



Agricultural Marketing Service

7 CFR Part 1206

[Document No. **AMS-SC-20-0086**]

Mango Promotion, Research and Information Order; Removal of Frozen Mangos

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Mango Promotion, Research and Information Order (Order) by removing the provisions of frozen mangos as a covered commodity. The Order is administered by the National Mango Board (Board) with oversight by the U.S. Department of Agriculture (USDA). In a referendum, first handlers and importers voted to remove frozen mangos as a covered commodity under the Order. This rule will remove frozen mangos as a covered commodity, discontinue the collection of assessments on frozen mangos, remove frozen mango entity representation on the Board, and make necessary conforming changes.

DATES: Effective date: [INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Assessment collection on frozen mangos will discontinue on the effective date of this rule.

Comments due: Comments which are received by [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. All comments must be submitted through the Federal e-rulemaking portal at: <http://www.regulations.gov> and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this rule will be included in the rulemaking record and will be made available to the public. Please be advised that the identity of individuals or entities submitting comments will be made public on the internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Marlene Betts, 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) 720-5057; or email: Marlene.Betts@usda.gov.

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

Executive Orders 12866 and 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, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

Executive Order 13175

This 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 regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

In addition, 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 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 issued under the Act may file a written petition with USDA stating that the order, any provision of the order, or any obligation imposed in

connection with the order, is not established in accordance with the law, and request a modification of the order or an exemption from the 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 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

The Mango Promotion, Research, and Information Order (Order) took effect in November 2004 (69 FR 59120), and assessment collection began in January 2005 for fresh mangos. The Order is administered by the National Mango Board (Board) with oversight by the U.S. Department of Agriculture. Currently, the program is funded by assessments on first handlers and importers of fresh and frozen mangos, and is focused on maintaining and expanding existing markets and uses for fresh and frozen mangos through its research, promotion and information efforts.

Frozen mangos as a covered commodity was added to the Order on February 21, 2019 (84 FR 5335), and a referendum was held in 2019 to determine whether the industry favored the inclusion of frozen mangos as a covered commodity under the Order. In the 2019 referendum, 52.5 percent of first handlers and importers of fresh and frozen mangos were in favor of the amendment to add frozen mangos to the Order. Since the vote passed by a small margin, the frozen mango industry asked the Board to conduct another referendum on whether frozen mangos should continue as a covered commodity under the Order.

The Order prescribes that every five years, the USDA conduct a referendum to determine if first handlers and importers of mangos favor the continuation of the Order. Such a referendum was required to be conducted in 2020. At the Board's September 2019 meeting, it was unanimously recommended to the USDA to add a second question to the continuance referendum ballot concerning frozen mangos as a covered commodity. USDA conducted a referendum from September 21 through October 9, 2020, among eligible first handlers and importers to (1) ascertain whether the continuance of the Order is favored by eligible first handlers and importers covered under the Order, and (2) ascertain whether the continuance of frozen mangos as a covered commodity in the Order is favored by eligible first handlers and importers (including frozen mango importers)

covered under the Order. The results were announced on October 20, 2020, stating that 60 percent of mango first handlers and importers voting were in favor of continuing the Order. On the question as to whether to continue frozen mangos as a covered commodity in the Order, 42 percent voted to keep frozen mangos in the Order, 49 percent voted to eliminate frozen mangos and 9 percent did not vote on this question. Of those representing frozen mangos, 83 percent voted to eliminate frozen mangos as a covered commodity.

Section 522 of the 1996 Act (7 U.S.C. 7421) and § 1206.72 of the Order (7 CFR 1206.72) provide that if the Secretary determines that provisions of the Order are not favored by persons voting in a referendum, the Secretary shall terminate those provisions. In accordance with the 1996 Act and Order, this rule removes the provisions of frozen mangos as a covered commodity under the Order including: removing definitions for frozen mangos and foreign processor of frozen mangos; reducing the Board's membership from 21 to 18 by eliminating two importers of frozen mangos and one foreign processor of frozen mangos; removing assessment collection provisions for frozen mangos at a rate of \$0.01 per pound and thereby eliminating assessments on frozen mango imports; and removing the exemption of assessment for importers who import less than 200,000 pounds of frozen mangos annually. In addition,

this rule makes clarifying and conforming changes to other provisions of the Order.

