

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 966

[Doc. No. AMS-SC-23-0063]

Tomatoes Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Florida Tomato Committee (Committee) to increase the assessment rate established for the 2023–2024 and subsequent fiscal periods from \$0.025 to \$0.035 per 25-pound container of tomatoes or equivalent. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by April 8, 2024.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237. Comments can also be sent to the Docket Clerk electronically by Email: *MarketingOrderComment@usda.gov* or via the 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 rule 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:
Steven W. Kauffman, Marketing

Specialist, or Christian D. Nissen, Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Steven.Kauffman@usda.gov* or *Christian.Nissen@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov*.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966, as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida. Part 966 referred to as “the Order” is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of producers of fresh tomatoes operating within the area of production.

The Agricultural Marketing Service (AMS) is issuing this proposed rule 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 action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under 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 rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule has been reviewed under Executive Order 12988—Civil Justice Reform. Under the Order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the proposed assessment rate would be applicable to all assessable tomatoes for the 2023–2024 fiscal period, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the U.S. Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate for Florida tomatoes handled under the Order from \$0.025 per 25-pound container or equivalent, the rate that was established for the 2017–2018 and subsequent fiscal periods, to \$0.035 per 25-pound container or equivalent for the 2023–2024 and subsequent fiscal periods.

Sections 966.41 and 966.42 authorize the Committee, with the approval of

AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2017–2018 and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of \$0.025 per 25-pound container or equivalent of Florida tomatoes within the production area. That rate continues in effect from fiscal period to fiscal period until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on September 20, 2023, and unanimously recommended 2023–2024 fiscal period expenditures of \$1,155,764 and an assessment rate of \$0.035 per 25-pound container or equivalent of Florida tomatoes handled for the 2023–2024 and subsequent fiscal periods. In comparison, last fiscal period's budgeted expenditures were \$1,156,773. The proposed assessment rate of \$0.035 per 25-pound container or equivalent is \$0.01 higher than the rate currently in effect. The Committee has used financial reserves in previous seasons to help pay for budgeted expenses. Increasing the assessment rate would allow the Committee to replenish and maintain their financial reserves at the desired level of \$250,000. The Committee projects handler receipts of approximately 22,000,000 25-pound containers or equivalent of assessable Florida tomatoes for the 2023–2024 fiscal period, an increase from the 21,815,350 containers handled for the 2022–2023 fiscal period.

The major expenditures recommended by the Committee for the 2023–2024 fiscal period include \$350,000 for research; \$340,000 for education and promotions; and \$277,393 for management and staff. By comparison, budgeted expenses for these items during the 2022–2023 fiscal period were \$350,000; \$330,000; and \$274,105, respectively.

At the current assessment rate of \$0.025, the expected 22,000,000 25-pound containers or equivalent of assessable Florida tomatoes would generate \$550,000 in assessment revenue (22,000,000 multiplied by \$0.025 assessment rate). By increasing the assessment rate by \$0.01 to \$0.035,

assessment income would generate \$770,000 in assessment revenue (22,000,000 multiplied by \$0.035 assessment rate) for the 2023–2024 fiscal period. This amount should be appropriate to ensure the Committee has sufficient revenue, along with an anticipated \$265,501 in funds awarded through the Foreign Agricultural Service Market Access Program and \$129,071 in other income, to fully fund its recommended 2023–2024 fiscal period budgeted expenditures, while maintaining financial reserves at around \$250,000.

The Committee derived the recommended assessment rate by considering anticipated fiscal period expenses, expected shipments of Florida tomatoes, anticipated grant funds, and the amount of funds available in financial reserve. Income derived from handler assessments (\$770,000), Foreign Agricultural Service Market Access Program grants (\$265,501), and other sources including administrative and interest income (\$129,071), would be adequate to cover budgeted expenses (\$1,155,764). Funds available in the financial reserve (currently about \$241,000) would be kept within the maximum permitted by the Order (approximately one fiscal period's expenses as authorized in § 966.44).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information. Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2023–2024 fiscal period budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed

rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 38 handlers of Florida tomatoes subject to regulation under the Order and approximately 50 producers of Florida tomatoes in the production area. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural producers of noncitrus fruit as those having annual receipts of less than \$3,500,000 (NAICS code 111339, Other Non-citrus Fruit Farming), and small agricultural service firms as those whose annual receipts are less than \$34,000,000 (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

According to data from the AMS Market News Tomato Fax Report, the average price for fresh Florida tomatoes for the 2022–2023 season was approximately \$21.94 per 25-pound carton, with total shipments of around 21,815,350 cartons. Based on the average terminal market price and shipment information, the number of handlers, and assuming a normal distribution, the majority of tomato handlers have estimated average annual receipts of significantly less than \$34,000,000 (\$21.94 multiplied by 21,815,350 cartons equals \$478,628,779, divided by 38 handlers equals \$12,595,494 per handler).

