

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 1210**

[FV-00-703 FR]

Watermelon Research and Promotion Plan; Redistricting and Adding Two Importer Members to the National Watermelon Promotion Board**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: This final rule changes the boundaries of all seven districts under the Watermelon Research and Promotion Plan (Plan) to apportion producer and handler membership on the National Watermelon Promotion Board (Board). This will make all districts equal according to the assessments collected in each district. Pursuant to the provisions of the Plan and regulations, this rule will also add two importer members to the Board to ensure that representation of importers is proportionate to the percentage of assessments importers pay to the Board. 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.

EFFECTIVE DATE: April 5, 2001.

FOR FURTHER INFORMATION CONTACT: Kathie Birdsell, Research and Promotion Branch, FV, AMS, USDA, Room 2535-S, Stop 0244, Washington, DC 20250-0244; telephone (202) 720-6930 or (888) 720-9917 (toll free); e-mail to kathie.birdsell@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Watermelon Research and Promotion Plan (Plan) (7 CFR part 1210). The Plan is authorized under the Watermelon Research and Promotion Act (Act) (7 U.S.C. 4901-4916). Prior document in this proceeding: A proposed rule published in the October 16, 2000, issue of the *Federal Register* (65 FR 61122).

Question and Answer Overview*Why is this action being taken?*

Section 1210.320 (d) of the Plan requires the National Watermelon Promotion Board (Board) to review the alignment of the seven districts and importer representation every five years. The Board conducted a review in 1999 and made recommendations to the U.S. Department of Agriculture (USDA). USDA published those

recommendations as a proposed rule in the October 16, 2000, issue of the *Federal Register*. No comments were received on the proposed rule. Therefore, this rule implements the Board's recommendations.

What is the size and composition of the Board?

The Plan divides the United States into seven districts of comparable watermelon production. Each district is allocated two producer members and two handler members. The Plan also requires the number of importer members on the Board to be proportionate to the percentage of assessments paid by importers. In addition, one public member should serve on the Board. The Board currently has 33 members: 14 producers, 14 handlers, 4 importers, and 1 public member. However, two importer positions and the public member position are currently vacant.

What data was used by the Board to conduct the review?

The Board is required to base its recommendations on the most recent three years of USDA production reports or Board assessment reports. In this instance, the Board used assessment reports for 1996, 1997, and 1998 because USDA production reports were available for only 16 of the 35 states in which watermelons are produced.

What was the outcome of the 1999 redistricting review?

The 1999 review indicated that the boundaries of the districts needed to be adjusted in order for there to be an equal amount of assessments paid by the producers and handlers in the districts and that two additional importers needed to be added to the Board.

How will this action change the size and composition of the Board?

The number of producer and handler members will not be changed. However, the number of importer positions on the Board will be increased from four to six.

Will this action affect the current assessment rates paid by importers? By producers and handlers?

This action will not have any impact on the assessment rates paid by producers, handlers, and importers.

Executive Orders 12886 and 12988

This rule has been determined "not significant" for purposes of Executive Order (E.O.) 2866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

In addition, this rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act allows producers, producer-packers, handlers, and importers (if covered by the program) 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.

Regulatory Flexibility Act and Paperwork Reduction Act*Final Regulatory Flexibility Analysis.*

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), AMS has examined the economic impact of this rule on the small producers, handlers, and importers that will be affected by this rule.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$500,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than \$5 million. Under these definitions, the majority of the producers, handlers, and importers that would be affected by this rule would be considered small entities. 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 2,219 non-exempt producers, 619 handlers, and 278 importers who are eligible to serve on the Board.

The Plan requires producers to be nominated by producers, handlers to be nominated by handlers, and importers to be nominated by importers. This will not change. Because some current

members are in states or counties which will be moved to other districts under this rule, at least one producer member vacancy in Districts 1, 6, and 7 and one handler member vacancy in District 6 will be created. Nomination meetings will need to be held in the new districts to fill these vacancies.

