

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

[FV-01-702 PR2]

**Watermelon Research and Promotion Plan; Amendment To Cover all Handlers and Referendum Order****AGENCY:** Agricultural Marketing Service, Agriculture.**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the Watermelon Research and Promotion Plan (Plan) and the regulations issued under the Plan to cover all handlers of watermelons—including wholesalers, persons who arrange the sale or transfer of watermelons, and fresh-cut processors in addition to the first handlers who are currently covered. Under this rule, all handlers would pay assessments and file reports on all watermelons they handle, including any watermelons handled domestically after their importation. All handlers would also be eligible to seek nomination to the National Watermelon Promotion Board and vote in referenda. The amendment would increase assessment income under the watermelon program. In order to become effective, the amendment must be approved by a majority of the eligible watermelon producers, handlers, and importers voting in a referendum.

**DATES:** The voting period for the referendum will be from December 3, 2001 through January 11, 2002. If the following persons produced, handled, or imported watermelons in calendar year 2000, they may vote in the referendum: Current producers of 10 or more acres of watermelons; watermelon handlers (including first handlers, wholesalers, fresh-cut processors, and anyone who arranges the sale or transfer of watermelons); watermelon importers of 150,000 or more pounds of watermelons annually; and watermelon importers who import less than 150,000 pounds of watermelons annually and did not apply for and receive reimbursement of assessments.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Manzoni, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250-0244; telephone (202) 720-9915; facsimile (202) 205-2800; or e-mail daniel.manzoni@usda.gov.

**SUPPLEMENTARY INFORMATION:** *Prior documents.* USDA published a proposed rule on amending the Plan in the **Federal Register** on April 30, 2001 [66 FR 21602] with a 60-day comment period. On the same date, USDA published proposed referendum procedures in the **Federal Register** [66 FR 21596] with a 60-day comment period.

The National Watermelon Promotion Board (Board) administers the Watermelon Research and Promotion Plan [7 CFR part 1210] under the supervision of the U.S. Department of Agriculture (USDA or the Department). The Plan was implemented in June 1989 under the Watermelon Research and Promotion Act (Act), as amended [Pub. L. 99-198; enacted January 1, 1986; 7 U.S.C. 4901-4916].

Under the Plan, the National Watermelon Promotion Board (Board) conducts promotion, consumer information, industry information, and research programs. To fund these activities, producers and handlers pay 2 cents per hundredweight (cwt.) on the domestic watermelons that they produce or handle, respectively, and importers pay 4 cents per cwt. on the foreign watermelons they import into the United States. Handlers collect the assessments from producers of 10 or more acres of watermelons and send the producer assessment to the Board along with their handler assessments. The assessments on imported watermelons are collected by the U.S. Customs Service (Customs) at the time the watermelons enter the United States. Customs remits the assessments to the Board. Importers of less than 150,000 pounds of watermelons annually may request the Board to reimburse them for the assessments collected by Customs and remitted to the Board.

**Question and Answer Overview***Why Should all Handlers of Watermelons pay Assessments Under the Plan?*

Between the farm and retail markets, watermelons are handled several times. The Plan currently only covers first handlers of watermelons—those who first put watermelons into the marketing chain. However, wholesalers, fresh-cut processors, and other persons who arrange the sale or transfer of watermelons perform similar functions and benefit from the Board's promotion of watermelons. Therefore, the Board recommended that these additional handlers also be covered by the Plan. Including all handlers would simplify the assessment process because all—not

just some—handlers would be required to pay assessments.

*What Would Be the Overall Impact of This Rule?*

Currently, there are approximately 619 first handlers required to pay assessments to the Board on the domestic watermelons they handle. If this amendment is approved, first handlers would be required to pay assessments on all watermelons they handle, including any watermelons handled domestically after their importation.

Also, an additional estimated 550 handlers—wholesalers, fresh-cut processors, and persons who arrange the sale or transfer of watermelons (such as brokers)—would be required to pay assessments for the first time. The additional handlers would not include retailers, wholesale retailers, foodservice distributors, or foodservice operators. The additional estimated 550 handlers would be expected to pay an assessment to the Board of 2 cents per cwt. on the watermelons they handle, including any watermelons handled domestically after their importation into the United States. The assessment would be due not later than 30 days after the end of the month in which the watermelons were handled. These handlers would also be required to submit to the Board with their assessments a report containing their name, address, and telephone number, the period covered by the report, and the total quantity of watermelons handled during the reporting period. If assessments are not paid on time, late payment charges and interest would be applied to the amount due, and they might be subject to civil penalties.

These handlers would be eligible to be nominated and to serve as a handler member of the Board for the district in which they reside. This provides the opportunity to participate in the development and implementation of marketing and research projects which can impact all aspects of the industry, from field to store. These handlers would also be eligible to vote in referenda relating to the Plan—including the referendum on this amendment.

*How Will This Change Affect Board Operations?*

The main impact on the Board would be the availability of an additional estimated \$900,000 in assessment income which would be used to benefit the watermelon industry as a whole through more marketing, public relations, education, and research activities, with specific emphasis on

post harvest research and category management. This has the potential to increase demand for watermelons.

*Why Is There Going to Be a National Referendum on the Amendment?*

The Act requires USDA to conduct a referendum on amendments to the Plan. Conducting a referendum allows the persons affected or potentially affected by the amendments the opportunity to vote on whether it should be adopted.

*When Will the Vote Be Taken?*

The voting period will be from December 3, 2001 through January 11, 2002.

*How Can I Vote in the Referendum?*

Voting will take place by mail. All known eligible producers, handlers, and importers will receive a ballot and voting instructions in the mail from USDA. Producers, handlers, and importers who believe they are eligible to vote and who do not receive a ballot in the mail may request a ballot by calling a toll-free telephone number. The ballot must be received by USDA by close of business on January 11, 2002.

*What Criteria Will USDA Use To Decide Whether the Industry Wants the Amendment or not?*

The amendment must be approved by a simple majority of the voters in the referendum.

*If the Watermelon Industry Approves This Amendment, When Will it Become Effective?*

The amendment would likely become effective for the 2002 marketing year which begins on April 1, 2002.

**Executive Orders 12866 and 12988**

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Section 1645 of the Act allows producers, handlers, and importers of watermelons who are subject to the Plan 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 in accordance with law. In the 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 decision, 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**

*Initial Regulatory Flexibility Analysis.* In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) is required to examine the impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

In 13 CFR 121.201, the Small Business Administration defines small agricultural service firms (handlers and importers) as those having annual receipts of less than \$5 million and small agricultural producers as those having annual receipts of not more than \$750,000.

Currently, there are approximately 2,220 producers of 10 or more acres of watermelons, 620 handlers, and 280 importers of more than 150,000 pounds of watermelons annually. If this rule is implemented, there would be an additional 550 handlers subject to the Plan: 480 wholesalers and persons who arrange the sale or transfer of watermelons and 70 fresh-cut processors. A majority of the producers, handlers, and importers may be classified as small entities.

This proposed rule would amend the Plan to cover all handlers of watermelons. If it is adopted, wholesalers, persons who arrange the sale or transfer of watermelons, and fresh-cut processors of watermelons—in addition to first handlers—would pay an assessment of 2 cents per cwt. on all watermelons they handle (including any watermelons handled domestically after their importation), file reports with the Board, keep records on their handling transactions, and be subject to penalties for noncompliance with the Plan. These additional handlers will also be eligible to be nominated to serve as handler members on the Board and to vote in referenda.

The watermelon industry as a whole could benefit from this rule. Covering all handlers under the Plan would simplify the assessment process and provide more income to the Board. The assessment process would be simplified because all handlers would be treated equally. No longer would the first handler be the only person paying the handler assessment. Covering all handlers is more workable in an actual business setting. Also, an additional estimated 550 handlers paying assessments is likely to increase the income of the Board from \$1.3 million to \$2.2 million annually. As a result, there would be more funds available to the Board to increase the demand for watermelons, which would benefit producers, handlers, and importers alike, without increasing the rate of assessment.

The Board would use the estimated \$900,000 in assessment income to benefit the watermelon industry as a whole through more marketing, public relations, education, and research activities, with specific emphasis on post harvest research and category management.

Category management is a new system used by major supermarket chains to manage supplies of the various products they sell. Each section of a supermarket is considered a category, and some sections—such as the produce section—contain several categories. With category management, the supermarket chains are less flexible in how much of a given product they want within a given time frame. In order to maintain or increase market share, the suppliers to the retail chains need to develop their own category management plans. It is much more difficult for producers and suppliers of perishable items to fit into this system than producers and suppliers of non-perishable goods. This means that an effective category management program may be essential for a perishable agricultural commodity group. However, developing an effective category management program is expensive. The Board began developing its category management program in 2000. The Board's goal is to position watermelons as the leader in the melon category of the produce section. In order to maintain its category management program, the Board needs to purchase additional sales data and conduct additional consumer research. An effective category management plan has the potential to increase demand for watermelons. This would benefit producers, handlers, and importers.

The Board considered raising the assessment rate for producers, handlers, and importers by 50 percent in order to

generate additional funds to grow demand for watermelons. However, watermelon producers are not in the position to increase their burden under the program, given the state of the industry. Therefore, this alternative was not considered viable. In the watermelon industry, just as in other fruit and vegetable industries, there are handlers that cover the assessment cost as a business expense, handlers that pass the cost back to producers, and handlers that pass the cost along to retailers and, hence, consumers. Therefore, it is likely that some of the additional assessments collected from the newly covered handlers would be passed back to first handlers, who may pass it back to producers. However, it is not anticipated that this will represent a majority of the additional assessments that would be collected. Any increased cost for producers is expected to be less than an overall increase in the producer assessment. In addition, any increased cost for producers or handlers is likely to be offset by the benefit of increased demand for watermelons.

