



Agricultural Marketing Service

7 CFR Part 1210

[Doc. No. AMS-SC-24-0020]

Watermelon Research and Promotion Plan; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking would implement a recommendation from the National Watermelon Promotion Board to increase the assessment rate from six cents per hundredweight to nine cents per hundredweight. Domestic watermelon producers of 10 acres or more and domestic first handlers of watermelons would each pay four and a half cents per hundredweight, and importers of 150,000 pounds or more annually of watermelons would pay nine cents per hundredweight. This proposed rulemaking would also amend current regulatory language to correct non-substantive and typographical errors.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rulemaking. Comments may be mailed to the Docket Clerk, Market Development Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 1406-S, STOP 0244, Washington, DC 20250-0237; submitted by Email:

SM.USDA.MRP.AMS.MDDComment@usda.gov; or via internet at

<https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the *Federal Register*. Comments submitted in response to this proposed rulemaking will be included in the record and will be made

available to the public and can be viewed at: <https://www.regulations.gov>. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: William Hodges, Marketing Specialist, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406-S, STOP 0244, Washington, DC 20250-0244; Telephone: (443) 571-8456; or Email: William.Hodges2@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rulemaking affecting the Watermelon Research and Promotion Plan (7 CFR part 1210) (Plan) is authorized by the Watermelon Research and Promotion Act (7 U.S.C. 4901-4916) (Act).

Executive Orders 12866, 13563 and 14094

The Agricultural Marketing Service (AMS) is issuing this proposed rulemaking in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This proposed rulemaking is not a significant regulatory action within the meaning of Executive Order 12866. Accordingly, this action has not been reviewed by the Office of Management and Budget under sec. 6 of the Executive order.

Executive Order 13175

This proposed action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rulemaking is unlikely to have substantial direct effects on one or more Indian Tribes, or the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under sec. 1650 of the Act (7 U.S.C. 4909), a person may 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 in accordance with the 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.

Background

Under the Plan, the National Watermelon Promotion Board (Board) administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the position of watermelons in the marketplace, and to establish,

maintain, and expand markets for watermelons. To administer the program, §§ 1210.328 and 1210.341 of the Plan authorize the Board, with the approval of AMS, to formulate an annual budget of expenses and collect assessments on domestic producers growing 10 acres or more of watermelons, domestic first handlers of watermelons, and importers of 150,000 or more pounds of watermelons per year. The Board is familiar with both the program's needs and the rising costs of research and promotion initiatives and are able to formulate an appropriate budget and assessment rate.

Currently, in accordance with the Plan, domestic watermelon producers of 10 acres or more and domestic first handlers of watermelons each pay three cents per hundredweight, and importers of 150,000 pounds or more annually of watermelons pay six cents per hundredweight. The Plan specifies that handlers are responsible for collecting and submitting both the producer and handler assessments to the Board, reporting their handling of watermelons, and maintaining records necessary to verify their reporting(s). Importers are responsible for payment of assessments to the Board on watermelons imported into the United States through the U.S. Customs Service and Border Protection. The current assessment rate for watermelon producers, handlers, and importers was established in 2008.

The Board recommended increasing the current assessment rate to address inflation's impact on buying power while maintaining its competitiveness in the marketplace.

Board Recommendation to Adjust the Assessment Rate

This proposed rulemaking would amend §1210.515 of the Plan by increasing the assessment rate from six cents per hundredweight to nine cents per hundredweight. The assessment on domestic watermelon producers of 10 acres or more and domestic first handlers of watermelons would increase from three cents per hundredweight to four and a half cents per hundredweight, and the assessment on importers of 150,000 pounds or

more annually of watermelons would increase from six cents per hundredweight to nine cents per hundredweight.

The Board discussed this recommendation over several months at various State and regional watermelon association meetings in addition to presenting at a public town hall meeting on February 23, 2024, at the National Watermelon Association's (NWA) annual convention. The Board sent out postcards to all industry contacts in their database to invite them to the NWA town hall meeting and provide information on the proposed assessment increase. The Board met on February 24, 2024, and voted unanimously to propose the assessment increase from six cents to nine cents per hundredweight of watermelons. Board members present for the vote represented domestic producers and first handlers, as well as importers.

