

# 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-05-703-ANPR]

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

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

**ACTION:** Advance notice of proposed rulemaking; request for public comments.

**SUMMARY:** The Agricultural Marketing Service (AMS) invites comments from producers, importers, first handlers and other interested persons on a possible change to the definition of "substantial activity" under 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).

**DATES:** Written suggestions, views or pertinent information relative to this action will be considered if received by December 20, 2005.

**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: [marlene.betts@usda.gov](mailto:marlene.betts@usda.gov) or Internet: <http://www.regulations.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: <http://www.ams.usda.gov/fv/rpb.html>.

#### 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](mailto: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].

#### Executive Order 12866

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

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 needs 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 advance notice of proposed rulemaking invites comments on a possible change to this definition of substantial activity under the Order to better measure substantial activity. AMS is seeking information pertaining to the definition of substantial activity and on the impact such rulemaking might have on the number of importers eligible to serve on the Board. All other views, suggestions or comments relative to the proposal in general also are sought.

The Order provision being considered for amendment governs the eligibility of importers to serve on the Board and is

authorized under the Hass Avocado Promotion, Research, and Information Order (Order). The Act provides that changes to the Order will become effective if approved in referenda by eligible producers and importers.

#### Background

Section 1219.30 of the Hass Avocado Promotion, Research, and Information Order provides 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.

After the Order was implemented, the Department of Agriculture (Department) conducted the initial nomination process for importer positions on the Board. At that time, only six nominees were received, although the Order provided for 16 nominees.

Since the initial nomination process in 2002 there has 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 affect importer eligibility on the Board.

Currently, the Department is in the process of appointing 2 importer members to the Board, which 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 any other pertinent information prior to the Department considering any change to the definition of substantial activity.

A proposed rule was published in the **Federal Register** March 18, 2003 [68 FR 12881], which would have terminated the definition of substantial activity under the Order. Comments were requested by May 19, 2003. Nine comments were received in a timely manner by the deadline. Seven commenters were importers of Hass avocados. Two commenters were Hass avocado industry organizations, one being the Hass Avocado Board created by the Act. Seven of the nine commenters opposed change to the Order, while two were in support of the proposed rule change.

On that rulemaking, 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.

In a separate publication in the **Federal Register**, the proposed rule was withdrawn without being finalized after taking into account the above.

### Comments and Information Requested

Information, suggestions, and comments pertaining to the proposal are sought. Examples of specific information that would assist AMS in determining if this recommendation should be proposed are:

1. Specific recommendations for the definition—including volume of imports relative to the volume of domestic production—that would allow the Department to measure substantial activity as is required by the Act.

2. Data relative to the number of importers that would become eligible to serve on the Hass Avocado Board if the definition changed.

3. Data relative to the number of importers that would become eligible to serve on the Hass Avocado Board if the definition was not changed.

### Summary

In conclusion, the AMS is soliciting the views of interested persons as to amending the definition of substantial activity to enable the Department to better measure substantial activity as is required by the Act. Specifically, the AMS is interested in the points mentioned previously in this advance notice as well as statistical information, suggestions, and comments pertaining to the definition of substantial activity and the impact on the number of eligible importers to serve on the Board. All views are solicited, however, so that every aspect of this potential amendment may be studied prior to formulating a proposed rule, if such is deemed warranted by the AMS.

This request for public comments does not constitute notification that the recommendation to change the regulations described in this document is or will be proposed or adopted.

A 60-day comment period is provided to allow interested persons the opportunity to respond to this request for information and comments. All written comments timely received will be considered before any subsequent rulemaking action is undertaken.

**Authority:** 7 U.S.C. 7801–7813.

Dated: October 18, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 05–21081 Filed 10–20–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA–2005–22748; Directorate Identifier 2005–NM–127–AD]**

**RIN 2120–AA64**

#### **Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Fokker Model F.28 Mark 0070 and 0100 airplanes. This proposed AD would require modifying the passenger door and installing new placards. This proposed AD results from reports of the airstairs-type passenger door opening during flight. We are proposing this AD to prevent rapid decompression of the airplane, or ejection of a passenger or crew member out the door during flight.

**DATES:** We must receive comments on this proposed AD by November 21, 2005.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.

- Fax: (202) 493–2251.

- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building,

400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

### SUPPLEMENTARY INFORMATION:

#### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number “FAA–2005–22748; Directorate Identifier 2005–NM–127–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit <http://dms.dot.gov>.

#### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.