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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1208

[Docket No. AMS-FV-07-0077; FV-07-705-FR]

RIN 0581-AC79

Processed Raspberry Promotion, Research, and Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, Agriculture, USDA.

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 Processed Raspberry Promotion, Research, and Information Order (Proposed Order) is favored by producers of raspberries for processing and importers of processed raspberries. The Proposed Order will be implemented if it is approved by a simple majority of the eligible producers and importers voting in the referendum. These procedures will also be used for any subsequent referendum under the Proposed 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 is implemented under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act).

DATES: *Effective Date:* February 9, 2010.

FOR FURTHER INFORMATION CONTACT: Kimberly Coy, Marketing Specialist, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 0634-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244; telephone 202-720-9915 or (888) 720-9917 (toll free) or e-mail kimberly.coy@usda.gov.

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible producers of raspberries for processing and importers of processed raspberries to determine whether they favor issuance of the proposed Processed Raspberry Promotion, Research, and Information Order (Proposed Order) [7 CFR part 1208]. The program will be implemented if it is approved by a simple majority of the producers and importers voting in the referendum. The Proposed Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) [7 U.S.C. 7411-7425]. It would cover domestic producers of raspberries for processing and importers of processed raspberries of 20,000 pounds or more. A proposed rule and referendum order is published separately in this issue of the **Federal Register**.

Prior documents: Proposed rules on both the Proposed Order [74 FR 16266] and the Referendum Procedures [74 FR 16289] were published in the **Federal Register** on April 9, 2009 with a 60-day comment period.

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 Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the 1996 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 1996 Act, a person subject to an order may file a petition with the 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. In the petition, the person may request 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 1996 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 entry of the Department's final ruling.

Final Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601-612], the Department is required to examine the impact of this 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 1996 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 1996 Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the 1996 Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. In addition, Section 518 of the 1996 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 Washington Red Raspberry Commission (WRRC) has recommended that the Department conduct a referendum in which approval of the Proposed Order would be based on a simple majority of the producers and importers voting in the referendum. The Department is conducting a referendum prior to the Proposed Order going into effect.

This rule establishes the procedures under which producers of raspberries for processing and importers of processed raspberries will vote on

whether they want a processed raspberry promotion, research, and information program to be implemented. This rule adds a new subpart which establishes procedures to conduct initial and future referenda. The subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 195 producers of raspberries for processing and 50 importers of processed raspberries who would be subject to the program and eligible to vote in the first referendum. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than \$7.0 million. Under these criteria, the majority of the producers and handlers that would be affected by this Proposed Order would be considered small entities, while most importers would not. Further, qualified organizations certified by the Secretary for nomination purposes, would be expected to generally consist of entities reflecting such sizes also. Producers and importers of less than 20,000 pounds per year of raspberries for processing and processed raspberries respectively would be exempt under this Proposed Order. Five organic producers and importers are also expected to be exempt from assessments. The number of entities assessed under the program would be around 245. Estimated revenue is expected at \$1.2 million of which 43 percent is expected from imported product and 57 percent from domestic product.

This rule provides the procedures under which producers of raspberries for processing and importers of processed raspberries will vote on whether they want the Proposed Order to be implemented. In accordance with the provisions of the 1996 Act, subsequent referenda may be conducted, and it is anticipated that these procedures will apply. There are approximately 195 producers of raspberries for processing and 50 importers of processed raspberries who will be eligible to vote in the first referendum. Producers of raspberries for processing and importers of processed raspberries of less than 20,000 pounds per year will be exempt from assessments and not eligible to vote in the referendum.

The Department will keep these individuals informed throughout the program implementation and referendum process to ensure that they

are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers and importers choose to vote, the burden of voting will be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this rule are designed to minimize the burden on producers and importers. This rule provides for a ballot to be used by eligible producers and importers to vote in the referendum. The estimated annual cost of providing the information by an estimated 195 producers of raspberries for processing and 50 importers of processed raspberries would be \$195.00 for all producers or \$1.00 per producer and \$50.00 for all importers or \$1.00 per importer.

The Department considered requiring eligible voters to vote in person at various USDA offices across the country. The Department also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot will be more cost effective and reliable. USDA will provide easy access to information for potential voters through a toll free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction Act

In accordance with the OMB regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, was submitted to OMB for approval and approved under OMB Number 0581-NEW.

Title: Processed Raspberry Promotion, Research, and Information Order.

OMB Number: 0581-NEW.

Expiration Date of Approval: 3 years from OMB date of approval.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the 1996 Act, to provide the respondents the type of service they request, and to administer the Proposed Order. The ballot is needed for the referendum that will be held to determine whether

producers and importers are in favor of the program. The information collected is used by USDA to determine whether a majority of the eligible producers and importers voting in a referendum approve of this program. Producers and importers of 20,000 or more pounds of raspberries for processing or processed raspberries respectively, are eligible to vote in the referendum and shall be entitled to cast only one ballot in the referendum.

Referendum Ballot

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each producer and importer.

Respondents: Producers and importers.

Estimated Number of Respondents: 245.

Estimated Number of Responses per Respondent: 1 every 7 years (0.14).

Estimated Total Annual Burden on Respondents: 8.58 hours.

The ballot will be added to the other information collections approved for use under OMB Number 0581-NEW.

