



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1208

[Document Number AMS-SC-19-0047]

Processed Raspberry Promotion, Research, and Information Order; Termination

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination order.

SUMMARY: This final rule terminates the Processed Raspberry Promotion, Research, and Information Order (Order) in its entirety. This action is necessary because termination of the Order was favored by a majority of the eligible producers and importers voting in a referendum conducted from September 10 through October 5, 2018.

DATES: *Effective Date:* [Insert date one day after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Patricia Petrella, Deputy Director, Promotion and Economics Division, Specialty Crop Program, AMS, USDA, 1400 Independence Avenue, SW, Stop 0244, Room 1406-S, Washington, D.C. 20250-0244, telephone (202)720-9915, facsimile (202) 205-2800, or electronic mail: Patricia.Petrella@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule affecting 7 CFR part 1208 is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425). The Processed Raspberry Promotion, Research, and Information Order,

referred to herein as the "Order", is codified at 7 CFR part 1208.

Prior documents in this proceeding: Termination of Assessments, February 20, 2019 [84 FR 4951], Continuance Referendum, July 25, 2018 [83 FR 35153]; Processed Raspberry Promotion, Research, and Information Order, May 8, 2012 [77 FR 26911]; and Referendum Procedures, February 8, 2010 [75 FR 6089].

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 final rule falls within a category of regulatory actions that the Office of Management and Budget (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 final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this rule will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

In addition, this final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

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 1996 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 final rule terminates the Order as prescribed in its § 1208.72 and section 522 of the 1996 Act. The 1996 Act authorizes a national processed raspberry promotion, research, and information program. In accordance with the 1996 Act, upon the request of the industry, USDA developed and implemented the Order, which became effective on May 9, 2012.

The Order covered persons who grew 20,000 pounds or more of raspberries for processing in the United States or imported 20,000 pounds or more of processed raspberries into the United States.

Section 518(c) of the 1996 Act (7 U.S.C. 7417(c)), and § 1208.71(b) of the Order provide that the Secretary of Agriculture (Secretary) shall conduct a subsequent referendum among people subject to assessments. The Order states that subsequent referenda will be held every seven years to determine whether producers of raspberries for processing and importers of processed raspberries favor continuance of the Order. A

referendum also may be held by request of 10 percent or more of eligible voters, by request of the Council established by the Order, or when the Secretary deems it necessary. The Order shall continue if it is favored by a majority of producers and importers voting in the referendum, who during a representative period, have been engaged in the production or importation of processed raspberries.

In March 2018, USDA received a petition requesting a referendum from more than the required 10 percent of eligible producers of raspberries for processing and importers of processed raspberries. As such, a referendum was held from September 10 through October 5, 2018. The representative period for establishing voter eligibility was January 1 through December 31, 2017. Persons who grew 20,000 pounds or more of raspberries for processing in the United States or imported 20,000 pounds or more of processed raspberries into the United States during the representative period and were subject to assessment during the representative period were eligible to vote. Notice of the referendum was published in the Federal Register on July 25, 2018 (83 FR 35153). Termination of the Order was favored by 57 percent of the eligible producers and importers voting in the referendum.

In addition, in accordance with § 1208.73 of the Order, the USDA appointed three members of the Council to serve as trustees for the purpose of liquidating the assets of the Council.

Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the economic impact of this 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 (SBA) 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 (handlers and importers) as those having annual receipts of no more than \$7.5 million.

According to the Council, it is estimated that there are 160 producers of raspberries for processing and 30 first handlers of raspberries for processing in the United States. Dividing the processed raspberry crop value for 2017 reported by the National Agricultural Statistics Service (NASS) of \$102,691,456¹ by the number of producers yields an annual average producer revenue of \$641,821. It is estimated that 75 percent of first handlers shipped under \$7.5 million worth of processed raspberries.

Likewise, based on U.S. Customs data, it is estimated there are 136 importers of processed raspberries. Using 2017 Customs data, nearly all importers, or 99 percent, import less than \$7.5 million worth of processed raspberries annually. Thus, the

¹ Noncitrus Fruits and Nuts 2017 Summary, June 2018, USDA, National Agricultural Statistics Service, pg.83.

majority of domestic producers, first handlers, and importers of processed raspberries would be considered small entities.

Regarding the value of the commodity, as mentioned above, based on 2017 NASS data, the value of the domestic crop was about \$102 million. According to U.S. Customs data, the value of 2017 imports was about \$55 million.

According to the Council, in 2017 there were 202 eligible producers and importers who paid about \$1.2 million in assessments. When the Order was published in the Federal Register on May 8, 2012, the USDA stated that an anticipated \$1.2 million of assessments would be collected from about 245 eligible entities. The assessment rate currently is one cent per pound of processed raspberries. This is the same rate that was set when the program first started. USDA has issued a rule to terminate the assessments which was effective on February 21, 2019 (84 FR 4951).

Although research and promotion order requirements are imposed on handlers and importers, the costs of the requirements are often passed on to producers. Termination of the Order, and the resulting regulatory relaxation, would therefore be expected to reduce costs for handlers, importers and producers.

This action will not impose any additional reporting or recordkeeping requirements on either large or small producers or importers of processed raspberries.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Termination Order

Termination of the Order was favored by a majority of the eligible producers and importers voting in a referendum conducted in September and October 2018. The Act requires that, upon such a determination by referendum, the Department shall terminate the Order. The assets of the Council have been liquidated, and a final audit of the Council's books has been conducted.

It is therefore ordered, that pursuant to section 522 of the Act, the Order is hereby terminated.

It is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this action into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because (1) this action relieves restrictions on handlers and importers by terminating the requirements of the Order; (2) termination of the Order was favored by a majority of qualified producers and importers voting in a referendum in September - October 2018; and (3) the assets of the Council have been liquidated and a final audit of the Council's books has been conducted.

List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Raspberry promotion, Reporting and recordkeeping requirements.

PART 1208-[REMOVED]

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 6802 et seq., 7 CFR part 1208 is removed.

Dated: September 16, 2019.

Bruce Summers,
Administrator.

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