

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 1208**

[Doc. No. AMS-FV-07-0077; FV-07-705-PR-2B]

RIN 0581-AC79

**Proposed Processed Raspberry Promotion, Research, and Information Order**

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

**ACTION:** Proposed rule and Referendum Order.

**SUMMARY:** This document directs that a referendum be conducted among eligible producers of raspberries for processing and importers of processed raspberries to determine whether they favor the establishment of an industry-funded promotion, research, and information program for processed raspberries. The proposed program, Processed Raspberry Promotion, Research, and Information Order (Proposed Order), was submitted to the Department of Agriculture (Department) by the Washington Red Raspberry Commission (WRRRC). Under the Proposed Order, producers of raspberries for processing and importers of processed raspberries would pay an assessment of up to one cent per pound, with the initial assessment rate being one cent per pound, which would be paid to the proposed National Processed Raspberry Council (Council). Producers and importers of less than 20,000 pounds annually of raspberries for processing and processed raspberries, respectively, would be exempt from the assessment. The proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). The Department is conducting an initial referendum to ascertain whether the persons to be covered by and assessed under the Proposed Order favor the implementation of the program prior to it going into effect. The Proposed Order would be implemented if it is approved by a majority of producers and importers voting in the referendum.

**DATES:** The voting period is June 8 through June 24, 2011. To be eligible to vote, producers must have produced 20,000 pounds of raspberries for processing and importers must have imported 20,000 pounds of processed raspberries during the representative period from January 1, 2010 through December 31, 2010. Ballots will be mailed to all known producers of

raspberries for processing and importers of processed raspberries, on or before June 1, 2011. Ballots must be received by the referendum agent no later than the close of business 4:30 pm (Eastern Time) on June 24, 2011.

**ADDRESSES:** Copies of the Proposed Order may be obtained from: Referendum Agent, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632-S, Washington, DC 20250-0244; telephone: (202) 720-9915 or (888) 720-9917 (toll free); or facsimile: (202) 205-2800; or can be viewed at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Coy, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0632, Stop 0244, Washington, DC 20250-0244; telephone: (202) 720-9915 or (888) 720-9917 (toll free); or facsimile: (202) 205-2800; or e-mail: [Kimberly.Coy@ams.usda.gov](mailto:Kimberly.Coy@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

As part of this rulemaking, a proposed rule was published in the **Federal Register** on April 9, 2009 [74 FR 16289], with a 60-day comment period which closed on June 8, 2009. Twenty-one comments were received. A second proposed rule was published in the **Federal Register** on February 8, 2010 [75 FR 6131] addressing the comments. In addition, a separate final rule on referendum procedures was published in the **Federal Register** on February 8, 2010 [75 FR 6089].

Since publication of the second proposed rule, the industry worked with the 484(f) Committee (Committee) of the United States International Trade Commission (USITC) which is the committee that reviews requests for changes to the statistical reporting requirements of the HTS for imports, to determine the feasibility of separating red raspberry juice and juice concentrate from all other juice and juice concentrate, red raspberry paste and purees from all other pastes and purees, and red raspberry preserves from all other fruit preserves. According to the Committee, this separation was feasible. Accordingly, the Committee approved the petition for processed red raspberry statistical breakout in the Harmonized Tariff Schedule. The new number assigned to red raspberry juice and juice concentrate is 2009.80.60.55, the new number assigned to processed

red raspberry pastes and purees is 2007.99.65.10, and the new number assigned to red raspberry preserves is 2008.99.20.20, effective July 1, 2010. The aforementioned changes will be reflected in the final rule. Also, assessments for imported red raspberry preserves will not begin until a conversion factor is developed.

**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 1996 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 written 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, 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 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 the entry of the Department's final ruling.

