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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1206

[Doc. No. AMS-FV-10-0092]

#### Mango Promotion, Research, and Information Order; Reapportionment

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

**ACTION:** Final rule.

**SUMMARY:** This rule reduces the number of National Mango Board (Board) members from 20 to 18 to reflect the elimination of two non-voting wholesaler/retailer positions. In accordance with the Mango Promotion, Research, and Information Order (Order), which is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act), a review of the composition of the Board must be conducted every five years. The Board reviewed the production volumes and geographical distribution of domestic and imported mangos, and submitted this information to the U.S. Department of Agriculture with a recommendation that no changes be made to the number of importer, first handler, or producer seats on the Board. However, the Board recommended elimination of two non-voting wholesaler/retailer positions that have not been filled since 2007.

**DATES:** *Effective Date:* June 23, 2011.

#### FOR FURTHER INFORMATION CONTACT:

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**SUPPLEMENTARY INFORMATION:** This rule is issued under the Mango Promotion, Research, and Consumer Information Order (Order) [7 CFR part 1206]. The Order is authorized by 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 rule on 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, importers, wholesalers, and retailers would be considered agricultural service firms. Currently, fewer than five first handlers and 193 importers are subject to assessment under the Order. The majority of producers would be considered small businesses. The majority of these first handlers and importers would be considered small businesses, while wholesalers and retailers would not.

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. In addition, domestic producers, foreign producers, wholesalers, and retailers are not subject to assessment under the Order, but such individuals are eligible to serve on the Board along with importers and first handlers.

Section 1206.30(c) of the Order requires that the Board review the volume and geographical distribution of mango production and imports at least once every five years. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes in the volume and geographical distribution of mango production and imports.

The Order currently provides for a Board of 20 members including eight importers, one first handler, two domestic producers, seven foreign producers, and two non-voting wholesalers and/or retailers. At its November 16, 2010 meeting, the Board reviewed the volume and geographic distribution of mango production and imports from 2006 through 2009. Based on data from U.S. Customs and Border Patrol, the volume of mango imports to the U.S. declined from 666,772,761 pounds in 2006 to 627,271,605 pounds in 2009. The Board's eight importer seats are allocated based on the volume of mangos imported into each of the four Districts defined in the Order. The

current allocation is two seats for District I, three seats for District II, two seats for District III, and one seat for District IV. The percentage of the total mango import volume imported into District I remained at 25 percent from 2006 to 2009. Imports into District II grew from 35 percent of the total in 2006 to 41 percent in 2009. Imports into District III fell from 28 percent of the total in 2006 to 23 percent in 2009. Imports into District IV fell from 12 percent of the total in 2006 to 11 percent in 2009. Much of the domestic mango production was adversely affected by hurricanes during the early 2000s. Accordingly, data provided by the Board shows that in 2006, no assessments were collected on domestic mangos, while in 2009 assessments were collected on 1,539,306 pounds of domestic mangos. After reviewing the data regarding mango imports and domestic production, the Board voted to recommend that no changes be made at this time to the number of importer, first handler, domestic producer, or foreign producer seats; or to the allocation of importer seats among the four districts.

At the same meeting, the Board voted to request elimination of the wholesaler/retailer positions from the Order. These positions were included so that the Board would include members with direct customer sales experience. The Board has made numerous attempts to nominate individuals to those positions; however, wholesalers and retailers are not interested in or do not have the time to serve on the Board. As a result, the two wholesaler/retailer positions have been vacant since 2008. These two positions do not represent assessment payers. If the wholesaler/retailer positions are eliminated, the Board would consist of a total of 18 members including eight importers, one first handler, two domestic producers, and seven foreign producers.

Nominations and appointments to the Board are conducted pursuant to sections 1206.31 and 1206.33 of the Order. Appointments to the Board are made by the Secretary from a slate of nominated candidates. Pursuant to section 1206.31 of the Order, candidates for the importer, first handler, and domestic producer positions are nominated by their peers. Nominations for the foreign producer positions are solicited from foreign mango producer organizations. The Board nominates the wholesaler/retailer members. The Order requires that two nominees be submitted for each vacant position.

