

# 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**DATES:** This proposed rule is withdrawn as of October 14, 2005.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](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].

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.*

[FR Doc. 05-20530 Filed 10-12-05; 8:45 am]

**BILLING CODE 3410-02-P**

## 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

policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BIS is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

**DATES:** Comments must be received by November 14, 2005.

**ADDRESSES:** Written comments (three copies) should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Include "FPBEC" in the subject line of the message. Alternatively, comments may be e-mailed to Sheila Quarterman at [squarter@bis.doc.gov](mailto:squarter@bis.doc.gov). Also include "FPBEC" in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Joan Roberts, Director, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482-4252. Copies of the current Annual Foreign Policy Report to the Congress are available at <http://www.bis.doc.gov/PoliciesAndRegulations/05ForPolControls/index.htm> and copies may also be requested by calling the Office of Nonproliferation and Treaty Compliance at the number listed above.

**SUPPLEMENTARY INFORMATION:**

Foreign policy based controls in the Export Administration Regulations (EAR) are implemented pursuant to section 6 of the Export Administration Act of 1979, as amended. The current foreign policy-based export controls maintained by the Bureau of Industry and Security (BIS) are set forth in the EAR, including in parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Special Country Controls). These controls apply to a range of countries, items, activities and persons, including: high performance computers (§ 742.12); certain general purpose microprocessors for "military end-uses" and "military end-users" (§ 744.17); significant items (SI): hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§§ 742.15 and 744.9); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); certain firearms included within the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition,

Explosives, and Other Related Materials (§ 742.17); regional stability commodities and equipment (§ 742.6); equipment and related technical data used in the design, development, production, or use of certain rocket systems and unmanned air vehicles (§§ 742.5 and 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§§ 742.2 and 744.4) and various chemicals included in those controlled pursuant to the Chemical Weapons Convention (§ 742.18); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 742.19, 742.20, 746.2, 746.3, and 746.7); certain entities in Russia (§ 744.10); individual terrorists and terrorist organizations (§§ 744.12, 744.13 and 744.14); certain persons designated by Executive Order 13315 ("Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members") (§ 744.18); and certain sanctioned entities (§ 744.20). Attention is also given in this context to the controls on nuclear-related commodities and technology (§§ 742.3 and 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non-Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. The EAA expired on August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2005 (70 FR 45273, August 5, 2005), continues the EAR and, to the extent permitted by law, the provisions of the EAA, in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls, requesting public comments on such controls, and submitting a report to Congress.

In January 2005, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy-based export controls then in effect.

To assure maximum public participation in the review process,

comments are solicited on the extension or revision of the existing foreign policy-based export controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy-based export controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods, software or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. Whether reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to enforce the controls effectively.

BIS is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BIS is also interested in industry information relating to the following:

1. Information on the effect of foreign policy-based export controls on sales of U.S. products to third countries (*i.e.*, those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy-based export controls.

2. Information on controls maintained by U.S. trade partners. For example, to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations?

3. Information on licensing policies or practices by our foreign trade partners which are similar to U.S. foreign policy-based export controls, including license review criteria, use of conditions, requirements for pre and post shipment verifications (preferably supported by

examples of approvals, denials and foreign regulations).

4. Suggestions for revisions to foreign policy-based export controls that would (if there are any differences) bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy-based export controls on the trade or acquisitions by intended targets of the controls.

7. Data or other information as to the effect of foreign policy-based export controls on overall trade at the level of individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy-based export controls on trade.

9. Information on the use of foreign policy-based export controls on targeted countries, entities, or individuals.

BIS is also interested in comments relating generally to the extension or revision of existing foreign policy-based export controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BIS in reviewing the controls and developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482-0637 for assistance.

Dated: October 6, 2005.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

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BILLING CODE 3510-33-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR PART 51

[OAR-2005-0148; FRL-7982-9]

#### Advance Notice To Solicit Comments, Data and Information for Determining the Emissions Reductions Achieved in Ozone Nonattainment and Maintenance Areas From the Implementation of Rules Limiting the VOC Content of AIM Coatings; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Advance notice of proposed rulemaking; extension of the comment period.

**SUMMARY:** EPA is extending the comment period for an advanced notice of proposed rulemaking (ANPR) published on August 31, 2005 (70 FR 51694). In the August 31, 2005 ANPR, EPA solicited comments, data and information for determining how to calculate the reductions in volatile organic compounds (VOC) emissions achieved in ozone nonattainment and maintenance areas from the implementation of rules which limit the VOC content of architectural coatings (commonly referred to as architectural industrial maintenance, or AIM, coatings). In addition to submitting comments, data and information, interested parties may also request to meet with EPA to present their recommended approaches and rationales. Pursuant to requests of the Ozone Transport Commission and the California Air Resources Board, EPA is extending the comment period through December 16, 2005.

**DATES:** Comments, data, and information must be submitted on or before December 16, 2005. Requests to meet with EPA should be made on or before November 28, 2005.

**ADDRESSES:** Submit your written comments, data and information, identified by Docket ID No. OAR-2005-0148, by one of the following methods:  
*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

*Agency Web site:* <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

*E-mail:* Send electronic mail (e-mail) to EPA Docket Center at [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

*Fax:* Send faxes to the EPA Docket Center at (202) 566-1741.

*Mail:* Air and Radiation Docket, U.S. Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attn: Docket ID No. OAR-2005-0148, *Advance Notice for Information on Determining the Emissions Reductions Achieved from Limiting the VOC Content of Architectural Coating*. Please include a total of two copies.

*Hand Delivery or Courier:* EPA Docket Center (Air and Radiation Docket), U.S. Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for delivery of boxed information.

*Instructions:* Direct your comments to Docket ID No. OAR-2005-0148. The EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov or e-mail. The EPA EDOCKET and the federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute.