

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1206

[Document No. AMS-FV-11-0021]

#### Mango Promotion, Research, and Information Order; Assessment Increase

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes amendment of the Mango Promotion, Research, and Information Order (Order) to increase the assessment rate on first handlers and importers of mangos from one half cent per pound to three quarters of a cent per pound. The increase is permitted under the Order, which is authorized by the Commodity Promotion, Research, and Information Act of 1996 (Act). The National Mango Board (Board), which administers the Order, recommended this action to ensure that the Board's research and promotion programs continue to be adequately funded.

**DATES:** Comments must be received by July 11, 2011.

**ADDRESSES:** Comments may be submitted electronically at <http://www.regulations.gov>. Comments may also be sent to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, Room 0634-S, Stop 0244, 1400 Independence Avenue, SW, Washington, DC 20250-0244; fax (202) 205-2800. All comments submitted should reference the document number and title of this proposed rule, and will be included in the record and made available for public inspection. Comments may be viewed on the Internet at <http://www.regulations.gov>, or at the above office. Please be advised that the identity of individuals or entities submitting comments will be

made public on the Internet at the above Web site.

**FOR FURTHER INFORMATION CONTACT:**

Veronica Douglass, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, Room 0634-S, Stop 0244, Washington, DC 20250-0244; *telephone:* (888) 720-9917; *fax:* (202) 205-2800; *e-mail:* [veronica.douglass@ams.usda.gov](mailto:veronica.douglass@ams.usda.gov).

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

**Executive Order 12866**

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

**Executive Order 12988**

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 Act provides that the Act shall not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

Under the Act, a person subject to an order may file a petition with the U.S. Department of Agriculture (Department) 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, the Department 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 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 the Department's final ruling.

#### Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on the small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

The Small Business Administration defines small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms as those having annual receipts of no more than \$7 million (13 CFR part 121). First handlers and importers would be considered agricultural service firms, and the majority of mango producers, first handlers and importers would be considered small businesses. Although this criterion does not factor in additional monies that may be received by producers, handlers and importers of mangos, it is an inclusive standard for identifying small entities.

Mango producers are not subject to the assessment. First handlers and importers who market or import less than 500,000 pounds of mangos annually are exempt from the assessment. Mangos that are exported out of the United States are also exempt from assessment. Furthermore, while domestic and foreign producers are not subject to assessment under the order, but such individuals are eligible to serve on the Board along with importers and first handlers. Currently, approximately five first handlers and 193 importers are subject to assessment under the Order.

Under the current Order, first handlers and importers of 500,000 pounds or more of mangos per year each pay a mandatory assessment of one half cent per pound of mangos handled or imported. The proposed amendment to the Order would increase the rate of assessment currently paid by first handlers and importers of mangos to three quarters of a cent per pound. Exempt handlers and importers would remain exempt from assessment. While this amendment will have an economic impact on handlers and importers of more than 500,000 pounds of mangos

per year, the impact is expected to be offset by the benefits to the mango industry. Assessment revenue is used by the Board to finance promotion, research, and information programs designed to increase consumer demand for mangos. Assessments at the current rate of one half cent per pound generate about \$3.4 million in annual revenue. The Order is administered by the Board under U.S. Department of Agriculture supervision.

According to the Board, additional revenue is needed to avoid reductions in the promotions budget and to increase investment in marketing and research programs. At its September 2009 meeting, the Board voted to propose a 50 percent increase in the mango assessment rate upon completion of the March 2010 referendum to determine whether mango handlers and importers favored continuation of the Order. The proposed increase is consistent with section 1206.42(b) of the Order, which permits modification of the assessment rate by the Board with the approval of the Secretary, after the first referendum is conducted.

Mango assessment collections began on January 3, 2005, however, Board activities did not begin until 2006. Consequently, the Board was able to grow a considerable reserve that was used to supplement annual assessment revenues from 2007 until 2009. In 2010, higher than expected assessment revenue made it possible for the Board to operate without exceeding the total assessments collected for that year and to begin 2011 with approximately \$1.6 million in available resources. However, with 2011 spending projected at approximately \$4.3 million and assessment income projected at approximately \$3.2 million, the Board is expected to begin 2012 with a reserve of \$505,244. With no extra funds available from reserves, and if the assessment rate is kept at the current level, the Board's budget would be decreased.

