

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 1219

[No. FV-03-702]

Hass Avocado Promotion, Research, and Information Order: Definition of "Substantial Activity"

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a proposed rule published in the **Federal Register** March 18, 2003, which would have terminated the definition of "substantial activity" under the Hass Avocado Promotion, Research, and Information Order (Order). The proposed action was expected to increase the number of importers eligible to serve on the Hass Avocado Board (Board). Based on comments received and other available information, termination of the definition would not be appropriate at this time.

DATES: This proposed rule is withdrawn as of October 14, 2005.

FOR FURTHER INFORMATION CONTACT: Marlene Betts, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535-S, Washington, DC 20250-0244, telephone (202) 720-9915, fax (202) 205-2800, e-mail: Marlene.Betts@usda.gov.

SUPPLEMENTARY INFORMATION: The Hass Avocado Promotion, Research, and Consumer Information Order (Order) is issued under the Hass Avocado Promotion, Research, and Information Act of 2000 (Act) [7 U.S.C. 7801-7813].

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 (67 FR 7290). 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.

This document withdraws the proposed rule published in the **Federal Register** March 18, 2003 [68 FR 12881], which would have terminated the definition of substantial activity under the Order. The proposed action was expected to increase the number of importers eligible to serve on the Hass Avocado Board (Board). Nine comments were received in a timely manner by the comment deadline. Seven commenters were importers of Hass avocados. Two commenters were Hass avocado industry organizations, one being the Hass Avocado Board. Seven of the nine commenters opposed changing the definition in the Order, while two were in support of the proposed rule change.

Opposing commenters raised a number of issues including whether other factors limited the number of nominees in the earlier selection process rather than the definition of substantial activity. The commenters stated that the size and pool of the eligible importers (200) was more than adequate to fill the vacancies on the Board. Concern was expressed as to the relationship of producers and importers on the Board.

The supporting commenters were of the view that the substantial activity requirement unnecessarily limited the potential pool of nominees for service on the Board and denied some of the most significant and most qualified individuals in the avocado industry to serve on the Board.

Since the initial nomination process in 2002, there have been significant changes in the industry. For example, the number of states and the months of the year that the Mexican Hass avocado industry can bring avocados in the

United States has changed, which can effect importer eligibility on the Board.

Currently, the Department is in the process of appointing 2 importer members to the Board, this would fill all 4 importer positions on the Board. However, nominations were not forthcoming from the industry for the alternate importer positions.

Further, the Department believes that it would be appropriate to publish an advance notice of rulemaking so that the industry can provide comments and other pertinent information prior to the Department publishing any further rulemaking on this issue. An advance notice of rulemaking will be published in the **Federal Register** separately from this document.

Based on comments received and other available information, termination of the definition would not be appropriate at this time. Therefore, the proposed rule regarding the termination of the definition of substantial activity published in the **Federal Register** March 18, 2003 [68 FR 12881] is hereby withdrawn.

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.

Authority: 7 U.S.C. 7801-7813.

Dated: October 7, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Chapter VII

[Docket No. 050923247-5247-01]

Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Industry and Security (BIS) is reviewing the foreign