From 2008 to 2023, according to the Board, the United States experienced inflation of 43.7%, which equates to 2.3% when compounded annually. This dollar devaluation translates to a loss in buying power of roughly 30% since the previous assessment increase was instituted in 2008. The erosion of buying power and continued inflationary pressure on funds limit the Board's research and promotion activities. The proposed change would further support the Board's goal of a balanced budget beginning in 2025, while still allowing for increased research and promotion of watermelon across the Board's communication, marketing, foodservice, and research committees.

Section 1210.341 of the Plan states, in part, that in the case of an importer, the assessment shall be equal to the combined rate for domestic producers and handlers and shall be paid by the importer at the time of entry of the watermelons into the United States. Accordingly, with the proposed increased assessment rate of nine cents per hundredweight, domestic watermelon producers of 10 acres or more and domestic first handlers of watermelons would each pay four and a half cents per hundredweight, and importers of 150,000 pounds or more annually of watermelons would pay nine cents per

hundredweight. This proposed increase is consistent with sec. 1647(f) of the Act that permits changes in the assessment rate through notice and comment procedures. Section 1210.341(b) of the Plan states that assessment rates shall be fixed by the Secretary in accordance with sec. 1647(f) of the Act. Further, not more than one assessment on a producer, handler, or importer may be collected on any lot of watermelons. Accordingly, if this proposed rulemaking was finalized, § 1210.515(a) of the Plan would be revised to reflect the recommendation of the Board as it relates to assessments.

Amend Current Regulatory Language

This proposed rulemaking also includes proposed changes to § 1210.515(b) of the Plan to amend language and make non-substantive corrections to the text. These proposed edits are administrative changes and would not have an impact on the assessment rate. The proposed edits would: amend the misspelling of “scheudle” to “schedule”; amend “U.S. Customs Service (USCS)” to “U.S. Customs Service and Border Protection (Customs)”; amend “USCS” to “Customs” and amend “of any other” to “or any other”. The proposal would also add clarifying language and amend “may submit the Board” to “may submit to the Board”.

Initial Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 et seq.], AMS has considered the economic impact of this action on the small producers, handlers, and importers that would be affected by this proposed rulemaking. 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.

Domestic producers of less than 10 acres of watermelons are exempt from this program. Importers of less than 150,000 pounds of watermelons per year are also exempt. According to the Board, there are approximately 429 producers, 121 first handlers, and 183 importers who are subject to the provisions of the Plan.

The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers of watermelons as those having annual receipts equal to or less than \$3.75 million [NAICS code 111219 - Other Vegetable (except Potato) and Melon Farming] and small agricultural service firms (handlers and importers) as those having annual receipts equal to or less than \$34.0 million [NAICS code –111514 - Postharvest Crop Activities (except Cotton Ginning)]. Under these definitions, the majority of the producers, handlers, and importers that would be affected by this proposed rulemaking would be considered small entities. This conclusion is based on following computations and data, using the current Board assessment rate of six cents per hundredweight.

For 2023, National Agricultural Statistics Service (NASS) reported a season average producer price per pound of \$0.214. The Board estimated the Freight on Board (FOB) price to be \$0.284 for both importers and handlers in 2023. The Board reported that 2023 assessments received from domestic entities totaled \$2.247 million, with equal proportions of \$1.1235 million coming from producers and handlers. Dividing \$1.1235 million by half of the current assessment rate of \$0.06 per hundredweight, as producers and handlers evenly split the assessment, yields an estimate of total producer pounds assessed of 3,745.0 million ($\$1.1235 \text{ million} \div \0.0003 per pound). Dividing the total pounds assessed quantity by 429 producers yields an average assessed pounds per producer estimate of 8.73 million. Multiplying the annual assessed pounds per producer estimate of 8.73 million pounds by the 2023 NASS season average producer price per pound of \$0.214 yields an average annual watermelon sales receipts per producer estimate of \$1.87 million. This is well below the SBA small producer size threshold of \$3.75 million.

