

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 1206****[Doc. # FV-02-708-FR]****Mango Promotion, Research, and Information Order; Subpart B—Referendum Procedures****AGENCY:** Agricultural Marketing Service, Agriculture.**ACTION:** Final rule.

**SUMMARY:** This rule establishes procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Mango Promotion, Research, and Information Order (Order) is favored by first handlers and importers of mangos. The Order will be implemented if it is approved by a majority of the eligible first handlers and importers voting in the referendum. These procedures will also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposed Order is being published separately in this issue of the **Federal Register**. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996.

**EFFECTIVE DATE:** November 10, 2003.**FOR FURTHER INFORMATION CONTACT:**

Kathie M. Birdsell, RP, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535-8, Washington, DC 20250-0244; telephone 202-720-4835, fax 202-205-2800, or [kathie.birdsell@usda.gov](mailto:kathie.birdsell@usda.gov).

**SUPPLEMENTARY INFORMATION:** A referendum will be conducted among eligible first handlers and importers of mangos to determine whether they favor issuance of the proposed Mango Promotion, Research, and Information Order (Order) [7 CFR part 1206]. The program will be implemented if it is approved by a majority of the first handlers and importers voting in the referendum. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [Pub. L. 104-127, 7 U.S.C. 7411-7425]. It would cover domestic and imported mangos of the *Mangifera indica* L. variety from the family of *Anacardiaceae*. A proposed Order is being published separately in this issue of the **Federal Register**.

**Executive Order 12866**

This rule has been determined to be not significant for purposes of Executive

Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

**Executive Order 12988**

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

Section 524 of the Act provides that the Act 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 Act, a person subject to an order may file a 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 requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, 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 be 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 entry of USDA's final ruling.

**Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in

the referendum. In addition, Section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order. The Fresh Produce Association of the Americas (Association) has recommended that the Department conduct a referendum in which approval of an order would be based on a majority of the first handlers and importers voting. The Association also has recommended that a referendum be conducted prior to the proposed Order going into effect.

This rule establishes the procedures under which first handlers and importers of mangos may vote on whether they want a mango promotion, research, and information program to be implemented. This action adds a new subpart which establishes procedures to conduct an initial and future referenda. The new subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 5 first handlers and 55 importers of mangos who would be subject to the program and eligible to vote in the first referendum. The Small Business Administration [13 CFR 121.201] defines small agricultural service firms as those having annual receipts of \$5 million or less. First handlers and importers would be considered agricultural service firms. Using these criteria, most first handlers and importers to be covered by the proposed program would be considered small businesses.

U.S. production of mangos is located in California, Florida, Hawaii, and Puerto Rico, according to the most recent U.S. Census of Agriculture (Census) which was in 1997. The Census does not include California production because California has so few producers that publishing production data would reveal confidential information. In 1997, production in Florida totaled 6.1 million pounds, Hawaii's production was 0.1 million pounds, and Puerto Rico's production as approximately 32.9 million pounds. For Florida and Hawaii combined, production fell from 16.6 million pounds in 1992 to 6.2 million pounds in 1997. Census data are published every five years. USDA does not report the value of U.S. production.

Seven countries account for 99 percent of the mangos imported into the United States. These countries and their share of the imports (from September 1, 2000, through June 30, 2001) are: Mexico (57 percent); Brazil (11 percent);