In accordance with OMB regulation [5 CFR part 1320], which implements information collection requirements imposed by the Paperwork Reduction

Act of 1995 [44 U.S.C. 3501 *et seq.*], there are no new requirements contained in this rule. In fact, a decrease of 0.33 hours per year in the information collection burden for the mango program is expected. The information collection requirements have been previously approved by OMB under OMB control number 0581-0093.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

### Background

The Order, which became effective November 3, 2004, is authorized under the Act and administered by the Board. The Order provides for a 20-member Board consisting of eight importers, one first handler, two domestic producers, seven foreign producers, and two non-voting wholesalers and/or retailers.

Under the Order, the Board administers a nationally coordinated program of promotion, research, and information designed to strengthen the position of mangos in the marketplace and to develop, maintain, and expand the demand for mangos in the United States. The program is financed by an assessment of 1/2 cent per pound on first handlers and importers who market or import 500,000 pounds or more of mangos annually. Under the Order, first handlers remit assessments directly to the Board, and assessments paid by importers are collected and remitted by U.S. Customs and Border Patrol.

Pursuant to section 1206.30(c) of the Order, at least once in each five-year period, the Board shall review the volume and geographical distribution of mango production and imports and, if warranted, make a recommendation to the Secretary to alter the Board's membership. On November 16, 2010, at its fall meeting, the Board voted to recommend that no changes be made to the importer, first handler, domestic producer, or foreign producer positions, but that the non-voting wholesaler/retailer positions be eliminated. If the wholesaler/retailer positions are eliminated, the Board's membership will be reduced from 20 to 18.

Accordingly, this action will amend the Order by removing the definition of retailer in section 1206.19, the definition of wholesaler in section 1206.24, and references to wholesalers and/or retailers in sections 1206.31 and 1206.32.

A proposed rule concerning this action was published in the **Federal Register** on March 14, 2011 [76 FR 13530]. Copies of the proposed rule were made available on the Internet by the Department and the Office of the

Federal Register. In addition, AMS published a press release announcing the comment period. The proposed rule provided a 30-day comment period, which ended April 13, 2011. Twelve comments were received by the deadline.

### Summary of Comments

In response to the proposed rule, USDA received 12 comments regarding the proposed amendment of the Order to eliminate two non-voting wholesaler/retailer positions on the Board. Of the 12 comments received, nine supported the proposed amendment and three did not support the proposed amendment.

A total of eight comments in support of the proposed amendment discussed the Board's reasons for requesting elimination of the wholesaler/retailer positions. Seven of the comments cited the potential for conflict of interest created by participation of wholesalers and/or retailers in Board meetings where decisions could be influenced by their business interests with individual Board members.

Five comments in favor of the proposed amendment mentioned the Board's retention of retail account managers who gather input from the retail sector and help the Board to develop appropriate programs. These commenters stated that having a dedicated team of retail account managers is an effective means of communicating with wholesalers and retailers.

Five comments expressed support for the elimination of the wholesaler/retailer positions on the basis that input from wholesalers and/or retailers can be obtained as needed through their ad hoc participation on the Board's committees. The Board's bylaws permit the Board's chairman to appoint committees that may include persons other than Board members. Subject to Board approval, committee chairmen are also permitted to appoint committee members who are not Board members.

Four commenters supported elimination of the wholesaler/retailer positions, stating that past wholesaler/retailer members struggled with the time and travel demands of Board membership and rarely attended Board meetings.

Three comments in favor of the proposed amendment stated that the funds used to service the wholesaler/retailer positions would be better spent on the Board's promotional programs.

One commenter agreed with the proposed rule without providing additional explanation.

