, the importation of Hass avocados for sale or marketing in the United States. Section 1219.30(d) of the Order states that a substantial activity means that the volume of a person's Hass avocado imports must exceed the volume of the person's production or handling of domestic Hass avocados. According to the California Avocado Commission (CAC), this restriction has had a limiting effect on the number of importers eligible to serve on the Board. Several importers are ineligible to serve on the Board because they produce or handle more Hass avocados than they import. Therefore, terminating the definition of "substantial activity" is expected to increase the number of importers eligible to serve on the Board.

The proposed action on the Order would not impose additional recordkeeping requirements on first handlers, producers, or importers of Hass avocados because the number of nominees would remain unchanged.

There are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, and we invite comments concerning potential effects of the proposed change.

## Background

The Order became effective on September 9, 2002. Assessments on domestic and imported fresh Hass avocados began on January 2, 2003. The funds will be used to maintain and expand markets for Hass avocados in the United States. The Hass Avocado Board (Board), which is appointed by the Secretary, will operate under the supervision of the USDA's (the Department) Agricultural Marketing Service (AMS).

In determining who is eligible to serve as an importer member of the Board, the Act provides for a substantial activity test. In order to implement this provision, the Order needed to provide criteria to enable the Department to measure substantial activity. The Department determined that basing a person's eligibility on the person's business activity and which industry function (producing or importing) predominates was a reasonable measure that gave a clear and understandable benchmark. However, after having completed the importer member nomination process for the initial Board, we now believe that this criteria should be revised since it had such limiting effect on the number of importer nominees. The limiting effect was shown by the importers only having six nominees although the Order provided for 16 nominees.

The California Avocado Commission (CAC) has requested that the "substantial activity" definition be terminated. The CAC noted that the substantial activity language has had a limiting effect on the pool of importer candidates for possible appointment to the Board and also, that several of the largest importers are not eligible to serve on the Board because they produce or handle more Hass avocados that they import.

Regarding the subsequent step of adopting a new definition, the Department believes that it would be appropriate to wait until the Board is seated so that the Board can review the issue and make a recommendation to the Department on any new definition of substantial activity. Waiting for the Board to be seated will provide the opportunity for the Board to review and make a recommendation to the Department. Further, the Board can seek industry consensus on the new definition before submitting a recommendation to the Department.

All written comments timely received will be considered before a final determination is made on this matter.

## List of Subjects in 7 CFR Part 1219

Administrative practice and procedure, Advertising, Consumer information, Hass avocados, Hass avocado promotion, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1219 is proposed to be amended as follows:

1. The authority citation for part 1219 continues to read as follows:

Authority: 7 U.S.C. 7401-7425

### § 1219.30 [Amended]

2. The last sentence in § 1219.30 paragraph (d) is removed.

Dated: March 14, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03-6510 Filed 3-14-03; 11:50 am]

BILLING CODE 3410-02-P

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 121

[Docket No. FAA-2002-14081; Notice No. 03-02]

RIN 2120-AH67

#### Transponder Continuous Operation; Extension of Comment Period

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

**ACTION:** Notice of proposed rulemaking (NPRM); extension of comment period.

**SUMMARY:** This action extends the comment period for an NPRM that was published on January 14, 2003. In that document, the FAA proposed to revise the instrument and equipment requirements for airplanes operated in domestic, flag, and supplemental operations to require affected airplanes to have the capability to help assure immediate activation of the designated air traffic control (ATC) hijack alert code, and continuous transmission of that code to ATC during a hijack situation. This extension is a result of a request from the Air Transport Association to extend the comment period to the proposal.

**DATES:** Comments must be received on or before April 18, 2003.

**ADDRESSES:** Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA-2002-14081, 400

Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: <http://dms.dot.gov> at any time. Commenters who wish to file comments electronically, should follow the instructions on the DMS Web site.

#### FOR FURTHER INFORMATION CONTACT:

Richard E. Jennings, Aircraft Certification Service, Aircraft Engineering Division, AIR-130, Federal Aviation Administration, c/o Atlanta ACO, 1895 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone (770) 703-6090; facsimile (770) 703-6055, e-mail [Richard.Jennings@faa.gov](mailto:Richard.Jennings@faa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments