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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1219

[Doc. No. FV-06-701-FR]

Amendment to the Hass Avocado Promotion, Research, and Information Order: Adjust Representation on the Hass Avocado Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule adjusts the number of members on the Hass Avocado Board (Board) to reflect changes in the production of domestic Hass avocados in the United States and the volume of imported Hass avocados into the U.S. over the 2003, 2004, and 2005 calendar years, which are three years after assessments commenced. These adjustments are required by the Hass Avocado Promotion, Research, and Information Order (Order). The results of the adjustment is one additional importer member and alternate and one less domestic producer member and alternate of Hass avocados that are subject to assessments. As a result of these changes, the Board membership will be composed of seven domestic producer members and alternates and five importer members and alternates. Currently, the Board is composed of eight domestic producer members and alternates, and four importer members and alternates. These changes to the Board are effective for the Secretary of Agriculture's 2006 appointments.

EFFECTIVE DATE: October 5, 2006.

FOR FURTHER INFORMATION CONTACT: Marlene M. Betts, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535-S, Washington, DC 20250-0244,

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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].

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. Section 1212(c) of the Hass Avocado Promotion, Research, and Information Act of 2000 states that the Act may not be construed to preempt or supersede any other program relating to Hass avocado promotion, research, industry information, and consumer information organized and operated under the laws of the United States or of a State.

Under Section 1207(a)(1) of the Hass Avocado Promotion, Research, and Information Act of 2000, a person subject to the Order may file a petition with the Department of Agriculture (USDA) stating that the Order, any provision for the Order, or any obligation imposed in connection with the Order, is not established in accordance with 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, USDA will issue a ruling on the petition. The Act provides that the district court of the United States in 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 USDA's final ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of 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. In accordance with the provision of the Act and section 1219.30 of the Order, this rule merely adjusts representation on the Board to reflect changes in production levels of domestic Hass avocados in the U.S. and the volume of imported Hass avocados into the U.S. over the 2003, 2004, and 2005 calendar year. There are approximately 20,000 producers and 200 importers, 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 \$6.5 million or less. Importers would be considered agricultural service firms. Using these criteria, most producers and importers covered by the program would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201).

At its January 2006 meeting, the Board reviewed the production for the domestic Hass avocados in the U.S. and the volume of imported Hass avocados over the 2003, 2004, and 2005 calendar years and decided to recommend one additional member and alternate member for importers and one less member and alternate for domestic producers of Hass avocados that are subject to the assessment. The total average combined volume of Hass avocados produced in the U.S. and imported into the U.S. for the 2003, 2004, and 2005 calendar years was 712 million pounds. Of this amount, 53.2 percent was Hass avocados imported into the U.S. and 46.8 percent was domestically produced Hass avocados.

Representation on the Board (12) is comprised of: (1) Seven producer members and their alternates; (2) two

importer members and their alternates; and, (3) three producer or importer members and their alternates, also known as the "swing seats." Under the Act and Order the three "swing seats" are allocated so as to reflect as nearly as possible the proportion of domestic production and imports supplying the U.S. market. The proportion is based on the average volume of domestic production and the average volume of imports into the U.S. market over the previous three years. With regard to alternatives, the adjustments to the three "swing seats" in this rule are in conformance with the provisions of the Act and Order. This rule merely adjusts representation on the Board to provide the "swing seats" with three importer members and imposes no new burden on the industry.

There are no relevant Federal rules that duplicate, overlap, or conflict with this rule.

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581-0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

Background

The Hass Avocado Promotion, Research, and Information Act of 2000 (7 U.S.C. 7801-7813) provides for the establishment of a coordinated program of promotion, research, industry information, and consumer information designed to strengthen the avocado industry's position in the domestic marketplace, and to maintain, develop, and expand markets and uses for Hass avocados in the domestic marketplace. The program is financed by an assessment of 2.5 cents per pound on fresh Hass avocados produced and handled in the U.S. and on fresh Hass avocados imported into the U.S. Also under the Act, the Secretary may issue regulations. Pursuant to the Act, an Order was made effective September 9, 2002. The Order established a Board of 12 members and alternates. For purposes of establishing the Board, seven members and their alternates shall be producers of Hass avocados; two members and their alternates shall be importers of Hass avocados; and, three members and their alternates shall be producers or importers of Hass avocados, also known as the "swing

seats." The three "swing seats" are allocated so as to reflect as nearly as possible the proportion of domestic production and imports supplying the U.S. market. Such proportion is determined using the average volume of domestic production and the average volume of imports into the U.S. market over the previous three years.

Section 1219.30(c) of the Order provides that at the end of three years after assessment funds began, the Board shall review the production of domestic Hass avocados in the U.S. and the volume of imported Hass avocados on the basis of the amount of assessments collected from producers and importers over the immediately preceding three-year period. The Board may recommend to the Secretary modification to the Board based on proportion of domestic production and imports supplying the U.S. market.

At its January 2006 meeting, the Board reviewed the production for the domestic Hass avocados in the U.S. and the volume of imported Hass avocados over the 2003, 2004, and 2005 calendar years and decided to recommend one additional member and alternate member for importers and one less member and alternate for domestic producers of Hass avocados that are subject to the assessment. The total average combined volume of Hass avocados produced in the U.S. and imported into the U.S. for the 2003, 2004, and 2005 calendar years was 712 million pounds. Of this amount, 53.2 percent was Hass avocados imported into the U.S. and 46.8 percent was domestically produced Hass avocados.

Representation on the Board (12) is comprised of: (1) Seven producer members and their alternates; (2) two importer members and their alternates; and, (3) three producer or importer members and their alternates, also known as the "swing seats." Under the Act and Order the three "swing seats" are allocated so as to reflect as nearly as possible the proportion of domestic production and imports supplying the U.S. market. The proportion is based on the average volume of domestic production and the average volume of imports into the U.S. market over the previous three years.

The current 12 member Board is composed of eight producer members and alternates, and four importer members and alternates; meaning (1) seven producer members and alternates; (2) two importer members and alternates; and, (3) of the three "swing seats" two are currently importer member and alternate seats and one is a producer member and alternate seat.

On May 9, 2006, an interim final rule concerning this action was published in the **Federal Register**. Copies of the rule were made available through the Internet by USDA and the Office of the Federal Register. The rule provided a 60-day comment period which ended July 10, 2006. Two comments were received, both of which were favorable.

The commenters' support the rule that adjusts the number of producer and importer members on the Hass Avocado Board. The commenters' support the adjustment to the Board that would give the three "swing seats" to the importers. In addition, the commenters state that it is important that the change be made as part of the Secretary's 2006 appointments so that members currently serving could complete their terms of office and easily seat the new members at the start of the Board's fiscal year. Both commenters support the implementation of the interim final rule as it was presented. However, one commenter was of the view that under the Act and Order, the Board had authority to conduct the administrative process leading to recommending candidates to the Secretary and that rulemaking was unnecessary to complete the process to adjust representation on the Board. We disagree. The Department properly initiated rulemaking to adjust representation on the Board and this action completes the rulemaking process.

After consideration of all relevant material presented including comments, the Board's recommendation, and other information, the interim final rule, as published in the **Federal Register** (71 FR 26821) on May 9, 2006, is adopted as a final rule.

Representation on the Board based on the changes in the production of domestic Hass avocados and the volume of imported Hass avocados into the U.S. over the 2003, 2004, and 2005 calendar year results in one additional importer member and alternate and one less producer member and alternate. Accordingly, all of the "swing seats" are importers' therefore, the 12-member Board will be comprised of seven producer members and alternates and five importer members and alternates effective for the Secretary of Agriculture's 2006 appointments.

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, under the authority of 7 U.S.C. 7801–7813 the amendments to 7 CFR part 1219 published at 71 FR 26821, May 9, 2006, are adopted as final without change.

Dated: August 24, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–7372 Filed 9–1–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125 and 135

[Docket No. 2005–23462]

RIN 2120–AI64

Thermal/Acoustic Insulation Installed on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments on final rule.

SUMMARY: On December 30, 2005, the FAA published a final rule; request for comments (Amendment Nos. 91–290, 121–320, 125–50, and 135–103), on the requirements for thermal/acoustic insulation flammability (70 FR 77748). We sought public comments on those amendments, but they became effective on February 28, 2006. This action responds to the comments received on that final rule; request for comments.

ADDRESSES: You may review the public docket (Docket No. 2005–23462) in the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility is on the plaza level of the Nassif Building at the Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Also you may review the public docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Airframe and Cabin Safety Branch (ANM–115), Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2136, facsimile (425) 227–1149, e-mail: jeff.gardlin@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 2000, the FAA published Notice No. 00–09, which proposed to upgrade the flammability and fire protection standards for thermal/acoustic insulation installed in transport category airplanes (65 FR 56992). The notice contained a provision that would require thermal/acoustic insulation to comply with the proposed new standards when used as replacements on airplanes already in service, as well as requirements about newly manufactured airplanes. The requirement was adopted in the final rule, published on July 31, 2003, in §§ 91.613(b)(1), 121.312(e)(1), 125.113(c)(1), and 135.170(c)(1) (68 FR 45046). These rules required operators to use replacement insulation materials meeting the requirements of § 25.856 after September 2, 2005.

For reasons discussed in the preamble, we published Amendment Nos. 91–290, 121–320, 125–50, and 135–103 on December 30, 2005, to refocus the requirements for replacement materials (70 FR 77748). Because of these amendments, only certain types of thermal/acoustic insulation are required to comply with the upgraded standards when replaced. As noted in the preamble, the revised requirements align the regulatory language more closely with the intent of the provision.

Although the immediately adopted rule revised the replacement provisions, we requested comments on the provisions. Six commenters responded to the request for comments.

Discussion of Comments

The General Aviation Manufacturers Association and Continental Airlines support the rule as written. AMIS International provided comments that were not directed at the substance of the amendments. Airbus, Boeing and the National Air Transport Association (NATA) support the rule, but suggest further changes as well.

Boeing suggests we further amend the rules so the requirements of 14 CFR part 25 match the revised requirements for replacement materials. The FAA does not agree. The intent of the part 25 rule is to upgrade the standards for thermal/acoustic insulation in the fuselage of transport category airplanes. Advisory Circular 25.856–1, Thermal/Acoustic Insulation Flame Propagation Test Method Details, dated 6/24/05, provides discussion and methods of compliance for specific installations that simplify the compliance demonstration. Conversely, the provision on replacement thermal/acoustic insulation

is intended to address insulation that is often replaced. The objective of that requirement is to encourage production only of materials that comply with the new standards, as well as to purge inventories of materials that do not comply. Thus, the two provisions are complementary, and need not be the same. Since manufacturers are producing airplanes that comply with the existing requirements of § 25.856(a), the requirements are clearly feasible. Changing part 25 as requested would reduce the level of safety already achieved.

Boeing further suggests the definition of insulation provided in the final rule be included in Advisory Circular 25.856–1 and possibly § 25.856(a) to be consistent. The FAA does not agree. Amendment 91–290 *et al.*, does not “define” insulation. These amendments modify the applicability of requirements for insulation. That is, they specify the conditions under which we require compliance with § 25.856(a) for replacement thermal/acoustic insulation. Thus, we require no changes to the advisory circular since it pertains to compliance with § 25.856(a), and does not apply if compliance with § 25.856(a) is not required.

Boeing also suggests we change the rule to exclude blanket type insulation installed inside galley inserts or other components. These components can be replaced and it is not obvious the replacement includes insulation. The FAA does not agree. Advisory Circular 25.856–1 already addresses these components, and describes a means of compliance that does not necessitate testing in most cases. Since compliant materials are available for those cases when testing is required, the rule should remain as is.

Airbus similarly suggests we change the replacement provision to exclude blanket type insulation when bonded to interior panels, such as sidewalls or floors. Airbus notes that these are infrequently replaced and it would be difficult to change the insulation. The FAA does not agree. Although the insulation is bonded to these panels, if it is in blanket form, there are available substitutes that comply. As long as operators are aware of the particular parts that are affected, they can accommodate the upgraded materials into their maintenance plan.

Airbus also notes that it used many resources to modify its affected parts and drawings before the compliance date, and now some of that effort appears wasted. Because the issues with replacement insulation were identified very late in the process, the FAA acknowledges that Airbus’ proactive