Two commenters expressed opposition to the notion that

representation on the Board is linked to the payment of assessments. The Order requires a review of the composition of the Board to be conducted every five years and states that the review is to be based on Board assessment records and statistics from USDA. The number of importer, first handler, and domestic producer seats, as well as the distribution of importer seats, is adjusted as needed based on the volume and geographic distribution of mango production and imports. In addition, the volume of imports for each country of origin is considered in appointments of foreign producer members. Because the volume handled or imported is linked to the value of assessments received by the Board, representation of importers, first handlers, domestic producers and foreign producers is necessarily linked to the payment of assessments. However, that is not the case for the wholesaler/retailer positions.

Two commenters expressed opposition to the proposed elimination of the wholesaler/retailer positions on the grounds that wholesalers and/or retailers could provide valuable insight to the Board. As stated above, the Board's bylaws permit the participation of non-members on the Board's committees. Thus the Board is able to seek input from wholesalers and/or retailers as needed.

One commenter expressed doubt that the Board has made sufficient efforts to secure nominees to fill the wholesaler/retailer positions. As discussed in the proposed rule, the Board has made numerous attempts to nominate individuals to those positions; however, wholesalers and retailers are either not interested in or do not have the time to serve on the Board.

One commenter recommended that wholesalers and/or retailers be given full voting rights on the Board. The question of whether or not wholesaler/retailer members should be permitted to vote is not considered in this rule as it is not relevant given the Board's inability to find wholesalers and/or retailers to serve on the Board. The same commenter also suggested that the Board consider adding consumer members. Currently, all Board meetings are open to the public, and any person has the opportunity to contact the Board at any time. As such, consumer participation in Board activities does not require amendment of the Order.

One comment objecting to the regulation of mangos was outside the scope of this rule.

The Department has considered all of the comments and is not making any changes to the proposed rule.

After consideration of all relevant material presented, the Board's recommendation, public comments and other information, it is hereby found that this rule, as published in the **Federal Register** [76 FR 13530] on March 14, 2011, is consistent with and will effectuate the purpose of the Act.

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

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

For the reasons set forth in the preamble, 7 CFR part 1206 is amended as follows:

#### PART 1206—MANGO PROMOTION, RESEARCH, 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. Remove and reserve § 1206.19.

#### § 1206.19 [Reserved]

- 3. Remove and reserve § 1206.24.

#### § 1206.24 [Reserved]

- 4. Amend § 1206.30 by revising paragraph (a) to read as follows:

#### § 1206.30 Establishment of the National Mango Promotion Board.

(a) *Establishment of the National Mango Promotion Board.* There is hereby established a National Mango Promotion Board composed of eight importers, one first handler, two domestic producers, and seven foreign producers. The chairperson shall reside in the United States and the Board office shall also be located in the United States.

\* \* \* \* \*

- 5. Amend § 1206.31 by removing paragraph (h), and redesignating paragraph (i) as paragraph (h).

- 6. 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, and these members may serve a maximum of two consecutive three-year terms. When the Board is first established, the first handler, two importers, one domestic producer, and two foreign producers will be assigned initial terms of four years; three importers, one domestic producer, and two foreign producers will be assigned initial terms of three

years; and three importers and three foreign producers will be assigned initial terms of two years. Thereafter, each of these positions will carry a full 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.

Dated: June 16, 2011.

**Rayne Pegg,**  
*Administrator.*

[FR Doc. 2011–15630 Filed 6–21–11; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. **FAA–2011–0259**; Directorate Identifier **2010–NM–196–AD**; Amendment **39–16730**; AD **2011–13–07**]

**RIN 2120–AA64**

#### Airworthiness Directives; Dassault Aviation Model FALCON 7X Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) that applies to the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Several occurrences of untimely radio-altimeter lock-up have been reported, where the failed radio-altimeter indicated a negative distance to the ground despite the aircraft was flying at medium or high altitude.

A locked radio-altimeter #1 leads to untimely inhibition of warnings that could be displayed along with certain abnormal conditions while the avionics system switches into landing mode during altitude cruise.

\* \* \* \* \*

[Untimely radio altimeter lock-up] may cause the crew to be unaware of possible system failures that could require urgent crew's actions.

\* \* \* \* \*

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective July 27, 2011.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://>