With an equal proportion of annual domestic assessments coming from handlers, the total handler pounds assessed is also 3,745.0 million. Dividing total handler pounds assessed by 121 handlers yields an average assessed pounds per handler estimate of 30.95

million pounds. Multiplying this estimate of annual assessed pounds per handler of 30.95 million pounds by the season average handler price per pound of \$0.284, provided by the Board, yields an estimate of average annual watermelon sales receipts per handler of \$8.79 million. This is well below the SBA small handler size threshold of \$34.0 million.

The Board reported that assessments received from importers totaled \$1.196 million in 2023. Dividing \$1.196 million by the current assessment rate of \$0.06 per hundredweight (\$0.0006 per pound) yields an estimate of total importer pounds assessed of 1,993.3 million. Dividing the total pounds assessed by the number of importers, 183, yields an average assessed pounds per importer estimate of 10.89 million. Multiplying this estimate of annual assessed pounds per importer of 10.89 million pound by the season average importer price per pound of \$0.284 yields an estimate of average annual watermelon sales receipts per importer of \$3.09 million. This is well below the SBA small importer size threshold of \$34.0 million. Assuming normal distributions, the majority of producers, handlers, and importers would be classified as small businesses according to SBA size standards.

Under the current Plan, domestic watermelon producers of 10 acres or more and domestic first handlers of watermelon each pay a mandatory assessment rate of three cents per hundredweight, and importers of more than 150,000 pounds or more annually of watermelons pay an assessment of six cents per hundredweight. Assessments under the program are used by the Board to finance promotion, research, and educational programs designed to increase consumer demand for watermelons in the United States and international markets. The six cents per hundredweight assessment rate on watermelons became effective when the Plan was amended in January 2008, which was the only time that the Board increased the assessment rate since the inception of the program in 1989. The Plan is administered by the Board under the U.S. Department of Agriculture (USDA) supervision.

According to the Board, additional revenue is required to sustain and expand the promotional, research, and communications programs. The Board approved the proposed assessment rate increase at its February 24, 2024, meeting. This proposed increase is consistent with sec. 1647(f) of the Act that permits changes in the assessment rate through notice and comment procedures. Section 1210.341(b) of the Plan states that assessment rates shall be fixed by the Secretary in accordance with sec. 1647(f) of the Act. Section 1210.515(a) of the Plan currently states that an assessment of three cents per hundredweight shall be levied on all watermelons produced, and on all watermelons first handled for consumption as human food. It also states that an assessment of six cents per hundredweight shall be levied on watermelons imported into the United States for consumption as human food. Further, not more than one assessment on a producer, handler, or importer may be collected on any lot of watermelons. Under this proposal, § 1210.515(a) of the Plan would be revised to increase the assessment rate from six cents to nine cents per hundredweight. The proposal would increase the assessment rate of three cents per hundredweight to four and a half cents per hundredweight to be levied on all watermelons produced, and on all watermelons first handled for consumption as human food in the United States and increase the assessment rate from six cents to nine cents per hundredweight to be levied on all watermelons imported into the United States for ultimate consumption as human food.

The Board contracted with an independent industry analyst to conduct an inflation impact analysis using the Consumer Price Index (CPI) published by the U.S. Bureau of Labor Statistics. The base year for the analysis was 2008, the year of the last assessment rate increase, and the analysis extended through April 2023. The CPI was 211.080 in January 2008 and 303.363 in April 2023. Dividing 303.363 by 211.080 yields a ratio of 1.437, or an increase of 43.7 percent. This inflation rate equates to 2.3% when compounded annually. Dividing the Board's average annual revenue throughout this

period of \$3,024,721 by the CPI change ratio of 1.437 yields a figure of \$2,104,601. This decline of \$920,120 shows the budget's reduced buying power of roughly 30 percent since the previous assessment increase. This reduction in buying power due to inflation has had a significant impact on the industry's ability to compete for market share. The cost of media services, research programs, promotional opportunities, as well as general administrative costs and fees paid to USDA have continually risen. USDA's AMS oversight costs were budgeted at \$105,000 in 2008, compared to \$147,000 for 2023. It is AMS policy that all research and promotion programs be charged in a fair and equitable manner. Assessments collected have not kept pace with these increasing costs. Movement and sales of watermelon continue to grow, however, that growth has not outpaced the negative effects of inflation.

