

statements based on reports or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person or the publication, by direction of the Department of the name of any person violating an order and a statement of the particular provisions of an order violated by the person.

The proposed Order provides for USDA to conduct an initial referendum preceding the proposed Order's effective date. Therefore, approval of the proposed Order will be determined by a majority of the eligible first handlers and importers voting in the referendum. The proposed Order also provides for subsequent referenda to be conducted (1) every 5 years after the program is in effect; (2) at the request of the Board established under the proposed Order; or (3) when requested by 10 percent or more of first handlers and importers of mangos covered by the proposed Order. In addition, the Department may conduct a referendum at any time.

The Act requires that an order provide for the establishment of a board to administer the program under USDA supervision. The Department modified the Association's proposal by adding two domestic producers and eliminating the public member position to help ensure that the program will benefit the domestic mango industry. Therefore, the proposed Order provides for a 20-member Board consisting of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting wholesalers and/or retailers. In addition, the Department included a separate definition for foreign producers.

To ensure fair and equitable representation of the mango industry on the Board, the Act requires membership on the Board to reflect the geographical distribution of the production of mangos and the quantity or value of imports. We anticipate that this program will assist domestic producers by increasing the demand for mangos. It is possible that domestic production will expand accordingly, in which case reapportioning of the Board would be required under the Order.

Upon implementation of the proposed Order and pursuant to the Act, at least once every five years, the Board will review the geographical distribution of production of mangos in the United States, the geographical distribution of the importation of mangos into the United States, the quantity of mangos produced in the United States, and the quantity of mangos imported into the United States. The review will be based on Board assessment records and

statistics from the Department. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes in geographical distribution of domestic mango production and importation and the quantity of domestic production and imports. To help ensure equitable representation of importers and first handlers on the Board, additional first handlers may be added to the Board if the quantity of domestic production increases to a level where first handlers would be entitled to an additional member on the Board. Currently, each importer member represents about 42.6 million pounds of imported mangos, and the first handler member represents about 6.2 million pounds of domestic mango production.

Board members will serve terms of three years and be able to serve a maximum of two consecutive terms, except that the wholesaler/retailer positions shall carry a term of one year. Wholesaler and retailer members may serve three consecutive one-year terms. When the Board is first established, the U.S. first handler, two U.S. importers, one U.S. producer, and two foreign producers will be assigned initial terms of four years; three U.S. importers, one U.S. producer, and two foreign producers will be assigned initial terms of three years; and three U.S. importers, and three foreign producers will be assigned initial terms of two years. Thereafter, these positions will carry a three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

#### *Comments*

The proposal was published in the **Federal Register** on August 26, 2002 [67 FR 54908], with a 60-day comment period ending on October 25, 2002. In addition, the USDA published a proposed rule on the referendum procedures in the **Federal Register** on August 26, 2002 [67 FR 54920], with the same 60-day comment period. Twenty-two comments from 21 persons or organizations were received by the deadline. Commenters included domestic packers, private farms, four foreign interests, and an American produce association. Nineteen of the 22 comments were in support of the proposed program while three were opposed. Two comments were received late, however, they did not raise any issues different from those timely received. Some of the favorable comments recommended changes to the

proposal. Recommendations that have been adopted are discussed herein.

The opposing comments also raised additional issues and concerns regarding the proposed program. These commenters questioned the constitutionality of the program; offered their own views of the impact of the proposed program on the domestic mango industry; discussed the state of the domestic mango industry and the comparative advantages and disadvantages for U.S. mango growers in terms of regulatory requirements, ability to export, costs of production and the like; and questioned the make-up of the proposed board. Questions were raised as to program focus with regard to imports. Two of the commenters referenced an agricultural economic study conducted in Florida, at the state level, to support their views. The commenters believe the proposed program would not benefit U.S. growers. Two opponents concluded that the proposed program should not be applied to domestic production (producers) and that domestic production should be exempt from assessments. We disagree. We are of the view that this program is constitutional and consistent with the provisions of the Act and that the benefits of this program would outweigh program costs. In addition, a favorable comment also supported one exemption for U.S. producers based upon the volume of U.S. production.

The commenters from Florida and Puerto Rico also expressed the belief that the proposed mango program represents, for domestic producers, taxation without representation. However, domestic producers are not responsible for paying assessments under the proposed program. Although it is possible that the assessment will be passed back to the producers, only importers and first handlers of fresh mangos would be responsible for paying assessments into the program. Handlers and importers of less than 500,000 pounds of mangos, per calendar year, are exempt from paying assessments. Further, 92 percent of the assessment funds would come from imported mangos. USDA recognized the interests of domestic producers by adding two U.S. producers to the Board. These two members represent two of the 18 voting positions on the Board which represents 11 percent of the seats on the Board.

In contrast, six other commenters stated that they supported USDA adding domestic producer seats to the Board. In addition, five of these commenters noted that they were also satisfied that the proposal requires that, at least once every five years, the Board would