

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 1208

[FV-97-701PR]

Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to provide procedures that the Department of Agriculture (Department) will use in conducting the referendum to determine whether to continue the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order (Order). In order to continue, the program must be approved by a majority of the qualified handlers voting in the referendum.

DATES: Comments must be received by April 3, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), USDA, P.O. Box 96456, Room 2535-S, Washington, DC 20090-6456, fax (202) 205-2800. Three copies of all written material should be submitted, and they will be made available for public inspection at the Research and Promotion Branch during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register. Also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address.

FOR FURTHER INFORMATION CONTACT:

Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535-S, Washington, DC 20090-6456, telephone (202) 720-9916 or (888) 720-9917.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993 (7 U.S.C. 6801-*et seq.*), hereinafter referred to as the Act, and the Order.

This rule provides the procedures under which the referendum would be conducted.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8 of the Act, after an Order is implemented, a person subject to the Order may file a petition with the Secretary stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

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.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency is required to examine the impact of the proposed rule on small

entities. Accordingly, we have performed this initial regulatory flexibility analysis.

The Act, which authorizes the creation of a generic program of promotion and information for fresh cut flowers and greens, became effective on December 14, 1993.

Section 7 of the Act provides that the Secretary of Agriculture (Secretary) shall conduct a referendum not later than 3 years after the issuance of an order to ascertain whether the order then in effect shall be continued. The Order was issued on December 29, 1994. Paragraph (a)(2) of section 7 of the Act requires that the Order be approved by a simple majority of all votes cast in the referendum. In addition, paragraph (b) of section 7 of the Act specifies that each qualified handler eligible to vote in the referendum shall be entitled to cast one vote for each separate facility of the person that is an eligible separate facility. Eligible separate facility is defined in paragraph (b)(2) of section 7 of the Act as a handling or marketing facility of a qualified handler that is physically located away from other facilities of the qualified handler or that the business function of the separate facility is substantially different from the functions of other facilities owned or operated by the qualified handler and the annual sales of cut flowers and cut greens to retailers and exempt handlers from the facility are \$750,000 or more annually.

Only those wholesale handlers (including but not limited to, wholesale jobbers, bouquet and floral article manufacturers, auction houses that clear the sale of cut flowers and greens, and retail distribution centers), producers and importers who have annual sales of \$750,000 or more of fresh cut flowers and greens and who sell those products to exempt handlers, retailers, or consumers are considered qualified handlers and assessed under the Order.

There are approximately 525 wholesale handlers, 84 importers, and 83 producers who are qualified handlers. Small agricultural service firms, which would include the qualified handlers covered under the Order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than \$5 million. Only 127 qualified handlers have been identified to have \$5 million in annual sales.

It is concluded that the majority of qualified handlers may be classified as small entities.

Statistics reported by the National Agricultural Statistics Service show that in 1995 sales of domestic cut flowers and cut greens totaled approximately \$521.3 million at the wholesale level. The leading producing states by wholesale value are California, with about 49 percent of the total of flower and cut green production, followed by Florida, Colorado and Hawaii.

Exports in 1995 of U.S. cut flowers were valued at \$23.9 million, with about 64 percent of the value from exports to Canada, and 26 percent of the value from exports to Japan. Exports of cut greens are not reported by the Bureau of the Census as a separate item; they are included in a "basket" export category that includes other types of fresh cut plant exports such as branches without flowers or buds, evergreens, and grasses, which are suitable for ornamental purposes. In 1995 the value of these exports was \$45.6 million.

The value of imports of cut flowers in 1995 was \$495.2 million. Major countries exporting cut flowers to the United States, by value, are Colombia which accounts for about 65 percent of the value, followed by the Netherlands (11.6 percent), Ecuador (10.2 percent), and Mexico (3.8 percent). Imports of cut greens are reported in a category that includes some other fresh cut plant items suitable for ornamental purposes such as grasses, branches without flowers or buds, and other plant parts, but excludes fresh evergreens. In 1995 this "basket category" of imports had a value of \$24.1 million.

