

# Proposed Rules

Federal Register

Vol. 67, No. 68

Tuesday, April 9, 2002

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

[Docket No. FV-01-705 RO]

#### Hass Avocado Promotion, Research, and Information Order; Referendum Order

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

**ACTION:** Referendum order.

**SUMMARY:** This document directs that a referendum be conducted among eligible producers and importers of Hass avocados to determine whether they favor implementation of the Hass Avocado Promotion, Research, and Information Order (Order).

**DATES:** The registration period will be from May 13 through May 31, 2002. The referendum will be conducted from June 24 to July 12, 2002. To vote in this referendum, current producers and importers must have produced or imported Hass avocados during the period from January 1, 2000, through December 31, 2001 (two years).

**ADDRESSES:** Copies of the Order may be obtained from: Referendum Agent, Research and Promotion Branch (RP), Fruit and Vegetable Programs (FV), AMS, USDA, Stop 0244, Room 2535-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Morin, RP, FV, AMS, USDA, Stop 0244, Room 2535-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244, telephone 888-720-9917 (toll free), fax 202-205-2800, e-mail [julie.morin@usda.gov](mailto:julie.morin@usda.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to the Hass Avocado Promotion, Research, and Information Act (Act) [7 U.S.C. 7801-7813], it is hereby directed that a referendum be conducted to ascertain whether implementation of the Order is favored by Hass avocado producers and importers. The Order is authorized under the Act.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1, 2000, through December 31, 2001 (two years). Persons who are producers or importers of Hass avocados at the time of the referendum and during the representative period are eligible to vote. Producers and importers must register with the U.S. Department of Agriculture (Department) in order to receive a ballot to vote in the referendum. Registration will be conducted by mail and by fax. The referendum shall be conducted by mail ballot and by fax from June 24 through July 12, 2002. Ballots must be received by the referendum agent no later than July 12, 2002, to be counted.

Section 1206(a) of the Act requires the Department to conduct a referendum prior to the Order's effective date and that the Order shall become effective only if it is determined that the Order has been approved by a simple majority of all votes cast in a referendum.

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0197. It is estimated that there are approximately 6,000 producers and 200 importers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each producer and importer to read the registration instructions and register for the referendum. It will take an average of 15 minutes for each registered producer and importer to read the voting instructions and complete the referendum ballot.

#### Referendum Order

Julie A. Morin, Margaret B. Irby, and Martha B. Ransom, RP, FV, AMS, USDA, Stop 0244, Room 2535-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244, are designated as the referendum agents to conduct this referendum. The referendum procedures [7 CFR 1219.100 through 1219.109], which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agents will mail registration instructions to all known Hass avocado producers and importers in advance of the referendum. Any producer or importer who does not receive registration instructions should contact the referendum agents no later

than one week before the end of the registration period. Prior to the first day of the voting period, the referendum agents will mail the ballots to be cast in the referendum and voting instructions to all registered voters. Persons who are producers or importers at the time of the referendum and during the representative period are eligible to vote. Any eligible producer or importer who does not receive a ballot should contact the referendum agents no later than one week before the end of the voting period. Ballots must be received by the referendum agents on or before July 12, 2002, to be counted.

#### List of Subjects in 7 CFR Part 1219

Advertising, Agricultural research, Hass avocados, Imports, Reporting and recordkeeping requirements.

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

Dated: April 3, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02-8547 Filed 4-8-02; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1710

RIN 0572-AB80

#### Useful Life of Facility Determination

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) proposes to eliminate the requirement to use depreciation rates as found in Bulletin 183-1, for determining the useful life of a facility. If the proposed useful life of a facility is deemed inappropriate by RUS, other means to establish an appropriate term for the loan will apply. Current reliance on the fixed range of depreciation rates found in Bulletin 183-1, to be used across the country, has been determined to not be as appropriate as looking at proposals on a case-by-case basis. This proposed rule is made as part of the RUS efforts to continually look for ways to streamline lending requirements and make regulations useful and direct.

**DATES:** Written comments must be received by RUS or carry a postmark or equivalent no later than May 9, 2002.

**ADDRESSES:** Written comments should be addressed to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Patrick R. Sarver, Management Analyst, Rural Utilities Service, Electric Program, Room 4024 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250-1560, Telephone: 202-690-2992, FAX: 202-690-0717, E-mail: [psarver@rus.usda.gov](mailto:psarver@rus.usda.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Order 12866**

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 (OMB).

##### **Executive Order 12372**

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice titled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

##### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912 (e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies may be initiated.

#### **Regulatory Flexibility Act Certification**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of RUS has determined that this rule will not have significant impact on a substantial number of small entities. The RUS electric loan program provides loans and loan guarantees to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. Small entities are not subjected to any requirements, which are not applied equally to large entities. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with RUS regulations and requirements.

#### **Information Collection and Recordkeeping Requirements**

This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572-0032 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

#### **Unfunded Mandates**

This proposed rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

#### **National Environmental Policy Act Certification**

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

#### **Catalog of Federal Domestic Assistance**

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325, telephone number (202) 512-1800.

#### **Background**

RUS is authorized to make loans and loan guarantees with a final maturity of up to 35 years. When determining the

useful life of a facility to be financed, current regulations require that the useful life determination be consistent with the borrower's proposed depreciation rates for facilities. If the depreciation rates are deemed inappropriate by RUS, then the depreciation rates listed in RUS Bulletin 183-1 will apply. RUS Bulletin 183-1, last updated in 1977, provides the borrower depreciation rates by asset class, which is meant to be used by all borrowers across the country. The standard depreciation rates that are published in Bulletin 183-1 are presented as a range of rates to allow for the recognition of locational and situational differences.

Depreciation is the allocation of asset costs over the period that the asset provides a benefit. The system of allocation should correctly match cost with related revenue, while recognizing the declining service value of the asset. Both use and usefulness of the asset influence the rate of depreciation. Appropriate determination of depreciation for a particular asset should consider the past experience with similar assets, the asset's present condition and the factory's maintenance policy. Other considerations include technological and industry trends, and local environmental conditions.

In the electric utility industry depreciation is designed to allocate the costs of electric plant, including net salvage (cost of removal less salvage), over the estimated useful life of the plant. The depreciation rates, therefore, include components for estimated cost of removal and net salvage. In recent years net salvage has, in many cases, become a significant factor in depreciation rates. As a result, without knowing the net salvage components the depreciation rates cannot readily be converted to determine the estimated useful life of electric plant.

Because of the growing difficulty in determining the net salvage value and the resulting difficulty in accurately determining useful life, RUS is proposing to eliminate the requirement for a useful life determination based upon the depreciation rates as found in Bulletin 183-1. If the useful life being proposed by the borrower is not satisfactory to RUS, the depreciation rates listed in RUS Bulletin 183-1 will no longer be used in lieu thereof. Instead, RUS proposes using an independent evaluation, the manufacturer's estimated useful-life or RUS experience with like-property as alternatives to an unsatisfactory proposal made by the borrower. RUS views this new back-stop approach to reviewing and approving the

determination of the useful life of a facility as a more appropriate method. The increased difficulties in establishing net salvage values and recent experience in using the fixed range of depreciation rates as found in Bulletin 183-1, dictates a more flexible approach.

The RUS is proposing this change to regulations as part of its ongoing effort to minimize administrative burden, streamline the loan process, and update regulations to reflect current requirements. This proposed change in regulations will provide greater latitude in establishing the useful life of a facility being financed but at the same time maintain RUS approval for making the determination.

#### List of Subjects in 7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, is proposed to be amended as follows:

#### PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

#### Subpart C—Loan Purposes and Basic Policies

2. Amend § 1710.115 by revising paragraph (b) to read as follows:

##### § 1710.115 Final maturity.

(b) Loans made or guaranteed by RUS for facilities owned by the borrower generally must be repaid with interest within a period, up to 35 years, that approximates the expected useful life of the facilities financed. The expected useful life shall be based on the weighted average of the useful lives that the borrower proposes for the facilities financed by the loan, provided that the proposed useful lives are deemed appropriate by RUS. RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers, submitted as part of the loan application must include, as a note, either a statement certifying that at least 90 percent of the loan funds are for facilities that have a useful life of 33 years or longer, or a schedule showing the costs and useful life of those facilities with a useful life of less than 33 years. If the useful life determination

proposed by the borrower is not deemed appropriate by RUS, RUS will base expected useful life on an independent evaluation, the manufacturer's estimated useful-life or RUS experience with like-property, as applicable. Final maturities for loans for the implementation of programs for demand side management and energy resource conservation and on and off grid renewable energy sources not owned by the borrower will be determined by RUS. Due to the uncertainty of predictions over an extended period of time, RUS may add up to 2 years to the composite average useful life of the facilities in order to determine final maturity.

\* \* \* \* \*

Dated: March 27, 2002.

**Blaine D. Stockton,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 02-8484 Filed 4-8-02; 8:45 am]

**BILLING CODE 3410-15-P**

#### SMALL BUSINESS ADMINISTRATION

##### 13 CFR Part 121

**RIN 3245-AE78**

##### Small Business Size Standards; Testing Laboratories

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Proposed rule.

**SUMMARY:** The Small Business Administration (SBA) is proposing to increase the size standard for the Testing Laboratories industry (North American Industry Classification System (NAICS) code 541380) to \$10 million in average annual receipts. The current size standard for this industry is \$6 million in average annual receipts. The proposed revision is being made to better define the size of businesses in this industry that SBA believes should be eligible for Federal small business assistance programs.

**DATES:** Comments must be submitted on or before June 10, 2002.

**ADDRESSES:** Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW, Mail Code 6530, Washington, DC 20416; or via email to [SIZESTANDARDS@sba.gov](mailto:SIZESTANDARDS@sba.gov). Upon request, SBA will make all public comments available.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Ray, Office of Size Standards, (202) 205-6618.

**SUPPLEMENTARY INFORMATION:** The Small Business Administration (SBA) has received requests from Testing

Laboratories to review its \$6 million size standard. These firms believe that a size standard increase is warranted in light of the high level capacities and skills that Federal agencies have recently required among their vendors that specialize in environmental and radiochemical testing. They believe that the minimum government requirements may have raised the costs of doing business in this industry to the point that the pool of eligible small businesses in this activity has seriously declined. If this trend continues, it is argued, Federal agencies could be hampered in using government preference programs for small business. Below is a discussion of SBA's size standards methodology and the analysis leading to the proposal to increase the Testing Laboratories size standard to \$10 million.

(Effective February 22, 2002, the Testing Laboratories size standard increased from \$5 million to \$6 million as part of an inflation adjustment to SBA's monetary size standards (see 67 FR 3041, dated January 23, 2002. This rule proposes a further increase to the size standard based on an analysis of the characteristics of businesses in the Testing Laboratories industry.)

*Size Standards Methodology:* Congress has granted SBA discretion to establish detailed size standards. SBA's Standard Operating Procedure (SOP) 90 01 3, "Size Determination Program," available on SBA's web site at <http://www.sba.gov/library/soprooom.html>, sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors, including the impact on other agencies' programs, may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

*Industry Analysis:* The Small Business Act, 15 U.S.C. 632(a)(3), requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics