



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[Document No. AMS-SC-17-0002]

Mango Promotion, Research and Information Order; Amendment to Include Frozen Mangos

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on amending the Agricultural Marketing Service's (AMS) regulations regarding a fresh mango national research and promotion program to include frozen mangos as a covered commodity. Additionally, this proposal announces AMS' intent to request approval by the Office of Management and Budget (OMB) of new information collection requirements necessary to include frozen mangos under the program.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments may be submitted on

the Internet at: <http://www.regulations.gov>. Comments may also be sent to the Promotion and Economics Division, Specialty Crops Program, AMS, USDA, Room 1406-S, Stop 0244, 1400 Independence Avenue SW., Washington, DC 20250-0244; facsimile: (202) 205-2800. All comments submitted should reference the document number and page number of this issue of the *Federal Register* and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; telephone: (202) 720-9915; facsimile: (202) 205-2800; email: Jeanette.Palmer@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal affecting 7 CFR part 1206 is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

Executive Orders 12866, 13563, and 13771

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, reducing costs, harmonizing rules and promoting flexibility. This action falls within a category of regulatory actions that the OMB exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled "Reducing Regulation and Controlling Regulatory Costs" (February 2, 2017).

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal

or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA 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 request 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, USDA 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 USDA's final ruling.

Background

This proposal invites comments on amending AMS' regulations regarding a fresh mango national research and promotion program to include frozen mangos as a covered commodity. The program is

administered by the Board with oversight by USDA. This proposal would add definitions to the regulations for frozen mangos and foreign processor of frozen mangos; expand the Board's membership from 18 to 21 by adding two importers of frozen mangos and one foreign processor of frozen mangos; assess frozen mangos at a rate of \$0.01 per pound; exempt from assessment importers who import less than 200,000 pounds of frozen mangos annually; and make clarifying and conforming changes to other provisions of the program. This action was recommended by the Board in November 2016 and would allow frozen mango stakeholders to participate in a coordinated effort to maintain and expand the market for frozen mangos. This proposal would also update the definition for the term "Board" to reflect current practices. Additionally, this proposal announces AMS' intent to request approval by the OMB of new information collection requirements necessary to include frozen mangos under the program.

Overview of Current Mango Program

The fresh mango research and promotion program took effect in November 2004 (69 FR 59120) and assessment collection began in January 2005. Under the current program, assessments are collected from first handlers and importers of 500,000 pounds or more of fresh mangos annually. Assessments are used by the

Board for projects designed to maintain and expand existing markets for fresh mangos in the United States.

Table 1 below shows the volume, value and price per pound for fresh mango imports into the United States from 2005 through 2016.¹ Imports of fresh mangos have increased from about 575 million pounds in 2005 (valued at about \$169 million) to almost 985 million pounds in 2016 (valued at \$420 million). The price per pound for fresh mango imports has increased from \$0.29 in 2005 to \$0.43 in 2016. In 2016, about 45 percent of the mangos imported into the United States were from Mexico, 22 percent were from Ecuador, and 18 percent were from Peru.

Table 1. Volume, Value and Price/Pound for Fresh Mango Imports 2005-2016

Year	Imports (pounds) (A)	Value (B)	Price/Pound (C)
2016	984,554,112	\$420,291,061	\$0.43
2015	861,384,226	\$401,260,865	\$0.47
2014	827,108,732	\$372,298,536	\$0.45
2013	766,477,061	\$296,953,865	\$0.39
2012	706,690,535	\$248,410,276	\$0.35
2011	810,404,105	\$284,744,341	\$0.35
2010	706,690,535	\$248,410,276	\$0.35
2009	633,703,998	\$217,448,516	\$0.34
2008	655,825,602	\$210,884,833	\$0.32
2007	650,918,405	\$196,062,305	\$0.30
2006	644,579,545	\$209,650,045	\$0.33
2005	575,057,320	\$169,117,171	\$0.29

Column C equals Column B divided by Column A.

¹ <https://apps.fas.usda.gov/gats/default.aspx>.

Assessment revenue under the fresh mango program increased from \$3,293,825² in 2007 to \$7,374,170³ in 2016. In 2016, less than one percent of the total assessments were from domestic handlers as the vast majority of assessments were collected from importers. The assessment rate under the current program for fresh mangos is \$0.0075 per pound, pursuant to § 1206.42(b).

Since 2008, the Board has invested over \$34 million of industry funds to help increase mango consumption among U.S. consumers. The Board has funded promotional programs with consumers, retailers and restaurants within the United States. Retail stores of all sizes are promoting mangos all year round, while restaurants all over the country are offering their customers more mango dishes. Consumers are learning more about mangos from multiple media sources and the demand for mangos increased due to the Board's investments in educating consumers about the health benefits of eating mangos.

There have been two economic studies done since the program's inception in 2004 that assessed the effectiveness of the Board's programs. The studies were conducted by Dr. Ronald Ward at the University of Florida and published in 2011 and 2016 and are titled "*Estimating the Impact of the National Mango*

² National Mango Promotion Board, Financial Statements Year Ending December 31, 2007; Cross, Fernandez & Riley, LLP, Accountants and Consultants; April 18, 2008; p. 13.

³ National Mango Promotion Board, Financial Statements and Supplementary Information Years Ending December 31, 2016 and 2015; BDO USA, LLP; March 15, 2017; p. 17.

Board's Programs on the U.S. Demand for Mangos." The 2016 study built on the 2011 study and found that, for each dollar spent by the Board, approximately 11 to 12 times that was generated in sales. This return on investment indicates the program's success in moving the demand for mangos. The studies are available from USDA or the Board.

Frozen Mango Data

Table 2 below shows the volume, value and price per pound for frozen mango imports into the United States from 2005 through 2016.⁴ Imports of frozen mangos have increased from almost 32 million pounds in 2005 (valued at about \$14 million) to almost 118 million pounds in 2016 (valued at \$101 million). The price per pound for frozen mango imports has increased from \$0.46 in 2005 to \$0.86 in 2016. In 2016, over half of the imports of frozen mangos into the United States were from Mexico, 33 percent were from Peru, and 2 percent were from Guatemala.

Table 2. Volume, Value and Price/Pound for Frozen Mango Imports 2005-2016

Year	Imports (pounds) (A)	Value (B)	Price/Pound (C)
2016	117,724,239	\$101,204,418	\$0.86
2015	139,492,136	\$131,155,555	\$0.94
2014	116,950,534	\$82,257,399	\$0.70
2013	128,109,849	\$80,929,782	\$0.63
2012	91,630,515	\$54,466,961	\$0.59
2011	88,121,973	\$49,291,591	\$0.56
2010	64,688,410	\$38,581,629	\$0.60
2009	30,178,419	\$21,619,646	\$0.72

⁴ <https://apps.fas.usda.gov/gats/default.aspx>.

2008	51,756,422	\$32,298,845	\$0.62
2007	52,832,786	\$29,982,510	\$0.57
2006	44,351,020	\$22,447,677	\$0.51
2005	31,657,933	\$14,473,533	\$0.46

Column C equals Column B divided by Column A.

Board Recommendation

Because of the current program's success for the fresh mango market, those who sell frozen mangos have been interested in becoming part of the program. Mango producers often sell their mangos for use by both the fresh and processed markets. Handlers and importers may include all mango product categories in their businesses. However, Board promotion efforts only support mangos for the fresh market.

Thus, the Board recommended amending part 1206 to include frozen mangos. This would allow frozen mango stakeholders to participate in a coordinated effort to maintain and expand the existing market for frozen mangos. These efforts would be accomplished through Board activities including promotion, research, consumer information, education and industry information. By collaborating within the existing national mango promotion program, frozen mango stakeholders could provide to consumers more information on the various uses and benefits of frozen mangos in order to increase demand for the commodity.

Accordingly, several changes to part 1206 would be necessary to expand the program to include frozen mangos. These

changes are described in the following paragraphs. Authority for the Board to recommend changes to part 1206 is provided in § 1206.36(m).

Definitions

Frozen Mangos

The term "mangos" is defined in § 1206.11 to mean all *fresh* fruit of *Mangifera indica L.* of the family *Anacardiaceae*. The term would be revised to mean the fruit of *Mangifera indica L.* of the family *Anacardiaceae* and would include both fresh and frozen mangos. Separate definitions would be added in new paragraphs (a) and (b) of § 1206.11 for fresh and frozen mangos, respectively. "Fresh mangos" would mean mangos in their fresh form. "Frozen mangos" would mean mangos which are uncooked or cooked by steaming or boiling in water, and then frozen, whether or not containing added sugar or other sweetening agent.

Foreign Processor of Frozen Mangos

A definition would be added to part 1206 for "foreign processor of frozen mangos." Section 1206.8 which currently defines the term "foreign producer" would be redesignated as § 1206.8a, and a new § 1206.8 would define the term "foreign processor of frozen mangos" or "foreign processor" to mean any person: (a) Who is engaged in the preparation of frozen mangos for market to the United States and/or who owns or shares the ownership and risk of loss of such mangos; and (b) who exports

frozen mangos to the United States. As described later in this document, a foreign processor would also have a seat on the Board.

Additionally, §§ 1206.6 and 1206.9 which define the terms "first handler" and "importer," respectively, to mean entities that handle or import 500,000 pounds or more of mangos annually would be revised to remove the references to volume for the purpose of clarity. There are other sections in part 1206 that apply to all first handlers and importers regardless of the volume of mangos handled or imported (i.e., § 1206.61 regarding books and records and § 1206.62 regarding confidential treatment thereof). Thus, the definition of the terms "first handler" and "importer" would be revised to mean *all* such entities, regardless of the volume of mangos handled or imported. Other sections of part 1206 where the volume handled or imported is relevant would specify the applicable figure.

Mango Board

Establishment and Membership

Section 1206.30(a) regarding establishment and membership of the Board specifies that the Board be composed of 18 members - 8 importers, 1 first handler, 2 domestic producers and 7 foreign producers. This section would be revised to add three Board seats - two for importers of frozen mangos and one for a foreign processor of frozen mangos.

The Board's rationale for recommending the addition of three seats representing the frozen mango industry is based on a review of import data. Table 3 below shows fresh and frozen mango import data for 2014-2016.⁵ Fresh and frozen mango imports account for an average of 88 and 12 percent, respectively, of the total volume of imports for the 3-year period.

Table 3. Fresh and Frozen Mango Import Volumes 2014-2016

Year	Fresh Mango Imports (pounds)	Frozen Mango Imports (pounds)	Total Fresh and Frozen Mango Imports (pounds)
2016	984,554,112	117,724,239	1,102,278,350
2015	861,384,226	139,492,136	1,000,876,362
2014	827,108,732	116,950,534	944,059,266
3-Year Average	891,015,690	124,722,303	1,015,737,993
Percent of Total	88 percent 1/	12 percent 2/	

1/This figure equals the 3-year average of 891,015,690 for fresh mango imports divided by the total mango import figure of 1,015,737,993, multiplied by 100.

2/This figure equals the 3-year average of 124,722,303 for frozen mango imports divided by the total mango import figure of 1,015,737,993, multiplied by 100.

Imports of fresh mangos account for over 99 percent of the assessments under the current program. On the current 18-member Board, 15 out of the 18 seats (about 83 percent) are for importers and foreign producers. If three Board seats are added to represent frozen mango imports (two importers and one foreign processor), then 18 of the new 21-member Board (almost 87

⁵ <https://apps.fas.usda.gov/gats/default.aspx>.

percent) would represent foreign mangos. Further, 3 of the 18 foreign-product seats (importers and foreign producers) would represent frozen imported mangos (almost 17 percent) and the remaining 15 seats (over 83 percent) would represent fresh imported mangos. The Board's recommendation regarding frozen mango representation on the Board is reasonable and § 1206.30(a) would be revised accordingly.

Additionally, a sentence would be added to § 1206.30(a) to specify that first handler Board members must receive 500,000 pounds or more of fresh mangos annually from producers, and importer Board members must import 500,000 pounds or more of fresh mangos or 200,000 pounds or more of frozen mangos annually. These requirements are part of the current de minimis exemption for the program (see § 1206.43 Exemptions), added to the Establishment and Membership section in § 1206.30 for clarification as to who is covered under the program.

Section 1206.30(b) defines Customs Districts within the United States that are used for allocating importer Board seats based on the volume of mangos imported into each respective district. This section would be revised to state that the two Board seats for importers of frozen mangos shall be allocated for importers who import into any of the districts (or "at-large") defined in paragraphs (1) through (4) of § 1206.30(b). The Board recommended that these two seats be at-large to allow

nominees from all four districts. This could encourage participation on the Board from this new group regardless of their location.

Nominations and Appointments

Section 1206.31 prescribes procedures for nominating and appointing Board members. Board staff solicits nominees for first handler, fresh mango importer, and domestic producer member positions and voting is conducted by mail ballot. Nominees to fill the foreign producer member positions are solicited from foreign producers and from foreign producer organizations. From the nominations, the Secretary of Agriculture then selects the members of the Board.

This section would be revised to specify procedures for nominating foreign processors and importers of frozen mangos. The procedures would be similar to those in place for first handlers and importers of fresh mangos. Nominees to fill the foreign processor seat would be solicited from foreign mango organizations and from foreign processors. Foreign mango organizations would submit two nominees for each position, and foreign processors could submit their own name or the names of other foreign processors directly to the Board. The nominees would represent the major countries exporting frozen mangos to the United States.

Nominees to fill the two at-large seats on the Board would be solicited from all known importers of frozen mangos. The members from each district would select the nominees for the two at-large positions on the Board. Two nominees would be submitted for each position. The names of the nominees would be placed on a ballot that would be sent to importers of frozen mangos in each of the four districts for a vote. For each position, the nominee receiving the highest number of votes and the nominee receiving the second highest number of votes would be submitted to USDA as the first and second choice nominees.

Accordingly, in § 1206.31, paragraph (e) which prescribes nomination procedures for fresh mango importers, would be revised to clarify that the procedures pertain to *fresh* mango importers. Further, paragraph (h) would be redesignated as paragraph (k), a new paragraph (h) would be added to specify procedures for nominating foreign processors, and a new paragraph (i) would be added to specify procedures for nominating frozen mango importers.

A new paragraph (j) would be added to § 1206.31 to clarify that first handler nominees for a Board position must receive more than 500,000 pounds of fresh mangos annually from producers, and importers must import 500,000 pounds or more of fresh mangos annually or 200,000 pounds or more of frozen mangos annually.

Term of Office

Section 1206.32 specifies that Board members serve for a 3-year term of office. Members may serve a maximum of two consecutive 3-year terms. This section would be revised to include the new positions for importers of frozen mangos and foreign processors. Similar to the other Board members, the term of office for the new positions would be 3 years, and no member could serve on the Board for more than two consecutive 3-year terms.

Procedure

Section 1206.34(a) specifies that a quorum for the current 18-member board consists of 10 members. The proposed rule would increase the number of Board seats from 18 to 21, which would necessitate an increase in quorum requirements. Therefore, this section would be revised to specify that it would be considered a quorum at a Board meeting when at least 11 of the 21 Board members were present.

Assessments

Section 1206.42(b) specifies that the assessment rate is three quarters of a cent (\$0.0075) per pound on all mangos (fresh). Pursuant to paragraph (d) of § 1206.42, import assessments are collected through U.S. Customs and Border Protection (Customs). Pursuant to paragraph (e) of that

section, first handlers must submit their assessments to the Board on a monthly basis.

In its deliberations on the proposed assessment rate for frozen mangos, the Board considered the current assessment rate for fresh mangos of \$0.0075 per pound. Board members took into account that it takes 2.5 pounds of fresh mangos to make one pound of frozen mangos.⁶ If the fresh equivalent assessment rate were applied to frozen mangos, frozen mango importers would pay an assessment of approximately \$0.019 per pound, which is 2.5 times the fresh mango assessment rate. Additionally, according to the Board, manufacturing costs are higher for frozen mangos than for fresh mangos because the fruit has been processed.

The Board also considered assessment revenue as a percentage of value. Board members refer to this computation as the "Mango Reinvestment Rate" or MRR. To compute this for fresh mangos, assessment revenue is divided by the value of imported fresh product. The 3-year average for 2014-2016 for fresh mangos is 1.71 percent. The computation is shown in Table 4 below.

Table 4. Assessment Revenue as Percentage of Value for Fresh Mangos

Year	Assessment Revenue (A)	Value (B)	Revenue as a Percent of Value (C)
2016	\$7,374,170	\$101,204,418	1.75%
2015	\$6,785,156	\$131,155,555	1.69%

⁶ Kader, Adel A.; Fresh Cut Mangos as a Value-Added Product (Literature Review and Interviews); October 2. 2008; page 20.

2014	\$6,249,918	\$82,257,399	1.68%
3-yr average			1.71%

Column (C) is computed by dividing Column A by Column B, and multiplying that figure by 100.

The 1.71 percent MRR was shared with importers and processors of frozen mangos. A majority of the importers and processors contacted indicated that, while the MRR computation seems equitable, expenses are higher and the profit margins are lower for frozen mangos. The industry members contacted indicated that a MRR between 1.0 and 1.5 percent was more in line with what they saw as equitable for the frozen mango industry.

Thus, the Board ultimately recommended an assessment rate for frozen mangos of \$0.01 per pound. As shown in Table 5 below, this computes to an average MRR of 1.21 percent for 2014-2016. Additionally, only imports of frozen mangos would be assessed at this rate because first handlers in the United States receive only fresh mangos from producers.

Table 5. Projected Assessment Revenue as Percentage of Value for Frozen Mangos

Year	Imports (pounds) (A)	Value (B)	Assessment Rate (per pound) (C)	Projected Assessment Revenue (D)	Revenue as a Percent of Value (E)
2016	117,724,239	\$101,204,418	\$0.01	\$1,177,242	1.16%
2015	139,492,136	\$131,155,555	\$0.01	\$1,394,921	1.06%
2014	116,950,534	\$82,257,399	\$0.01	\$1,169,505	1.42%
3-yr average					1.21%

Column D is computed by multiplying Column B by Column C.

Column E is computed by dividing Column A by Column B, and multiplying that figure by 100.

Accordingly, in § 1206.42, paragraph (b) would be revised to specify an assessment rate of \$0.01 per pound for frozen mangos, and paragraph (d) (2) would be revised to include the numbers for frozen mangos listed in the Harmonized Tariff Schedule (HTS) of the United States and update the HTS numbers for fresh mango imports. Section 517(d) of the 1996 Act (7 U.S.C. 7416) provides authority for one or more rates of assessment to be levied under a research and promotion program.

Exemptions

Section 1206.43 specifies that first handlers and importers of less than 500,000 pounds of mangos (fresh) may claim an exemption from the assessment obligation. The Board recommended revising the section to specify that importers of less than 200,000 pounds of frozen mangos be exempt from assessment. This was derived by taking into account the ratio for converting fresh mangos into frozen mangos (2.5 pounds of fresh to make 1 pound of frozen). Multiplying the factor 0.4 (1 pound frozen divided by 2.5 pounds fresh) by the fresh mango exemption of 500,000 pounds computes to 200,000 pounds. Paragraphs (a) and (b) in § 1206.43 would be revised accordingly. (First handlers only receive fresh mangos from domestic producers. Thus, the exemption threshold for frozen mangos would only apply to importers.)

Subpart B of part 1206 specifies procedures for conducting a referendum. In § 1206.101, paragraphs (c) and (d), respectively, define eligible first handlers and importers of 500,000 pounds or more of mangos (fresh) annually. This section would be revised to specify that importers of 200,000 pounds or more of frozen mangos would be eligible to vote in referenda.

Further, this proposal would revise the term "Board" as defined in § 1206.2 from the "National Mango Promotion Board" to "National Mango Board" to reflect current practices. The term as it appears in § 1206.30 and in the undesignated heading preceding § 1206.30 would also be revised to read "National Mango Board." Finally, this proposal would update the OMB control number specified in § 1206.78 from 0581-0209 to 0581-0093.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no

more than \$750,000 and small agricultural service firms (first handlers and importers) as those having annual receipts of no more than \$7.5 million.

According to the Board, there are five first handlers of fresh mangos. Based on 2016 assessment data, the majority of first handlers handled less than \$7.5 million worth of fresh mangos and would thus be considered small entities.

Based on 2016 Customs data, there are about 275 importers of fresh mangos and 190 importers of frozen mangos. The majority of fresh and frozen mango importers import less than \$7.5 million worth of fresh or frozen mangos and would also be considered small entities.