This proposed rule provides the procedures under which qualified handlers may vote on whether they want the fresh cut flowers and fresh cut greens promotion and information program to be continued. Qualified handlers of \$750,000 or more in annual gross sales are eligible to vote in the referendum. There are approximately 692 eligible voters representing approximately 923 votes some of which represent separate facilities. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot. The total burden on the total number of voters will be 77 hours.

The Department would keep all these individuals informed throughout the referendum process to ensure that they are aware of and are able to participate in the process. In addition, trade associations and related industry media would receive news releases and other information regarding the referendum process.

Voting in the referendum is optional. However, if qualified handlers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether they want to continue the program or not.

The Department considered requiring eligible voters to vote in person at various Department offices across the country. However, conducting the referendum from one central location by mail ballot is more cost effective for this program. Also, the Department would provide easy access to information for potential voters through a toll free telephone line. It is anticipated that a referendum would be conducted in June to maximize industry participation.

While we have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, in order to have all the data necessary for a more comprehensive analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements 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 has been assigned OMB number 0581-0093. It is estimated that there are 692 qualified handlers, representing 923 votes, who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot. The total burden on the total number of voters will be 77 hours.

Background

The Act authorized the Secretary to establish a national cut flowers and cut greens promotion and consumer information program. The program is funded by an assessment of 1/2 percent of gross sales of cut flowers and greens which is levied on qualified handlers. The program is administered by the National PromoFlor Council (Council) under the supervision of the Department of Agriculture (Department).

Assessments are used to pay for: research, promotion, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the

Secretary in implementing and administering the Order, including referendum costs.

Section 7 of the Act requires that a referendum be conducted not later than 3 years after the issuance of the Order among eligible qualified handlers of fresh cut flowers and fresh cut greens to determine whether they favor continuance of the Order. The Order shall continue in effect if it is approved by a simple majority of qualified handlers voting in the referendum.

In accordance with section 3(4) of the Act, qualified handler is defined in the Order as a person operating in the cut flowers and greens marketing system that sells domestic or imported cut flowers and greens to retailers and exempt handlers and whose annual sales of cut flowers and greens to retailers and exempt handlers are \$750,000 or more. The term also includes, but is not limited to, the following entities when they have the requisite volume of \$750,000 sales of cut flowers and greens a year: A wholesale handler; a manufacturer of bouquets or floral articles for sale to retailers if the cut flowers and greens used are a substantial portion of the value of the manufactured floral article; an auction house that clears the sale of cut flowers and greens to retailers and exempt handlers through a central clearinghouse; a distribution center that is owned or controlled by a retailer if the predominant retail business activity is floral sales; an importer whose principal activity is the importation of cut flowers and greens into the United States and sells to retailers and exempt handlers or directly to consumers; and a producer that sells cut flowers and cut greens directly to retailers or consumers.

Paragraph (b) of section 7 of the Act specifies that each qualified handler eligible to vote in the referendum shall be entitled to cast one vote for each separate facility of the person that is an eligible separate facility. Eligible separate facility is defined in paragraph (b)(2) of section 7 of the Act as a handling or marketing facility of a qualified handler that is physically located away from other facilities of the qualified handler or that the business function of the separate facility is substantially different from the functions of other facilities owned or operated by the qualified handler and the annual sales of cut flowers and cut greens to retailers and exempt handlers from the facility are \$750,000 or more annually.

This proposed rule provides the procedures under which fresh cut flowers and greens qualified handlers may vote on whether they want the

fresh cut flowers and greens promotion and consumer information program to continue. Qualified handlers of \$750,000 gross sales annually can vote in the referendum. There are approximately 692 eligible voters representing approximately 923 votes.

This proposed rule would add a new subpart which would establish procedures to be used in the referendum. This subpart would be in effect for the referendum period only and would not be part of the Code of Federal Regulations. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified herein will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the fresh cut flowers and greens industry.