Order Provisions

In accordance with § 1206.72, the following changes are necessary to terminate and remove the provisions regarding frozen mangos from the Order. In addition, §§1206.6 and 1206.9 which define the terms "first handler" and "importer," respectively, are revised to add the reference that first handlers and importers, respectively, must receive or import 500,000 or more pounds of mangos; this volume is added for the purpose of clarity.

Section 1206.8, which defines the term "foreign producers and foreign processor of frozen mangos or foreign processor", is revised to remove the definitions of "foreign processor of frozen mangos or foreign processor" because they are no longer covered under the Order. The definition for "foreign producer" will remain.

The definition of "mangos" in § 1206.11 is revised to mean all fresh fruit of *Mangifera indica* L. of the family *Anacardiaceae*. The term "frozen mangos" is removed as it is no longer a covered commodity.

Section 1206.30, which establishes the Board's membership, is revised to reduce its size from 21 to 18 members due to the removal of three members; i.e., two importers of frozen mangos and one foreign processor. The three members are removed from the Board once this rule is

effective. The remaining 18-member Board will be comprised of 8 importers, 1 first handler, 2 domestic producers, and 7 foreign producers. In addition, eligibility requirements for Board members from the frozen mango industry are removed, and only those eligibility requirements for the first handler and fresh mango importers remain. Lastly, the four "Importer Districts" that were unintentionally removed from the CFR when this section was amended, are restored to section 1206.30 as paragraphs (b) (1) - (4).

Section 1206.31, which describes the procedures for nominating and appointing Board members to the Board, is revised to remove procedures for nominating foreign processors and importers of frozen mangos. Section 1206.32, which specifies that Board members serve for a 3-year term of office and may serve a maximum of two consecutive 3-year terms, is revised to remove the references to importers of frozen mangos and foreign processors.

Section 1206.34 specifies quorum requirements for Board meetings, and with the reduction of the Board from 21 to 18, a decrease in quorum requirements is necessary. Therefore, this section is revised to specify that a quorum at a Board meeting exists when at least 10 of the 18 Board members are present.

Section 1206.42 specifies the assessment rate for fresh mangos and frozen mangos. Paragraph (b) is revised

to remove the provisions assessing importers of frozen mangos one cent (\$0.01) per pound, and paragraph (d)(2), which includes the Harmonized Tariff Schedule (HTS) of the United States that applies to imported frozen mangos (number 0811.90.5200), is removed from the Order. Assessments on frozen mango importers shall be terminated. The termination of assessment collection on frozen mango importers will be effective one day after publication of this rule.

In §1206.43, paragraphs (a) and (b) are revised to remove references to frozen mango exemptions as frozen mangos are no longer a covered commodity.

Subpart B of part 1206 specifies procedures for conducting a referendum. In § 1206.101, paragraphs (c), (d), and (e) are revised to delete the references to eligibility of frozen mango importers to vote in referenda, as frozen mangos are no longer a covered commodity, and to restore definitions prior to when this section was amended.

Finally, this rule updates the OMB control number specified in § 1206.108 from 0581-0209 to 0581-0093.

Regulatory Flexibility Act Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the 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 2019 Customs 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 2019 Customs data¹, there are about 100 importers of fresh mangos and 70 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 action will remove frozen mango importers from the requirements associated with this research and promotion Order and result in a regulatory relaxation, and is therefore expected to reduce costs for frozen mango importers.