In 2010, an econometric study of the effects of the Board's promotion activities on U.S. mango demand was conducted by Dr. Ronald Ward of the University of Florida. The study indicates that from 2005 through 2009, the value of mango imports to the U.S. grew from \$169 million to \$217 million. This is significant as the vast majority of mangos consumed in the U.S. are imported. The growth in value is the result of both higher prices and greater volumes imported. The study also found that the Board's activities have had a positive economic impact on the demand for mangos, both in attracting more buyers and in increasing the number of mangos purchased per buyer.

According to the study, increased spending by the Board would correspond to increases in market penetration and the number of households purchasing mangos. Likewise, decreased spending would correspond to declines in both of those areas. Based on the analysis of these two factors and the value of mango imports, the study concludes that every \$1 invested in the Board adds an additional \$7 to mango freight on board revenues. This study is available from the Board and the Agricultural Marketing Service Web site.

An increase of one quarter of a cent per pound in the mango assessment rate is expected to add an additional \$1.6 million per year to the Board's assessment revenue. With the additional revenue collected, the Board intends to invest primarily in marketing and research programs. In addition, the Board would be able to establish a contingency fund to ensure consistent funding in the face of market instability.

The Board considered three alternatives prior to recommending that the assessment rate be increased. First, the Board considered reducing investment in its research program. However, postponing the human nutrition studies that may help the Board to develop health messages that increase demand for mangos could hinder expansion of the U.S. mango market. Second, the Board considered limiting investment in programs designed to improve the quality of mangos available at the retail level. Delivering higher quality mangos to U.S. consumers is one of the Board's top priorities because higher quality translates to higher demand. Third, the Board considered reducing funding for its marketing programs. Lowering the funding level for marketing programs would significantly reduce the Board's ability to conduct promotion and consumer marketing activities, thereby hindering its efforts to increase demand for mangos.

This rule does not impose additional recordkeeping requirements on first handlers, importers, or producers of mangos. Additionally, first handlers or importers of less than 500,000 pounds of mangos per year are exempt.

There are no Federal rules that duplicate, overlap, or conflict with this rule. Additionally, section 517(c) of the Act states that not more than one assessment may be levied on a first handler or importer.

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) that implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the

information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581-0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

We have performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed amendment to the Order on small entities and we invite comments concerning potential effects of this amendment on small businesses.

### Background

Under the Order, the Board administers a nationally coordinated program of research and promotion designed to strengthen the position of mangos in the marketplace and to establish, maintain, and expand U.S. markets for mangos. The program is financed by assessments on first handlers and importers of 500,000 pounds or more of mangos per year. The Order specifies that first handlers are responsible for submitting assessments to the Board on a monthly basis and maintaining records necessary to verify their reporting. Importers are responsible for paying assessments on mangos imported for marketing in the United States through the U.S. Customs and Border Protection Service of the U.S. Department of Homeland Security.

This rule proposes an increase of one quarter of a cent per pound in the mango assessment rate. Currently, the assessment rate is one half cent per pound of mangos handled domestically or imported into the United States. In order to sustain and expand its promotion, research, and communications programs, the Board contends that additional revenue is required. The proposed assessment rate increase is expected to generate an additional \$1.6 million annually, depending on the volume of mangos handled in the United States or imported into the United States. In 2010, a total of 717,830,404 pounds of mangos were subject to assessment, resulting in approximately \$3.6 million in assessment revenue. Less than one percent of the total assessments were from domestic handlers as the vast majority of assessments were collected from importers. The Board states that the proposed assessment rate increase would enable it to make additional investments in its marketing and research programs. In addition, the Board states that some of the additional revenue could be used to establish a

contingency fund to ensure consistent funding for its programs.

The Board, whose members represent domestic producers, first handlers, importers, and foreign producers, voted at its September 12, 2009, meeting to propose the assessment rate increase of one quarter of a cent per pound after the March 2010 continuance referendum. Of the members present at the meeting, 9 voted in favor and 4 opposed proposal of the assessment rate increase. The four Board members that voted against the assessment increase stated that the increase would be passed onto mango producers. The assessment will be imposed on first handlers and importers who would pay assessments under the Order. Business decisions on how to manage assessments, including whether to pass back the cost of assessments to producers, are made by handlers and importers based on their respective business practices.

This rule would amend the rules and regulations issued under the Order. This rule would increase the assessment rate by one quarter of a cent per pound of mangos handled in the United States or imported. The assessment rate would increase from one half cent to three quarters of a cent per pound. This proposed increase is consistent with section 517(d) of the Act, which permits the Board to recommend to the Secretary a rate of assessment. Section 1206.42(a) of the Order states that the assessment rate may be modified by the Board with the approval of the Secretary, after the first referendum is conducted. The Board recommends the proposed assessment rate increase based on budget constraints imposed on its marketing, research, and industry relations programs by the current assessment rate. Accordingly, section 1206.42(b) of the Order would be revised.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this rule by the date specified would be considered prior to finalizing this action.

**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 proposed to be 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. In section 1206.42, paragraph (b) is revised to read as follows:

**§ 1206.42 Assessments.**

\* \* \* \* \*

(b) The assessment rate shall be three quarters of a cent per pound on all mangos. The assessment rate will be reviewed and may be modified by the Board with the approval of the Department, after the first referendum is conducted as stated in § 1206.71(b). The Department will amend this section if the assessment rate is modified.

\* \* \* \* \*

Dated: April 29, 2011.

**Rayne Pegg,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–11042 Filed 5–9–11; 8:45 am]

**BILLING CODE 3410–02–P**

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Parts 121, 124, 125, 126, and 127**

[Docket No. SBA–2011–006]

**Small Business Jobs Act Tour: Selected Provisions Having an Effect on Government Contracting**

**AGENCY:** U.S. Small Business Administration (SBA)

**ACTION:** Notice of public meetings; correction.

**SUMMARY:** The Small Business Administration (SBA) published a document in the **Federal Register** on Friday, March 25, 2011, concerning the Small Business Act Tour: Selected Provisions Having an Effect on Government that announced a series of public meetings on the implementation of provisions of the Small Business Jobs Act of 2010 (SBJA). This document corrects the **DATES** section and the Event Information table.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Miller, Small Business Job’s Act Tour-Office of Government Contracting and Business Development, 409 Third Street, SW., Washington, DC 20416, at (202) 205–6895, Fax (202) 481–4291, or e-mail [richard.miller@sba.gov](mailto:richard.miller@sba.gov).

**Correction**

In the **Federal Register** of March 25, 2011, in FR Doc. 2011–7135, on page 16703, in the second column, correct the **DATES** caption to read:

**DATES:** The meetings will be held on the dates and times specified in the Event Information section of the Supplementary Information below. It is recommended that all attendees register at least one week prior to the scheduled meeting date. In addition, comments to SBA docket number SBA–2011–0006 must be received on or before June 6, 2011.

In the **Federal Register** of March 25, 2011, in FR Doc. 2011–7135, on page 16706, in the third column, correct the “Event Information” caption to read:

**III. Event Information**

| Location            | Date   | Address  |
|---------------------|--|--|
| Seattle, WA .....   | May 9, 2011, Begins 1 p.m., Ends 5:30 p.m .....  | Holiday Inn Seattle-SeaTac International Airport, 17338 International Blvd, Seattle, WA 98188. |
| Denver, CO .....    | May 24, 2011, Begins 9 a.m., Ends 4:15 p.m ..... | PPA Event Center, 2105 Decatur Street, Denver, CO 80211.                                       |
| Albuquerque, NM ... | June 2, 2011, Begins 9 a.m., Ends 4:15 p.m ..... | Embassy Suites Albuquerque, 1000 Woodward Place NE, Albuquerque, NM 87102.                     |
| San Diego, CA ..... | June 3, 2011, Begins 9 a.m., Ends 4:15 p.m ..... | Scottish Rite Event Center, 1985 Camino del Rio, South, San Diego, CA 92108.                   |