

# 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

[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.