The overall impact will be favorable for producers and handlers because the new district boundaries will provide more equitable representation for the producers and handlers who pay assessments in the various districts. For importers, too, the overall impact will be favorable because they will be provided two additional seats on the Board and more equitable representation on the Board.

The Board considered several alignments of the districts in an effort to provide balanced representation for each district. The Board selected the alignment described in this rule as it will provide proportional representation on the Board of producers, handlers, and importers.

The addition of two importer seats on the Board will mean four additional nominees. This is because two nominees must be submitted for each position. The estimated additional annual cost of providing nomination information by four persons eligible to be nominated to serve as importer members on the Board will be \$6.00 or \$1.50 per importer. The increase of .06 hours has been added to the burden previously approved under OMB No. 0505-0001.

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

Paperwork Reduction Act. This rule will increase the information collection burden previously approved by OMB for the Board nominee background information form under OMB Number 0505-0001. This is because there will be two additional importers on the Board. Since two nominees must be submitted to the Secretary for each position, there is the potential for four additional background forms to be submitted under this final rule. As required by OMB regulations (5 CFR part 1320), the revised burden, as described below, has been submitted to OMB.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0505-0001.

Expiration Date of Approval: July 31, 2001.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are

essential to carry out the intent of the Act. The increase in burden associated with the background form is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.50 hours per response.

Respondents: Importers.

Estimated Number of Respondents: 4.

Estimated Number of Responses per Respondent: 1 every 3 years (0.3).

Estimated Total Annual Burden on Respondents: 0.6 hours.

The estimated additional annual cost of providing nomination information by four persons eligible to be nominated to serve as importer members on the Board is \$6.00 or \$1.50 per importer. The increase of .06 hours has been added to the burden previously approved under OMB No. 0505-0001.

Background

Under the Plan, the Board administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the watermelon's position in the market place and to establish, maintain, and expand markets for watermelons. This program is financed by assessments on producers growing 10 acres or more of watermelons, handlers of watermelons, and importers of 150,000 pounds of watermelons or more per year. 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.

Domestic membership on the Board is determined on the basis of two producers and two handlers for each of the seven districts established by the Plan. The Board should also include at least one representative of importers and one public member. There are currently four importer positions on the Board.

The current U.S. districts were established in 1994. They are:

District 1—South Florida, including all south areas of State Highway 50.

District 2—North Florida, including all north areas of State Highway 50.

District 3—Alabama, Georgia, and Mississippi.

District 4—Connecticut, Delaware, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South

Carolina, Vermont, Virginia, Washington, D.C., and West Virginia.

District 5—Alaska, Arkansas, Colorado, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Tennessee, and Wisconsin.

District 6—Arkansas, Louisiana, and Texas.

District 7—Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

The Plan provides that two years after its effective date (June 8, 1989), and at least every five years thereafter, the Board should review the districts to determine whether realignment of the districts is necessary.

When making a review, the Plan specifies that the Board should consider factors such as the most recent three years of USDA production reports or Board assessment reports if USDA production reports are unavailable, shifts and trends in quantities of watermelons produced, and any other relevant factors. In reviewing importer representation, the Board should review a three-year average of watermelon import assessments.

The Plan further specifies that, as a result of a review, the Board may recommend realignment of the districts and a change in the number of importer members subject to the approval of the Secretary. Any realignment should be recommended by the Board at least six months prior to the date of the call for nominations and should become effective at least 30 days prior to this date.

On November 8, 1999, the Board appointed a subcommittee to begin reviewing the U.S. districts and to determine whether realignment was necessary based on production and assessment collections in the current districts. During the review, as prescribed by the Plan, the subcommittee reviewed USDA's Annual Crop Summary reports for 1996 through 1998, which provide figures for the top 16 watermelon producing states, and the Board's assessment collection records for 1996 through 1998, including assessments collected at the county level for California and Florida.