The estimated annual cost of providing the information by an estimated 195 producers of raspberries for processing and 50 importers of processed raspberries would be \$195.00 for all producers or \$1.00 per producer and \$50.00 for all importers or \$1.00 per importer.

Background

The 1996 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 Department received the proposal for a new order from the Washington Red Raspberry Commission (WRRRC). On April 9, 2009, the Department published in the **Federal Register** proposals for the Proposed Order [74 FR 16266] and proposed referendum procedures [74 FR 16289]. A second proposal addressing the comments received for the Proposed Order is published in this issue of the **Federal Register**.

The Proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for processed raspberries in the United States. The program would be funded by an assessment levied on producers and importers (to be collected by Customs at time of entry into the United States) at an initial rate of one cent per pound. Producers of raspberries for processing

and importers of processed raspberries of less than 20,000 pounds per year would be exempt from paying assessments. The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the proposed National Raspberry Council; and expenses incurred by the Department in implementing and administering the Proposed Order, including referendum costs.

Section 518 of the 1996 Act requires that a referendum be conducted among eligible producers of raspberries for processing and importers of processed raspberries to determine whether they favor implementation of the Order. That section also requires the Proposed Order to be approved by a simple majority of the producers and importers voting in the referendum.

This final rule establishes the procedures under which producers of raspberries for processing and importers of processed raspberries may vote on whether they want the processed raspberry promotion, research, and information program to be implemented. There are approximately 245 eligible voters.

This action adds a new subpart establishing procedures to be used in this and future referenda. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

Proposed referendum procedures were published in the **Federal Register** on April 9, 2009. Copies of the proposed rule were made available by USDA and the Office of the Federal Register, and were also available via the Internet at www.regulations.gov. The proposed rule provided a 60-day comment period ending on June 8, 2009. No comments were received by the deadline.

It is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the crop year begins on April 1 and it is preferable that this program, if approved in referendum, be in effect before.

List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Processed Raspberries, 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 by adding part 1208 to read as follows:

PART 1208—PROCESSED RASPBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—[Reserved]

Subpart B—Referendum Procedures

Sec.

1208.100	General.
1208.101	Definitions.
1208.102	Voting.
1208.103	Instructions.
1208.104	Subagents.
1208.105	Ballots.
1208.106	Referendum report.
1208.107	Confidential information.
1208.108	OMB control number.

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Subpart A—[Reserved]

Subpart B—Referendum Procedures

§ 1208.100 General.

Referenda to determine whether eligible producers of raspberries for processing and importers of processed raspberries favor the issuance, amendment, suspension, or termination of the Processed Raspberry Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1208.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to delegate, 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 producer* means any person who grows 20,000 pounds or more of raspberries for processing in the United States for sale in commerce, or a person who is engaged in the business of producing, or causing to be produced for any market, raspberries for processing beyond the person's own family use and having value at first point of sale.

(d) *Eligible importer* means any person importing 20,000 or more pounds of processed raspberries 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 processed raspberries outside of the United States for sale in the United States, and who is listed as the importer of record for such processed

raspberries that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0811.20.20.20, during the representative period. Importation occurs when processed raspberries originating outside of the United States are released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced processed raspberries immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of processed raspberries from Customs when such processed raspberries are entered or withdrawn for consumption in the United States.

(e) *Raspberries* mean and include all kinds, varieties, and hybrids of cultivated raspberries of the genus "Rubus" grown in or imported into the United States.

(f) *Processed Raspberries* means raspberries which have been frozen, dried, pureed, made into juice, or delivered in any other form altered by mechanical processes other than fresh.

(g) *Order* means the Processed Raspberry Promotion, Research, and Information Order.

(h) *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 raspberry 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.

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

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

(k) *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.

§ 1208.102 Voting.

(a) Each eligible producer of raspberries for processing and eligible importer of processed raspberries shall be entitled to cast only one ballot in the referendum. However, each producer in

a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to process raspberries, in which more than one of the parties is a producer or importer, shall be entitled to cast one ballot in the referendum covering only such producer or importer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer 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 such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail as instructed by the Department.

§ 1208.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the

ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1208.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1208.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1208.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1208.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1208.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581-NEW.

Dated: January 27, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010-2064 Filed 2-5-10; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM417; Special Conditions No. 25-392-SC]

Special Conditions: Model C-27J Airplane; Class E Cargo Compartment Lavatory

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Alenia Model C-27J airplane. This airplane has novel or unusual design features when compared to the state of technology described in the airworthiness standards for transport-category airplanes. These design features include a lavatory in the Class E cargo compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. The FAA has issued additional special conditions for other novel or unusual design features of the C-27J.

DATES: *Effective Date:* January 22, 2010.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM-116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1503, facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 2006, the European Aviation Safety Agency (EASA) forwarded to the FAA an application from Alenia Aeronautica of Torino, Italy, for U.S. type certification of a twin-engine, commercial transport designated as the Model C-27J. The C-27J is a twin-turbopropeller, cargo-transport aircraft with a maximum takeoff weight of 30,500 kilograms.

Type Certification Basis

Under the provisions of § 21.17 of Title 14, Code of Federal Regulations (14 CFR), and the bilateral agreement between the U.S. and Italy, Alenia Aeronautica must show that the C-27J meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25-1 through 25-87.