A 15-day comment period is deemed appropriate for this rule because: (1) These proposed regulations contain provisions that are the same as or similar to referendum procedures for other research and promotion programs; (2) the fresh cut flowers and greens industry is aware that a referendum would be conducted this year; (3) comments would be addressed before a final rule is published; and (4) this rulemaking should be expedited in order to conduct a referendum in June to maximize industry participation.

List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Cut flowers, Cut greens, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7 of Chapter XI of the Code of Federal Regulations be amended as follows:

1. Part 1208 is amended by adding a new Subpart C to read as follows:

PART 1208—FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION ORDER

Subpart C—Procedure for the Conduct of Referenda in Connection With the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order

Sec.

- 1208.200 General.
- 1208.201 Definitions.
- 1208.202 Voting.
- 1208.203 Instructions.
- 1208.204 Subagents.

- 1208.205 Ballots.
- 1208.206 Referendum report.
- 1208.207 Confidential information.

Authority: 7 U.S.C. 6801 *et seq.*

Subpart C—Procedure for the Conduct of Referenda in Connection With the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order

§ 1208.200 General.

A referendum to determine whether qualified handlers favor continuance of the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order shall be conducted in accordance with these procedures.

§ 1208.201 Definitions.

Unless otherwise defined below, the definition of terms used in these procedures shall have the same meaning as the definitions in the Order.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order.

(c) *Referendum agent* or agent means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, firm, partnership, corporation, joint stock company, association, society, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and wife who has title to, or leasehold interest in, fresh cut flowers and greens facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called "joint ventures", wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the handling of fresh cut flowers and greens and the authority to transfer title to the fresh cut flowers and greens handled.

(f) *Eligible qualified handler* means a person who is a qualified handler under § 1208.16 of the Order that operates in

the cut flowers and greens marketing system and sells domestic or imported cut flowers and greens to retailers and exempt handlers and has annual sales of cut flowers and greens to retailers and exempt handlers that are \$750,000 or more.

(g) *Separate facility* means a handling or marketing facility of a qualified handler that is physically located away from other facilities of the qualified handler or that the business function of the separate facility is substantially different from the functions of other facilities owned or operated by the qualified handler and the annual sales of cut flowers and cut greens to retailers and exempt handlers from the facility are \$750,000 or more annually.

§ 1214.202 Voting.

(a) Each person who is an eligible qualified handler as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast one vote for each separate facility of the person that is an eligible separate facility.

(b) Proxy voting is not authorized, but an officer or employee of an eligible qualified handler, or an administrator, executor, or trustee of an eligible qualified handler entity may cast a ballot on behalf of such qualified handler entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible qualified handler, or an administrator, executor, or trustee of an eligible qualified handler entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail.

§ 1214.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining whether the person voting, or on whose

behalf the vote is cast, is an eligible voter;

(c) Give reasonable advance public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible qualified handlers, whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in presence of an agent of the Office of Inspector General.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1208.204 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1208.205 Ballots.

The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be questioned for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was questioned, by whom questioned, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1208.206 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1208.207 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the

vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Dated: March 14, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-6985 Filed 3-17-97; 9:49 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-ANE-04]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Pratt & Whitney JT9D series turbofan engines, that currently requires initial and repetitive eddy current inspection (ECI) or fluorescent penetrant inspection (FPI) for cracks in first stage high pressure turbine (HPT) disk cooling air holes. This action would require initial and repetitive FPI for cracks in cooling air holes of additional first stage HPT disks, and replacement with serviceable parts. In addition, this action would require initial and repetitive FPI for cracks in tie bolt holes of certain other affected second stage HPT disks installed in PW JT9D series turbofan engines. This proposal is prompted by reports of a cracked cooling air hole on one first stage HPT disk, and a cracked tie bolt hole on one second stage HPT disk. The actions specified by the proposed AD are intended to prevent turbine disk failure due to cooling air hole or tie bolt hole cracking, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by May 19, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-ANE-04, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the

docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565-6600, fax (860) 565-4503. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT:

Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7130, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-ANE-04." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-ANE-04, 12 New