**Referendum Order**

Pursuant to the 1996 Act, a referendum will be conducted to determine whether eligible producers of raspberries for processing and importers of processed raspberries favor issuance of the Proposed Order. The Proposed Order is authorized under the 1996 Act.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1, 2010, through December 31, 2010. Producers must have produced

20,000 pounds of raspberries for processing and importers must have imported 20,000 pounds of processed raspberries during the representative period from January 1, 2010 through December 31, 2010, to be eligible to vote. The referendum shall be conducted by mail ballot from June 8 through June 24, 2011. Ballots must be received by the referendum agent no later than the close of business 4:30 p.m. (Eastern Time) on June 24, 2011, to be counted.

Section 518 of the 1996 Act authorizes the Department to conduct a referendum prior to the Order's effective date. The Order shall become effective only if it is determined that the Order has been approved by a majority of those eligible persons voting for approval.

Kimberly Coy, of the USDA, AMS, Research and Promotion Branch, is designated as the referendum agent to conduct this referendum. The referendum procedures [7 CFR 1208.100 through 1212.108], which were issued pursuant to the 1996 Act, shall be used to conduct the referendum.

The referendum agent will mail registration instructions to all known eligible producers and importers in advance of the referendum. Any producer or importer who does not receive registration instructions should contact the referendum agent cited under the "For Further Information" section no later than one week before the end of the registration period. Prior to the first day of the voting period, the referendum agent will mail the ballots to be cast in the referendum and voting instructions to all eligible voters. Persons who are producers and importers during the representative period are eligible to vote. Any producer or importer who does not receive a ballot should contact the referendum agent cited under the "For Further Information" section no later than one week before the end of the registration period. Ballots must be received by the referendum agent by the close of business on or before [insert last day of referendum], to be counted.

In accordance with the OMB regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. 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 0581-0257.

#### List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer

information, Marketing agreements, Raspberry promotion, Reporting and recordkeeping requirements.

**Authority:** 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

**David R. Shipman,**

*Associate Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1210

[Document Number AMS-FV-10-0093]

#### Watermelon Research and Promotion Plan; Redistricting and Importer Representation

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on changing the boundaries of all seven districts under the Watermelon Research and Promotion Plan (Plan) to reapportion the producer, handler, and importer memberships on the National Watermelon Promotion Board (Board). In addition, the Board is adding two importer seats based on the quantity of watermelon imports in the past three years. These changes are based on a review of the production and assessments paid in each district and the amount of watermelon import assessments, which the Plan requires at least every five years. As a result of these changes, the importer seats would increase from six to eight. Therefore, the total Board membership would increase from 35 to 37 members. In addition, a new CFR section is added to reflect the importer representation on the Board. **DATES:** Comments must be received by June 6, 2011.

**ADDRESSES:** Interested persons are invited to submit written comments on the Internet at: <http://www.regulations.gov> or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, (USDA) Room 0632-S, Stop 0244, 1400 Independence Avenue, SW., Washington, DC 20250-0244; facsimile: (202) 205-2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business

hours or it can be viewed at <http://www.regulations.gov>. All comments received will be posted without change, including any personal information provided. Please be advised that the identity of the individuals or entities submitting comments will be made public on the Internet at the address provided above.

#### FOR FURTHER INFORMATION CONTACT:

Jeanette Palmer, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, Stop 0244, 1400 Independence Avenue, SW., Room 0632-S, Washington, DC 20250-0244; telephone: (888) 720-9917; facsimile: (202) 205-2800; or electronic mail: [Jeanette.Palmer@ams.usda.gov](mailto:Jeanette.Palmer@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Watermelon Research and Promotion Plan [7 CFR part 1210]. The Plan is authorized under the Watermelon Research and Promotion Act (Act) [7 U.S.C. 4901-4916].

#### Executive Orders 12886

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

#### Executive Order 12988

In addition, this rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have retroactive effect.

The Act allows producers, producer-packers, handlers, and importers to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not established in accordance with law. In any petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

#### Initial Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601-612], AMS has examined the economic impact of