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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1206**

**[Document No. AMS-FV-12-0041]**

**Mango Promotion, Research, and Information Order; Nominations of Foreign Producers and Election of Officers**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would allow foreign producers, from major countries exporting mangos to the United States, who are not members of a foreign producer organization to submit names to the Secretary for appointment to the National Mango Board (Board). At this time, only foreign producer associations from major countries exporting mangos to the United States can submit names to the Secretary for consideration. In addition, this proposal seeks to provide flexibility to the timing of election of officers to the Board. The changes were proposed by the Board, which administers the program, in accordance to the provisions of the Mango Promotion, Research, and Information Order (Order) which is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act).

**DATES:** Comments must be received by [Insert date 20-days after date of publication in the Federal Register].

**ADDRESSES:** Comments may be submitted electronically at <http://www.regulations.gov>.

Comments may also be sent to the Promotion and Economics Division, Fruit and Vegetable Program, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, Room 1406-

S, Stop 0244, 1400 Independence Avenue SW, Washington, D.C. 20250-0244; fax (202) 205-2800. All comments submitted should reference the document number and title of this proposed rule, and will be included in the record and made available for public inspection. Comments may be viewed on the internet at <http://www.regulations.gov>, or at the above office. Please be advised that the identity of individuals or entities submitting comments will be made public on the internet at the above website.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Palmer, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406-S, Stop 0244, Washington, D.C. 20250-0244; telephone: (888) 720-9917; fax: (202) 205-2800; email: [Jeanette.Palmer@ams.usda.gov](mailto:Jeanette.Palmer@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Mango Promotion, Research, and Information Order (Order) (7 CFR part 1206). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411-7425).

**Executive Order 12866 and Executive Order 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as “non-significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

## **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

Under the Act, a person subject to an order may file a petition with the U.S. Department of Agriculture (Department) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the 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 Department's final ruling.

## **Regulatory Flexibility Analysis and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 - 612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on the small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory

action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

The Small Business Administration defines small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms as those having annual receipts of no more than \$7 million (13 CFR part 121). First handlers and importers would be considered agricultural service firms, and the majority of mango producers, first handlers and importers would be considered small businesses. Although this criterion does not factor in additional monies that may be received by producers, handlers and importers of mangos, it is an inclusive standard for identifying small entities.

Mango producers are not subject to the assessment. First handlers and importers who market or import less than 500,000 pounds of mangos annually are exempt from the assessment. Mangos that are exported out of the United States are also exempt from assessment. Furthermore, while domestic and foreign producers are not subject to assessment under the Order, such individuals are eligible to serve on the Board along with importers and first handlers. Currently, approximately three first handlers and 193 importers are subject to assessment under the Order.

U.S. production of mangos is located in California, Florida, Hawaii, Texas, and Puerto Rico according to the most recent U.S. Census of Agriculture (Agricultural Census) which was conducted in 2007. The Agricultural Census does not include California production because California has so few producers that publishing production data would reveal confidential information. According to the 2007 Agricultural Census published by the Department's National Agricultural Statistics Service, the U.S. had a total of 2,259 acres of mangos in 2007, which is the most recent data available. Out of the total acreage, 1,212 acres (54 percent) were in Florida,

and the remaining 1,047 acres (46 percent) were in Hawaii, California, and Texas. The Agricultural Census does not collect mango production data for Puerto Rico. Individual acreage for Hawaii, California and Texas are not available. U.S. mango acreage rose by 321 acres between 2002 and 2007. Florida saw a decrease of 161 acres between 2002 and 2007 census, but acres in other States rose by 482 acres. Census data is published every five years.

Seven countries account for 99 percent of the mangos imported into the United States. These countries and their share of the imports (from April 1, 2011, through March 31, 2012) are: Mexico (68 percent); Ecuador (9 percent); Brazil (7 percent); Peru (7 percent); Guatemala (4 percent); Haiti (3 percent); and Nicaragua (1 percent). For the period from April 1, 2011, through March 31, 2012, the United States imported a total of 353,629 tons of mangos, valued at \$280 million.

The Board is composed of 18 members, including eight importers; two domestic producers; one first handler; and seven foreign producers. Nominations and appointments to the Board are conducted pursuant to section 1206.31 of the Order. Nominations for the importer, domestic producer, and first handler seats are made by U.S. importers, domestic producers, and first handlers, respectively. Foreign producers are nominated by foreign producer associations. The Board wants to increase the pool of nominees from the major countries that export mangos to the United States by allowing foreign producers who are in areas without a producer organization to nominate foreign producers to the Board.

Section 515(b)(2)(C) of the Act states the Secretary may make appointments from nominations made pursuant to the method set forth in the order. The Board wants to receive representation from all mango growing regions within the major mango exporting countries to the United States. Section 1206.31(g) of the Order limits the nominations for the foreign

producer seats to the foreign mango organizations. At a meeting on September 11, 2009, the Board voted (9 out of 14 in favor) to allow foreign producers from the major countries exporting mangos to the United States to provide nominees directly to the Secretary. At a recent Board meeting, the Board decided to request this change. The proposed change does not limit the foreign producer organizations ability to submit nominations. It will increase the slate of candidates from which the Secretary may choose to appoint to the Board. It also provides an opportunity to increase diversity on the Board.

In addition, on July 11, 2012, the Board voted unanimously to amend the Order to provide the Board flexibility in the election of officers. Currently, section 1206.34 (b) of the Order requires the Board to select a chairperson and a vice chairperson at the start of its fiscal period. The Board must schedule Board meetings around several domestic and international growing regions in the mango industry. This challenge has caused the Board to hold its first meeting of the year three months into the fiscal year. The language in the Order would leave the Board without a chairperson for several months. The Board had considered changing its fiscal year, but it was rejected by Board members because the Board's fiscal year flows with the mango production cycle which is a calendar year.