Armada Corporate Intelligence conducted a five-year return on investment (ROI) study for the Board from 2017-2021, to determine the impact of Board activities on the demand for watermelons. The resultant ROI for the Board's promotional endeavors is approximately 19:1, which displays that the activities of the Board have a significant positive impact on the watermelon industry. For further details, the study is located at <https://www.watermelon.org/press-releases/watermelon-board-announces-significant-positive-impact-for-watermelon-industry-with-191-roi/>. Armada Corporate Intelligence's 2021 econometric analysis is aligned with prior economic studies developed for the Board, including Dr. Harry Kaiser of Cornell University's 2017 analysis¹.

With the proposed increase assessment, the financial commitment of the US watermelon industry for research and promotion activity would increase approximately 50% in current dollars. For example, if we apply the proposed assessment increase to 2023, in which collections totaled \$3,442,105, the increase in assessments collected would have been approximately \$1,721,053. The Board plans to use the additional funds

¹ <https://www.watermelon.org/wp-content/uploads/2020/01/Econometric-Evaluation.pdf>.

to expand promotion and research activities, maintain operating reserves, and to address inflation's impact on buying power.

The Board estimates the proposed nine cents per hundredweight adjustment to the assessment rate would increase the cost to watermelon producers and handlers from \$12 per truckload of watermelons to \$18 per truckload of watermelons each. Similarly, the adjusted assessment rate will increase the cost to watermelon importers from \$24 a truckload to \$36 a truckload. This is based on a 40,000-pound net weight of watermelons per truckload.

Prior to its recommendation to increase the assessment rate, the Board considered three alternative options. First, the Board considered maintaining the current assessment rate of six cents per hundredweight. However, with no increase to the assessment rate, the Board determined many research and promotion programs would be reduced or eliminated to balance the budget. Consequently, the alternative of maintaining the current assessment rate was rejected.

The second alternative considered by the Board was a two-cent increase to the assessment rate, raising the assessment rate from six cents per hundredweight to eight cents per hundredweight. This would allow the Board to operate with a balanced budget beginning in 2025, in addition to increasing investment in Board promotions. However, the Board decided against supporting a two-cent increase as inflationary pressure may further limit operations of the Board in coming years.

The third alternative considered by the Board was a tiered increase of the assessment rate with a two-cent increase effective on January 1, 2025, for a rate of eight cents per hundredweight, and an additional one-cent increase effective on January 1, 2026, for a rate of nine cents per hundredweight. This option to spread the assessment increase over a prolonged period was considered, but the Board ultimately decided

against this alternative to avoid confusion with concurrent annual assessment adjustments.

This proposed rulemaking would also include administrative changes to § 1210.515(b) of the Plan to correct non-substantive and typographical errors. These administrative changes would have no impact on the assessment rate.

This proposed rulemaking would not impose additional recordkeeping requirements on first handlers, producers, or importers of watermelons. Producers of fewer than 10 acres of watermelon and importers of less than 150,000 pounds of watermelon annually are exempt. There are no Federal rules that duplicate, overlap, or conflict with this proposed rulemaking. In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35], the information collection and recordkeeping requirements that are imposed by the Plan have been approved previously under OMB control number 0581-0093. This proposed rulemaking would not result in a change to the information collection and recordkeeping requirements previously approved.

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

AMS has determined this proposed rulemaking is consistent with the Act and would effectuate its purposes.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rulemaking by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Agricultural research, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelons.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 1210 as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901-4916 and 7 U.S.C. 7401.

2. Amend § 1210.515 by revising paragraphs (a) and (b) to read as follows:

§ 1210.515 Levy of assessments.

(a) An assessment of four and a half cents per hundredweight shall be levied on all watermelons produced for ultimate consumption as human food, and an assessment of four and a half cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food. An assessment of nine cents per hundredweight shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry in the United States.

(b) The import assessment shall be uniformly applied to imported watermelons that are identified by the numbers 0807.11.30 and 0807.11.40 in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh watermelons for consumption as human food. The U.S. Customs Service and Border Protection (Customs) will collect assessments on such watermelons at the time of entry and will forward such assessment as per the agreement between Customs and USDA. Any importer or agent who is exempt from payment of assessments may submit to the Board adequate proof of the volume handled by such importer for the exemption to be granted.

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Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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