This proposal invites comments on amending AMS' regulations regarding a fresh mango national research and promotion program to include frozen mangos as a covered commodity. The program is administered by the Board with oversight by USDA. This proposal would add definitions for frozen mangos (§ 1206.11) and foreign processor of frozen mangos (§ 1206.8); expand the Board's membership from 18 to 21 by adding two importers of frozen mangos and one foreign processor of frozen mangos (§§ 1206.30 and 1206.31); assess frozen mangos at a rate of \$0.01 per pound (§ 1206.42); exempt from assessment importers who import less than 200,000 pounds of frozen mangos annually (§ 1206.43); and make clarifying and conforming changes to other provisions in

part 1206 (revisions would be made to clarify the definitions for first handler (§ 1206.6) and importer (§ 1206.9); quorum requirements would be revised (§ 1206.34); and definitions for importers eligible to vote in referenda would be revised (§ 1206.101)). Authority for amending part 1206 is provided in § 1206.36(m) and in section 514 of the 1996 Act. This proposal would also update the definition of term "Board" to reflect current practices (§ 1206.2, the heading preceding §1206.30, and § 1206.30). Section 1206.2 provides authority for revising the term "Board." Finally, this proposal would update one of the OMB numbers (0581-0209) listed in § 1206.78.

Mango producers are not subject to assessment under the program. Currently, first handlers and importers of less than 500,000 pounds of fresh mangos annually are exempt from assessment. Further, organic mangos and exports of U.S. mangos are also exempt from assessment under the program.

Regarding the economic impact of this proposed rule on affected entities, importers of 200,000 pounds or more of frozen mangos annually would pay an assessment of \$0.01 per pound. Based on Customs data, of the 190 importers of frozen mangos, about 60 imported 200,000 pounds or more in 2016 and would pay assessments, and thus 130 importers imported less than 200,000 pounds and would be exempt from paying assessments under the program. Exempt importers would be able to apply to the Board

for a refund of assessments funds collected by Customs. Those requirements are detailed in the section of this document titled **Paperwork Reduction Act**. (The update to the term Board is administrative in nature.)

Regarding the impact of this proposed action on the industry as a whole, as shown previously in Table 3, imports of frozen mangos averaged about 125 million pounds annually from 2014-2016. At an assessment rate of \$0.01 per pound, this would equate to about \$1.25 million per year in assessment revenue.

Further, this action would allow frozen mango stakeholders to participate in a coordinated effort to maintain and expand the existing market for frozen mangos. These efforts would be accomplished through Board activities including promotion, research, consumer information, education and industry information. By collaborating within the existing national mango promotion program, frozen mango stakeholders could provide to consumers more information on the various uses and benefits of frozen mangos in order to increase demand for the commodity.

With regard to alternatives, the Board contemplated the merits of assessing all processed mangos (i.e., frozen as well as juice and concentrate). The Board's staff attended several process tradeshow, conferences, and other events to garner support for the mango program. After several outreach activities, the frozen mango industry demonstrated the highest

response out of the other process categories to include under the mango program.

As for alternative assessment rates, as previously mentioned, the Board considered the current assessment rate for fresh mangos of \$0.0075 per pound. However, if the fresh equivalent assessment rate were applied to frozen mangos, frozen mango importers would pay an assessment of approximately \$0.019 per pound, which is 2.5 times the fresh mango assessment rate. (It takes 2.5 pounds of fresh mangos to make one pound of frozen mangos.) Additionally, according to the Board, manufacturing costs are higher for frozen mangos than for fresh mangos because the fruit has been processed.

The Board also considered assessment revenue as a percentage of value. Board members refer to this computation as the "Mango Reinvestment Rate" or MRR. To compute this for fresh mangos, assessment revenue is divided by the value imported fresh product. The 3-year average for 2014-2016 for fresh mangos is 1.71 percent. The computation was shown previously in Table 4. The 1.71 percent MRR was shared with importers and processors of frozen mangos. A majority of the importers and processors contacted indicated that, while the MRR computation seems equitable, expenses are higher and the profit margins are lower for frozen mangos. Industry members contacted indicated that a MRR between 1.0 and 1.5 percent was more in line with

what they saw as equitable for the frozen mango industry. Thus, the Board ultimately recommended an assessment rate for frozen mangos of \$0.01 per pound. As shown previously in Table 5, this computes to an average MRR of 1.21 percent for 2014-2016.

The Board also considered alternative exemption thresholds. When the Board initially contemplated amending the mango regulations, it considered all categories of processed mangos, including juice, concentrate and frozen. Each of these categories has a different conversion ratio, or amount of fresh mangos that it takes to make the respective processed fruit. At that time, the Board considered an exemption threshold of 45,000 pounds. When the Board decided to pursue amending the program to include only frozen mangos, the Board also decided to recommend an exemption threshold of 200,000 pounds. This was based on the industry average ratio of 0.4 for converting fresh mangos into frozen mangos (2.5 pounds of fresh mangos to make one pound of frozen mangos). Multiplying the fresh mango exemption threshold of 500,000 pounds by the 0.4 ratio equals 200,000 pounds. Thus, the Board recommended an exemption threshold of 200,000 pounds for frozen mangos.

This action would impose additional reporting and recordkeeping requirements upon importers and processors of frozen mangos. Importers and foreign processors of frozen mangos who were eligible and interested in serving on the Board

would submit a nomination form to the Board indicating their desire to serve or nominate another industry member to serve on the Board. Importers could cast a ballot and vote for candidates to serve on the Board. Frozen mango importer and foreign processor nominees would have to submit a background form to the Secretary to ensure they are qualified to serve on the Board.