Section 515(c)(3) of the Act allows the Board to meet, organize, and select among its members its officers as the Board determines appropriately. In practice, the Board has learned that waiting three months into its fiscal year to elect officers is impractical. The Board believes that electing its officers at the last meeting of the fiscal year is more advantageous. Therefore, the Board proposes to update the Order to reflect the particular needs of the mango industry and to provide for a more efficient management method.

This rule does not impose additional recordkeeping requirements on first handlers, importers, or producers of mangos. There are no Federal rules that duplicate, overlap, or conflict with this rule.

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) that implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581-0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

We have performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed amendment to the Order on small entities and we invite comments concerning potential effects of this amendment on small businesses.

## **Background**

The Order became effective on November 3, 2004, and it is authorized under the Act. The Board is composed of 18 members, including eight importers; two domestic producers; one first handler; and seven foreign producers. Nominations for the importer, domestic producer, and first handler seats are made by U.S. importers, domestic producers, and first handlers, respectively. Foreign producers are nominated by foreign producer associations.

Under the Order, the Board administers a nationally coordinated program of research and promotion designed to strengthen the position of mangos in the marketplace and to establish, maintain, and expand U.S. markets for mangos. The program is financed by an assessment of three quarters of a cent per pound on first handlers and importers of 500,000 pounds or more of mangos annually. The Order specifies that first handlers are responsible for submitting assessments to the Board on a monthly basis and maintaining records necessary to verify their

reporting. Importers are responsible for paying assessments on mangos imported for marketing in the United States through the U.S. Customs and Border Protection Service of the U.S.

Department of Homeland Security.

The Board wants to increase the pool of nominees from the major countries that export mangos to the United States by allowing foreign producers who are in areas without a producer organization to nominate foreign producers to the Board. The Board wants to receive representation from all mango growing regions within the major countries that export mangos to the United States. Section 1206.31(g) of the Order limits the nominations for the foreign producer seats to the foreign mango organizations. At a meeting on September 11, 2009, the Board voted to allow foreign producers from the major countries exporting mangos to the United States to provide nominees directly to the Secretary. At a recent meeting, the Board decided to request this change. The propose change does not limit the foreign producer organizations ability to submit nominations. It will increase the slate of candidates from which the Secretary may choose to appoint members to the Board.

This propose change is consistent with section 515(b)(2)(C) of the Act which states the Secretary may make appointments from nominations made pursuant to the method set forth in the Order. The Board wants to expand its slate of candidates for the Secretary's decision for appointment to the Board. Accordingly, section 1206.31(g) of the Order would be revised to allow foreign producers who are not members of a producer organization to nominate foreign producers to the Secretary for consideration for appointment to the Board.

In addition, on July 11, 2012, the Board voted unanimously to amend the Order to provide the Board flexibility in the election of officers. Currently, section 1206.34 (b) of the Order requires the Board to select a chairperson and a vice chairperson at the start of its fiscal

period. The Board must schedule Board meetings around several domestic and international growing regions in the mango industry. This challenge has caused the Board to hold its first meeting of the year three months into the fiscal year. The current procedure in the Order would leave the Board without a chairperson for several months. The Board had considered changing its fiscal year, but it was rejected because the Board's fiscal year flows with the mango production cycle which is a calendar year.

In practice, the Board has learned that waiting three months into its fiscal year to elect officers is impractical. The Board believes that electing its officers at the last meeting of the fiscal year is more advantageous. Therefore, the Board proposes to update the Order to reflect the particular needs of the mango industry and to provide for a more efficient management method. This proposed change is consistent with section 515(c)(3) of the Act which permits the Board to meet, organize, and select among its members its officers as the Board determines appropriately. This rule would amend section 1206.34(b) of the Order to provide the Board flexibility in the timing to elect its officers.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate so that the proposed amendments, if adopted, may be implemented for the next nomination process which begins early Spring 2013 and to reflect the current practices of the election of officers. If this process is not in effect by Spring of 2013, then the foreign producers without an organization would not be able to have representation on the Board until the year 2015. In addition, this nomination revision was disseminated to the mango industry which supports this change. All written comments received in response to this rule by the date specified would be considered prior to finalizing this action.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until twenty days after publication in the Federal Register because a final rule needs to be in effect before the Board makes a call for nominations for the term of office beginning January 1, 2014.

**List of Subjects in 7 CFR Part 1206**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Mango promotion, Reporting and recording requirements.

For the reasons set forth in the preamble, 7 CFR part 1206 is proposed to be amended as follows:

**PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION ORDER**

1. The authority citation for 7 CFR part 1206 continues to read as follows:

**Authority:** 7 U.S.C. 7411-7425 and 7401.

2. In § 1206.31, paragraph (g) is revised to read as follows:

**§1206.31 Nominations and appointments.**

\* \* \* \* \*

(g) Nominees to fill the foreign producer member positions on the Board shall be solicited from organizations of foreign mango producers and from foreign mango producers. Organizations of foreign mango producers shall submit two nominees for each position, and foreign mango producers may submit their name or the names of other foreign mango producers directly to the Board. The nominees shall be representative of the major countries exporting mangos to the United States.

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3. In § 1206.34, paragraph (b) is revised to read as follows:

**§1206.34 Procedure.**

\* \* \* \* \*

(b) The Board shall select officers from its membership, including a chairperson and vice chairperson, whose terms shall be one year. The chairperson and vice-chairperson will conduct meetings throughout the period.

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Dated: February 1, 2013

David R. Shipman  
Administrator

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