In addition, based on data from the National Agricultural Statistics Service (NASS), the average price producers received for fresh Florida tomatoes at the point of first sale during the 2022–2023 season was approximately \$11.08 per 25-pound carton, with total shipments of around 21,815,350 cartons. Using the average price producers received and shipment information, the number of producers, and assuming a normal distribution, the majority of producers have estimated average annual receipts greater than \$3.5 million (\$11.08 multiplied by 21,815,350 cartons equals \$241,714,078, divided by 50 producers equals \$4,834,282 per producer). Thus, a majority of producers of Florida tomatoes may be classified as large entities, while a majority of handlers may be classified as small entities.

This proposal would increase the assessment rate collected from handlers for the 2023–2024 and subsequent fiscal periods from \$0.025 to \$0.035 per 25-pound container or equivalent of Florida tomatoes. The Committee unanimously recommended 2023–2024 fiscal period expenditures of \$1,155,764 and an assessment rate of \$0.035 per 25-pound container or equivalent of Florida tomatoes. The proposed assessment rate of \$0.035 is \$0.01 higher than the current rate. The Committee expects industry to handle 22,000,000 25-pound containers or equivalent of Florida tomatoes during the 2023–2024 fiscal period. Thus, the \$0.035 rate per 25-pound container or equivalent should provide \$770,000 in assessment income (22,000,000 containers multiplied by \$0.035). The Committee expects to use an anticipated \$265,501 in funds awarded through the Foreign Agricultural Service Market Access Program and \$129,071 in other sources to cover remaining expenses. Income derived from handler assessments, Foreign Agricultural Service Market Access Program grants, and other sources including member fees and interest income, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2023–2024 fiscal period include \$350,000 for research; \$340,000 for education and promotions; and \$277,393 for management and staff. By comparison, budgeted expenses for these items during the 2022–2023 fiscal period were \$350,000; \$330,000; and \$274,105, respectively.

The Committee recommended increasing the assessment rate after drawing down financial reserves in previous seasons. The Committee desires to maintain a financial reserve of around \$250,000, and without increasing the assessment rate, the Committee would not be able to maintain financial reserves at this level. The Committee estimates production for the 2023–2024 fiscal period to be 22,000,000 25-pound containers or equivalent of Florida tomatoes. At the current assessment rate, assessment income would equal \$550,000 (22,000,000 containers multiplied by \$0.025). By increasing the assessment rate by \$0.01, assessment income would be \$770,000 (22,000,000 containers multiplied by \$0.035). This amount, along with Foreign Agricultural Service Market Access Program grants, and other income, should provide sufficient funds to meet anticipated 2023–2024 fiscal period expenses, while

maintaining financial reserves at around \$250,000.

Prior to arriving at this budget and assessment rate, the Committee considered maintaining the current assessment rate of \$0.025. However, the Committee would need to further draw down reserves to meet its expenses. The Committee members did not want to utilize additional funds from reserves to meet 2023–2024 fiscal period expenses. Consequently, the alternative of maintaining the current assessment rate was rejected.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates the average grower price for the 2023–2024 season should be approximately \$11.00 per 25-pound container of tomatoes or equivalent. Therefore, the estimated assessment revenue for the 2023–2024 crop year as a percentage of total grower revenue would be about 0.32 percent (\$0.035 divided by \$11.00 multiplied by 100).

This proposed action would increase the assessment obligation imposed on Florida tomato handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operations of the Order.

The Committee's meetings are widely publicized throughout the Florida tomato industry and all interested persons are invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 20, 2023, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce

information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, USDA has determined that this proposed rule is consistent with and would effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to comment on this proposed rule. All written comments timely received will be considered before a final determination is made on this proposed rule.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 966 as follows:

PART 966—TOMATOES GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 966.234 is revised to read as follows:

§ 966.234 Assessment rate.

On and after August 1, 2023, an assessment rate of \$0.035 per 25-pound container or equivalent is established for Florida tomatoes.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024-04788 Filed 3-6-24; 8:45 am]

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