Additionally, importers of frozen mangos who import less than 200,000 pounds annually could request an exemption from paying assessments. Importers of organic frozen mangos could submit a request to the Board for an exemption from assessment for their organic mango imports. Importers could also request a refund of assessments paid through Customs.

Finally, frozen mango importers who want to participate in future referenda on the program would have to complete a ballot for submission to the Secretary.

New forms are required to collect the referenced information. These forms will be submitted to OMB for approval under OMB Control No. 0581-NEW. Specific burdens for the forms are detailed later in this document in the section titled **Paperwork Reduction Act**. As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public

sector agencies. Finally, there are no Federal rules that duplicate, overlap, or conflict with this proposed rule.

In regard to outreach efforts, in 2015 the Board commissioned a study to determine industry support for amending part 1206. Processed mango importers responded in favor of amending the program. The survey respondents represented 72 percent of the imported processed mango volume. The Board also hosted a webinar in June 2015 and invited all known importers of processed mangos to participate. Fifteen industry members participated in the webinar. Of the attendees, 95 percent supported amending the program to include processed mangos. Two importers of frozen mangos participated in the Board's meeting in September 2015 where this issue was discussed.

In 2016, Board representatives attended tradeshow and conferences for processed fruit products in the U.S. and visited several mango producing regions and receiving ports in order to meet with processors and importers to discuss amending the program. Board representatives attended 21 meetings with frozen mango importers of record. The Board subsequently conducted another survey where 74 companies were contacted via electronic mail and telephone calls. For the companies that participated in the survey, 71 percent were in favor of amending the program to include frozen mangos. The Board continues to educate and update the mango industry on its marketing activities.

AMS has performed this initial RFA regarding the impact of this proposed amendment to part 1206 on small entities and invites comments concerning potential effects of this amendment on small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request an approval of new information collection and recordkeeping requirements for the frozen mango industry. Information collection and recordkeeping requirements for the fresh mango program (part 1206) have previously been approved under OMB control nos. 0581-0093 and 0505-0001. Upon approval of this action and associated burden, AMS would submit a Justification for Change to merge this new burden for frozen mangos into the currently approved collection for fresh mangos.

Title: Frozen mango research, promotion and consumer information program.

OMB Number: 0581-NEW.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the 1996 Act. The information collection concerns a recommendation received by USDA to amend the fresh mango national research and promotion

program (part 1206) to include frozen mangos. The program is currently financed by an assessment on first handlers and importers of 500,000 pounds or more fresh mangos annually. The program is administered by the Board with oversight by USDA.

In November 2016, the Board recommended amending part 1206 to include frozen mangos. Importers of 200,000 or more frozen mangos annually would pay assessments. The Board would be expanded from 18 to 21 members by adding two importers of frozen mangos and one foreign processor of frozen mangos. This action would allow frozen mango stakeholders to participate in a coordinated effort to maintain and expand the market for frozen mangos.

In summary, the information collection requirements regarding frozen mangos pertain to Board nominations, the collection of assessments, and referenda. Frozen mango importers and foreign processors interested in serving on the Board would submit a "Nomination Form" to the Board indicating their desire to serve or to nominate another industry member to serve on the Board. They could submit a "Nomination Ballot" to the Board where they would vote for candidates to serve on the Board. Nominees would also have to submit a background information form, "AD-755," to the Secretary to ensure they are qualified to serve. Frozen mango importers of less than 200,000 pounds annually could submit a request, "Application for

Exemption from Assessments," to the Board and request a refund of any assessments paid using proposed form "Application for Reimbursement of Assessment." (Import assessments would be collected by Customs and remitted to the Board.) Importers of organic frozen mangos could also apply to the Board for an exemption from assessment. Finally, importers of frozen mangos would have the opportunity to vote in future referenda on the program.

This new information collection would impose a total burden of 167.37 hours and 287.48 responses for 190 respondents. New information collection requirements that are included in this proposal pertaining to the frozen mango industry include:

(1) NOMINATION FORM

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hour per response.

Respondents: Importers of 200,000 pounds or more of frozen mangos annually and foreign processors.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: .33 (1 every 3 years).

Estimated Total Annual Burden on Respondents: 1.65 hours.

(2) NOMINATION BALLOT

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hour per response.

Respondents: Importers of 200,000 pounds or more of frozen mangos annually and foreign processors.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: .33 (1 every 3 years).

Estimated Total Annual Burden on Respondents: 2.48 hours.

(3) APPLICATION FOR EXEMPTION FROM ASSESSMENTS

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hour per response. Upon approval, the applicant would receive exemption certification.

Respondents: Importers of less than 200,000 pounds of frozen mangos annually.

Estimated number of Respondents: 130.

Estimated number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 32.5 hours.

(4) APPLICATION FOR REIMBURSEMENT OF ASSESSMENT

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hour per response.

Respondents: Importers of less than 200,000 pounds of frozen mangos annually.

Estimated Number of Respondents: 130.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 32.5 hours.

(5) ORGANIC EXEMPTION REQUEST FORM

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hour per response.

Respondents: Importers of 200,000 pounds or more of organic frozen mangos annually.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.25 hours.

(6) REFERENDUM BALLOT

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hour per response.

