

Proposed referendum procedures were published in the **Federal Register** on August 26, 2002, [67 FR 54920], with a sixty-day comment period ending on October 25, 2002.

One comment was received from a producer. In addition to noting that the Regulatory Flexibility Analysis did not contain production information from Puerto Rico, the commenter argued that since the Order would be implemented if it is approved by a majority of eligible first handlers and importers voting in the referendum, this would be assessment without representation for growers. The commenter expressed the view that growers would pay for program assessments in the form of lower returns, without any direct benefit. We disagree. Domestic producers are not responsible for paying assessments under the proposed program. Although it is possible that an assessment may be passed back to producers in some form, only importers and first handlers of 500,000 or more pounds of mangos per calendar year would be responsible for paying assessments and eligible to vote in a referendum. Domestic producers, however, would be represented on the board, with two of the 18 voting positions.

The definitions of eligible first handler and eligible importer are modified in this final rule. The definitions of first handlers and importer have been modified in the proposed order rulemaking published separately in this issue of the **Federal Register**. In that action, the definition of first handler was revised based upon a comment received and was further clarified by the Department. As a result, an appropriate conforming change was made to the definition of importer in that rulemaking action. This final rule revises the definition of eligible first handler and eligible importer to conform to and reflect the changes that appear in the order definitions.

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

Administrative practice and procedure, Advertising, Consumer information, Mangos, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, Chapter XI of the Code of Federal Regulations is amended as follows:

1. Part 1206 is added to read as follows:

### PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

#### Subpart A [Reserved]

#### Subpart B—Referendum Procedures.

Sec.

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| 1206.107 | Confidential information. |
| 1206.108 | OMB control number.       |

Authority: 7 U.S.C. 7411–7425.

#### Subpart A [Reserved]

#### Subpart B—Referendum Procedures.

##### § 1206.100 General.

Referenda to determine whether eligible first handlers and importers of mangos favor the issuance, amendment, suspension, or termination of the Mango Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

##### § 1206.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(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 0804.50.4040 and 0804.50.6040, during the representative period. Importation occurs when mangos originating outside of the United States are released from custody by the 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 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 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*.

(f) *Order* means the Mango Promotion, Research, and Information Order.

(g) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a mango farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(h) *Referendum agent* or *agent* means the individual or individuals designated by the Department to conduct the referendum.

(i) *Representative period* means the period designated by the Department.

(j) *United States* or *U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

##### § 1206.102 Voting.

(a) Each eligible first handler and eligible importer of mangos shall be entitled to cast only one ballot in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate first handler or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that