The subcommittee recommended to the Board that the boundaries of Districts 3 through 7 be changed and that Districts 1 and 2 be defined by Florida counties, rather than using Route 50 as the boundary line.

The subcommittee also determined that assessments on imports represented 20 percent of the Board's assessment income during 1996-1998. The Plan

requires that importers have proportionate representation on the Board. Therefore, importers should have 20 percent of the seats on the Board. Currently, the four importer positions represent only 12.5 percent of the 32 industry seats on the Board. Adding two more importer member positions will give importers approximately 20 percent of the seats on the Board. Because the Plan and regulations are self-executing in this regard, no change to the regulations is needed.

Subsequently, the realignment was approved by Board at its February 15–16, 2000, meeting, with slight modification. Under the realignment, each district will represent, on average, 14 percent of total U.S. production.

Therefore, this final rule will realign the districts as follows:

District 1—The Florida counties of Brevard, Broward, Collier, Dade, Glades, Hardee, Hendry, Highlands, Indian River, Lee, Martin, Monroe, Okeechobee, Osceola, Palm Beach, Polk, and St. Lucie.

District 2—The Florida counties of Alachula, Baker, Bay, Bradford, Calhoun, Charlotte, Citrus, Clay, Columbia, Desoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Manatee, Marion, Nassau, Okaloosa, Orange, Pasco, Pinnellas, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.

District 3—Alabama, Arkansas, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee.

District 4—Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, D.C., West Virginia, and Wisconsin.

District 5—Alaska, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming and the California counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus,

Sutter, Tehama, Trinity, Tulare, Toulumne, Venture, Yolo, and Yuba.

District 6—Texas.

District 7—Arizona, New Mexico, and the California counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and San Diego.

With these district boundaries: (1) South Carolina and Tennessee will be moved from District 4 to District 3; (2) Arkansas and Louisiana will be moved from District 6 to District 3; (3) Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin will be moved from District 5 to District 4; (4) four California counties will be moved from District 7 to District 5; and (5) only Texas will remain in District 6.

This will create one producer vacancy in Districts 1, 6, and 7 and one handler in District 6. Current Board members will be affected because their states or counties will be moved to other districts. Nomination meetings will be held in the new districts to fill the vacancies.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

For the reasons set forth in the preamble, Part 1210, Chapter XI of Title 7 is amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR Part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

2. Section 1210.501 is revised to read as follows:

§ 1210.501 Realignment of districts.

Pursuant to § 1210.320(c) of the Plan, the districts shall be as follows:

District 1—The Florida counties of Brevard, Broward, Collier, Dade, Glades, Hardee, Hendry, Highlands, Indian River, Lee, Martin, Monroe, Okeechobee, Osceola, Palm Beach, Polk, and St. Lucie.

District 2—The Florida counties of Alachula, Baker, Bay, Bradford, Calhoun, Charlotte, Citrus, Clay, Columbia, Desoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Manatee, Marion, Nassau, Okaloosa, Orange, Pasco, Pinnellas, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee,

Taylor, Union, Volusia, Wakulla, Walton, and Washington.

District 3—Alabama, Arkansas, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee.

District 4—Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, D.C., West Virginia, and Wisconsin.

District 5—Alaska, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming, and the California counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Toulumne, Venture, Yolo, and Yuba.

District 6—Texas.

District 7—Arizona, New Mexico, and the California counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino and San Diego.

Dated: March 1, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AG22

Grazing Payments for 2001 Wheat, Barley, or Oats

AGENCY: Commodity Credit Corporation; USDA.

ACTION: Final rule.

SUMMARY: This rule implements provisions of the Agricultural Risk Protection Act of 2000 (ARPA) related to grazing payments in lieu of loan deficiency payments (LDP's), for the 2001 crop year only, to include producers who elect to use acreage planted to wheat, barley, or oats for the grazing by livestock and forgo any other harvesting of such acreage.