Respondents: Importers of 200,000 pounds or more of frozen mangos annually.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: .20 (1 every 5 years).

Estimated Total Annual Burden on Respondents: 1.0 hours.

(7) BACKGROUND INFORMATION FORM AD-755 (OMB Form No. 0505-0001)

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hour per response.

Respondents: Importers of 200,000 pounds or more of frozen mangos and foreign processors.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: .33 (1 every 3 years).

Estimated Total Annual Burden on Respondents: 1.0 hour.

(8) A REQUIREMENT TO MAINTAIN RECORDS SUFFICIENT TO VERIFY REPORTS SUBMITTED UNDER PART 1206

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hour per record keeper maintaining such records.

Recordkeepers: Importers of frozen mangos.

Estimated number of recordkeepers: 190 (130 exempt and 60 assessment payers).

Estimated total recordkeeping hours: 95 hours.

An estimated 190 respondents would provide information to the Board. The estimated cost of providing the information to the Board by respondents would be \$2,870.90. This total has been estimated by multiplying 95 total hours required for reporting and recordkeeping by \$30.22, the average mean hourly

earnings of importers. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The proposed revisions to the fresh mango program have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other programs administered by USDA and other state programs.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the 1996 Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

The information to be included on these forms is not available from other sources because such information relates specifically to individual importers and processors of frozen mangos who would be subject to the provisions of the 1996 Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

Request for Public Comment under the Paperwork Reduction Act

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the proposed amended program and USDA's oversight of the proposed amended program, including whether the information would have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) the accuracy of USDA's estimate of the number of importers of frozen mangos that would be covered under the program; (d) ways to enhance the quality, utility, and clarity of the information to be collected; and (e) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581-NEW. In addition, the document number, date, and page number of this issue of the *Federal Register* also should be referenced. Comments should be sent to the same addresses referenced in the **ADDRESSES** section of this proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed rule

between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has determined that this proposed rule is consistent with and would effectuate the purposes of the 1996 Act.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified would be considered prior to finalizing this action.

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 RESEARCH, PROMOTION, 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. Revise § 1206.2 to read as follows:

§ 1206.2 Board.

Board or National Mango Board means the administrative body established pursuant to §1206.30, or such other name as recommended by the Board and approved by the Department.

3. Revise § 1206.6 to read as follows:

§ 1206.6 First handler.

First handler means any person (excluding a common or contract carrier) receiving fresh mangos from producers in a calendar year and who as owner, agent, or otherwise ships or causes mangos to be shipped as specified in this Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing mangos in commercial quantities. The term first handler includes a producer who handles or markets mangos of the producer's own production.

4. Amend § 1206.8 by revising the section heading, designating the introductory text as paragraph (a) and adding paragraph (b) to read as follows:

§ 1206.8 Foreign producers and foreign processor of frozen mangos or foreign processor.

(b) *Foreign processor of frozen mangos or foreign processor* means any person:

(1) Who is engaged in the preparation of frozen mangos for market to the United States and/or who owns or shares the ownership and risk of loss of such mangos; and

(2) Who exports frozen mangos to the United States.

5. Revise § 1206.9 to read as follows:

§ 1206.9 Importer.

Importer means any person importing mangos into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles mangos outside of the United States for sale in the United States, and who is listed as the importer of record for such mangos.

6. Revise § 1206.11 to read as follows:

§ 1206.11 Mangos.

Mangos means the fruit of *Mangifera indica* L. of the family *Anacardiaceae*. For purposes of this Order, the term mangos includes:

(a) *Fresh mangos*, which means mangos in their fresh form; and

(b) *Frozen mangos*, which means mangos that are uncooked or cooked by steaming or boiling in water, and then frozen, whether or not containing added sugar or other sweetening agent.

7. Revise the undesignated center heading preceding § 1206.30 to read "National Mango Board."

8. In § 1206.30, revise paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 1206.30 Establishment and membership.

(a) *Establishment of the National Mango Board.* There is hereby established a National Mango Board composed of eight importers of fresh mangos; one first handler of fresh mangos; two domestic producers of fresh mangos; seven foreign producers of fresh mangos; two importers of frozen mangos; and one foreign processor of frozen mangos. First handler Board members must receive 500,000 pounds or more of fresh mangos annually from producers, and importer Board members must import 500,000 pounds or more of fresh mangos or 200,000 pounds or more of frozen mangos annually. The chairperson shall reside in the United States and the Board office shall also be located in the United States.

(b) *Importer districts.* Board seats for importers of fresh mangos shall be allocated based on the volume of fresh mangos imported into the Customs Districts identified by their name and Code Number as defined in the Harmonized Tariff Schedule of the United States. Two seats shall be allocated for District I, three seats for District II, two seats for District III, and one seat for District IV. Two at-large seats shall be allocated for importers of frozen mangos who import into any of the four defined districts.

* * * * *

9. In § 1206.31, revise paragraph (e), redesignate paragraph (h) as paragraph (k), and add new paragraphs (h), (i), and (j) to read as follows:

§ 1206.31 Nominations and appointments.

* * * * *

(e) Nominees to fill the fresh mango importer positions on the Board shall be solicited from all known importers of fresh mangos. The members from each district shall select the nominees for two positions on the Board. Two nominees shall be submitted for each position. The nominees shall be placed on a ballot which will be sent to fresh mango importers in the districts for a vote. For each position, the nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the fresh importers' first and second choice nominees.