¹<https://www.cbp.gov/trade/automated>

This rule amends AMS's regulations regarding the mango research and promotion program to remove frozen mangos as a covered commodity under the Order. A continuance referendum was conducted September 21 through October 9, 2020, among eligible first handlers and importers to (1) ascertain whether the continuance of the Order is favored by eligible first handlers and importers covered under the Order, and (2) ascertain whether the continuance of frozen mangos as a covered commodity in the Order is favored by eligible first handlers and importers (including frozen mango importers) covered under the Order. The results were announced on October 20, 2020, stating that 60 percent of mango first handlers and importers voting were in favor of continuing the Order. On the question as to whether to continue frozen mangos as a covered commodity in the Order, 42 percent voted to keep frozen mangos in the Order, 49 percent voted to eliminate frozen mangos, and 9 percent did not vote on this question. Of those representing frozen mangos, 83 percent voted to eliminate frozen mangos as a covered commodity.

This rule removes references to frozen mangos as a covered commodity under the Order including: removing definitions for frozen mangos and foreign processor of frozen mangos; reducing the Board's membership from 21 to 18 by eliminating two importers of frozen mangos and one foreign processor of frozen mangos; removing assessment

collection provisions for frozen mangos at a rate of one cent (\$0.01) per pound and thereby eliminating assessments on frozen mango imports; removing the exemption of assessment for importers who import less than 200,000 pounds of frozen mangos annually; removing definitions for frozen mango importers concerning eligibility in a referendum; and clarifying and conforming changes to other provisions of the Order. This rule will also update the OMB number 0581-0209 listed in § 1206.108 to OMB number 0581-0093.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements previously approved by the OMB and titled Frozen Mango Research, Promotion and Information Program, and assigned OMB No. 0581-0314 will be submitted to OMB for withdrawal as these forms and information collection regarding frozen mangos are no longer needed.

The information collection package (0581-0314) that imposes a total burden of 166 hours and 475 responses for 190 respondents will be terminated.

The industry voted in a referendum held September 21, through October 9, 2020, to remove frozen mangos as a covered commodity from the Order. On October 20, 2020, the Department announced through a notice to trade that 42 percent of mango first handlers and importers voted to keep frozen mangos as a covered commodity, 49 percent of mango

first handlers and importers voting were not in favor of frozen mangos as a covered commodity and 9 percent did not vote on this question. Of those representing frozen mangos 83 percent voted to eliminate frozen mango as a covered commodity under the Order.

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 several provisions of the Order (7 CFR part 1206) are not favored by persons voting in a referendum conducted pursuant to the Act. USDA has determined that this rule is consistent with and will effectuate the purposes of the 1996 Act. Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action removes provisions referencing frozen mangos as a covered commodity under the Order, thereby relieving importers and foreign processors of frozen mangos from the burden to remit assessments and to complete information collection requirements; (2) the termination of frozen

mangos as a commodity covered by the Order was favored by 49 percent of mango first handlers and importers voting in the referendum; (3) of those representing frozen mangos, 83 percent voted to eliminate frozen mangos as a covered commodity under the Order; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

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 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 7 U.S.C. 7401.

2. Revise § 1206.6 to read as follows:

§ 1206.6 First handler.

First handler means any person (excluding a common or contract carrier) receiving 500,000 or more pounds of 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.

3. Revise § 1206.8 to read as follows:

§ 1206.8 Foreign producer.

Foreign producer means any person:

(a) Who is engaged in the production and sales of mangos outside of the United States who owns, or shares the ownership and risk of loss of the crop for sale in the U.S. market; or

(b) Who is engaged, outside of the United States, in the business of producing, or causing to be produced, mangos beyond the person's own family use and having value at first point of sale.

4. Revise § 1206.9 to read as follows:

§ 1206.9 Importer.

Importer means any person importing 500,000 or more pounds of 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.

5. Revise § 1206.11 to read as follows:

§ 1206.11 Mangos.

Mangos means all fresh fruit of *Mangifera indica* L. of the family *Anacardiaceae*.

6. In § 1206.30, revise paragraphs (a) and (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; one first handler; two domestic producers; and seven foreign producers. First handler Board members must receive 500,000 pounds or more mangos annually from producers, and importer Board members must import 500,000 pounds or more 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 mangos shall be allocated based on the volume of 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.

(1) *District I* includes the Customs Districts of Portland, ME (01), St. Albans, VT (02), Boston, MA (04), Providence, RI (05), Ogdensburg, NY (07), Buffalo, NY (09), New York City, NY (10), Philadelphia, PA (11), Baltimore, MD (13), Norfolk, VA (14), Charlotte, NC (15), Charleston,

SC (16), Savannah, GA (17), Tampa, FL (18), San Juan, PR (49), Virgin Islands of the United States (51), Miami, FL (52) and Washington, DC (54).

(2) *District II* includes the Customs Districts of Mobile, AL (19), New Orleans, LA (20), Port Arthur, TX (21), Laredo, TX (23), Minneapolis, MN (35), Duluth, MN (36), Milwaukee, WI (37), Detroit, MI (38), Chicago, IL (39), Cleveland, OH (41), St. Louis, MO (45), Houston, TX (53), and Dallas-Fort Worth, TX (55).

(3) *District III* includes the Customs Districts of El Paso, TX (24), Nogales, AZ (26), Great Falls, MT (33), and Pembina, ND (34).

(4) *District IV* includes the Customs Districts of San Diego, CA (25), Los Angeles, CA (27), San Francisco, CA (28), Columbia-Snake, OR (29), Seattle, WA (30), Anchorage, AK (31), and Honolulu, HI (32).

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7. Amend § 1206.31 by:

- a. revising paragraph (e),
- b. removing paragraphs ((h) through (j)), and
- c. redesignating paragraph (k) as paragraph (h).

The revision reads as follows:

§ 1206.31 Nominations and appointments.

* * * * *

(e) Nominees to fill the mango importer positions on the Board shall be solicited from all known importers of

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 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 importers' first and second choice nominees.

* * * * *

8. 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 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.

9. 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 ten voting members are present.

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10. In §§ 1206.42, revise paragraphs (b), (c), and (d) to read as follows:

§ 1206.42 Assessments.

* * * * *

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

(c) *Domestic mangos.* First handlers of domestic mangos are required to pay assessments on all mangos handled for the U.S. market. This includes mangos of the first handler's own production.

(d) *Imported mangos.* Each importer of mangos shall pay an assessment to the Board through Customs on mangos imported for marketing in the United States.

(1) The import assessment shall be uniformly applied to imported mangos that are identified by the numbers in the 0804.50.4045, 0804.50.4055, 0804.50.6045, and 0804.50.6055 Harmonized Tariff Schedule (HTS) of the United States and shall be the same or equivalent to the rate of mangos produced in the United States.

(2) 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 mangos, assessments will continue to be collected based on the new numbers.

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

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

§ 1206.43 Exemptions.

(a) Any first handler or importer of less than 500,000 pounds of mangos per calendar year may claim an exemption from the assessments required under § 1206.42. First handlers of mangos produced domestically and 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 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 mangos for the fiscal period for which the exemption is claimed.

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12. 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 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 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 that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0804.50.4045, 0804.50.4055, 0804.50.6045, and 0804.50.6055 during the representative period. Importation occurs when mangos originating outside of the United States are released from custody by the U.S. Customs and Border Protection 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 the U.S.

Customs and Border Protection, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mangos from the U.S. Customs and Border Protection when such mangos are entered or withdrawn for consumption in the United States.

(e) *Mangos* means all fresh fruit of *Mangifera indica* L. of the family *Anacardiaceae*.

* * * * *

13. Revise § 1206.108 to read as follows:

§ 1206.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581-0093.

Bruce Summers, Administrator,
Agricultural Marketing Service.

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