* * * * *

(h) Nominees to fill the foreign processor of frozen mangos position on the Board shall be solicited from foreign mango organizations and from foreign processors. Foreign mango organizations shall submit two nominees for each position, and foreign processors may submit their name or the names of other foreign processors directly to the Board. The nominees shall

represent the major countries exporting frozen mangos to the United States.

(i) Nominees to fill the at-large positions on the Board shall be solicited from all known importers of frozen mangos. The members from each district shall select the nominees for the two at-large positions on the Board. Two nominees shall be submitted for each position. The nominees shall be placed on a ballot which will be sent to importers of frozen mangos in each of the four districts for a vote. For each position, the nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the first and second choice nominees.

(j) First handler nominees must receive 500,000 pounds or more of fresh mangos annually from producers, and importer nominees must import 500,000 pounds or more of fresh mangos or 200,000 pounds or more of frozen mangos annually.

10. Revise § 1206.32 to read as follows:

§ 1206.32 Term of office.

The term of office for first handler, importer, domestic producer, and foreign producer and foreign processor members of the Board will be three years. Members may serve a maximum of two consecutive three-year terms. Each term of office will end on December 31, with new terms of office beginning on January 1.

11. In § 1206.34, revise paragraph (a) to read as follows:

§ 1206.34 Procedure.

(a) At a Board meeting, it will be considered a quorum when at least eleven voting members are present.

* * * * *

12. In § 1206.42, revise paragraphs (b), (d) (1), (d) (2), (d) (3) and (d) (4) to read as follows:

§ 1206.42 Assessments.

* * * * *

(b) The assessment rate on all fresh mangos shall be three quarters of a cent (\$0.0075) per pound (or \$0.0165 per kg). The assessment rate on all frozen mangos shall be one cent (\$0.01) per pound (or \$0.022 per kg). The assessment rates will be reviewed periodically and may be modified by the Board with the approval of the Department.

* * * * *

(d) * * *

(1) The assessment rate for imported fresh mangos that are identified by the numbers 0804.50.4040 and 0804.50.6040 in the Harmonized Tariff Schedule (HTS) of the United States shall be the same or equivalent to the rate for mangos produced in the United States.

(2) The import assessment shall be uniformly applied to imported frozen mangos that are identified by the numbers 0804.50.4045, 0804.50.4055, 0804.50.6045, 0804.50.6055, and

0811.90.5200 in the Harmonized Tariff Schedule (HTS) of the United States shall be the same or equivalent to the rate for mangos produced in the United States.

(3) In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of fresh mango and frozen mangos, assessments will continue to be collected based on the new numbers.

(4) The assessments due on imported mangos shall be paid when they enter or are withdrawn for consumption in the United States.

* * * * *

13. In § 1206.43, revise paragraphs (a) and (b) to read as follows:

§ 1206.43 Exemptions.

(a) Any first handler of less than 500,000 pounds of fresh mangos per calendar year, or importer of less than 500,000 pounds of fresh mangos or less than 200,000 pounds of frozen mangos per calendar year may claim an exemption from the assessments required under § 1206.42. First handlers who export mangos from the United States may annually claim an exemption from the assessments required under § 1206.42.

(b) A first handler or importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a

certificate of exemption. A first handler must certify that it will receive less than 500,000 pounds of domestic fresh mangos during the fiscal period for which the exemption is claimed. An importer must certify that it will import less than 500,000 pounds of fresh mangos or less than 200,000 pounds of frozen mangos for the fiscal period for which the exemption is claimed.

* * * * *

14. Revise § 1206.78 to read as follows:

§ 1206.78 OMB control number.

The control numbers assigned to the information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, are OMB control number 0505-0001 and OMB control number 0581-0093.

15. In § 1206.101, revise paragraphs (c), (d) and (e) to read as follows:

§ 1206.101 Definitions.

* * * * *

(c) *Eligible first handler* means any person, (excluding a common or contract carrier), receiving 500,000 or more pounds of fresh mangos from producers in a calendar year and who as owner, agent, or otherwise ships or causes mangos to be shipped as specified in this Order. This definition includes those engaged in the business of buying, selling and/or offering for sale;

receiving; packing; grading; marketing; or distributing mangos in commercial quantities. The term first handler includes a producer who handles or markets mangos of the producer's own production.

(d) *Eligible importer* means any person importing 500,000 or more pounds of fresh mangos or 200,000 or more pounds of frozen mango into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles mangos outside of the United States for sale in the United States, and who is listed as the importer of record for such mangos that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0804.50.4045, 0804.50.4055, 0804.50.6045, 0804.50.6055, and 0811.90.5200, during the representative period. Importation occurs when mangos originating outside of the United States are released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced mangos immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mangos from Customs when such mangos are entered or withdrawn for consumption in the United States.

(e) *Mangos* means the fruit of *Mangifera indica* L. of the family *Anacardiaceae*. The term mangos includes:

(1) *Fresh mangos*, which means in their fresh form; and

(2) *Frozen mangos*, which means mangos that are uncooked or cooked by steaming or boiling in water, and then frozen, whether or not containing added sugar or other sweetening agent.

* * * * *

Dated: April 2, 2018

Bruce Summers
Acting Administrator

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