The information collection requirements contained in this proposed rule are designed to minimize the burden on handlers covered by the watermelon research and promotion program. The estimated additional annual cost of providing the information by an estimated 550 new handlers would be \$2,750 or \$5 per new handler as discussed below.

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

AMS has performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. In order to have additional data that may be helpful in evaluating the effects of this rule on small entities, we invited comments concerning its potential effects. However, no comments were received on this aspect of the April 30, 2001, proposed rule.

*Paperwork Reduction Act.* 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 would be imposed by this rule were submitted to OMB and approved by OMB under OMB Number 0581-0093.

This proposed rule would add an information collection burden on the additional 550 handlers who would be subject to the Plan. The information collection burden includes filing reports and maintaining books and records

under the Plan. Handlers are required to maintain such records for two fiscal years beyond the fiscal period of their applicability. The additional handlers would also be eligible to vote in referenda under the Plan, but the voting burden is associated with the ballot which is included in the final referendum procedures which are being published separately in this issue of the **Federal Register**.

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

*OMB Number:* 0581-0093.

*Expiration Date of Approval:* July 31, 2004.

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

*Abstract:* The information collection requirements in this rule are essential to carry out the intent of the Act.

The increase in burden associated with this rule is as follows:

1. Handler's Report.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .75 hours per response.

*New Respondents:* Handlers.

*Estimated Number of New Respondents:* 550.

*Estimated Number of Responses per New Respondent:* 4 times a year.

*Estimated Total Annual Burden on New Respondents:* 1,650 hours.

2. A Requirement To Maintain Records Sufficient To Verify Reports Submitted Under the Plan.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .50 hours per response.

*New Respondents:* Handlers.

*Estimated Number of New Respondents:* 550.

*Estimated Total Annual Burden on New Respondents:* 275 hours.

The estimated additional annual cost of providing the information by an estimated 550 new handlers would be \$2,750 or \$5 per new handler. The increase of 275 total burden hours has been added to the previous burden total of 314.5 hours under OMB No. 0581-0093.

In the proposed rule published on April 30, 2001, comments were invited on:

(a) Whether the proposed additional collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed increase in the collection of information, including the validity of

the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

One comment was received by the June 29, 2001, deadline. The commenter asserted that the estimate of the burden associated with the handler's report (0.75 hours) and recordkeeping (0.5 hours) was overstated. AMS believes that the burden estimate is accurate, and, therefore, no changes are made in response to this comment.

### Background

The National Watermelon Promotion Board (Board) has recommended that the Watermelon Research and Promotion Plan (Plan) be amended to include all handlers of domestic watermelons due to an increased need to promote watermelons. In 1999, domestic production of watermelons totaled 4.1 billion pounds. This was a 12-percent increase over 1998. At the same time, the season average price of watermelons fell from \$7.71 per hundredweight (cwt.) in 1998 to \$6.49 per cwt. in 1999. This indicates that additional promotion of watermelons is needed.

The proposed amendment would increase the Board's assessment income by approximately \$900,000 to approximately \$2.2 million annually. It would also streamline the assessment payment and collection processes because all handlers would be covered—not just the first handler—because they perform similar functions in the marketing chain.

Section 1210.305 of the Plan currently defines a handler as any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. This means the first person who performs the handling function. Under § 1210.307 of the Plan, to handle means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause watermelons to which one has title or possession to be placed in the current of commerce. The handling function does not include the transportation or delivery of field run watermelons by a producer to a handler for grading, sizing, or processing.

Currently, 691 first handlers pay an assessment of 4 cents per cwt. on the watermelons that they handle, file

reports with the Board for the months in which they handle watermelons, and maintain records of their handling transactions for a period of two years after the year in which they occurred. In 1999, the average handler assessment was \$1,640.

Assessment payments and a report must be postmarked not later than 30 days after the end of the month in which the watermelons are handled. If a handler does not remit the assessments to the Board on time, the Board imposes a one-time late payment charge of 10 percent. In addition, handlers are charged 1.5 percent per month interest on the outstanding balance. The failure to pay assessments is considered a violation of the Act and the Plan. If a handler does not pay the assessments which are due, the Board may audit the handler's records and request USDA to take legal action against the handler. If USDA takes legal action, the handler may be subject to civil penalties from \$550 to \$5,500 per violation.

The Board has identified additional estimated 550 handlers who would be required to pay the same assessment, file the same reports, and maintain the same records as first handlers on all they handle, including any watermelons handled domestically after their importation, if this amendment is adopted. The additional handlers are wholesalers, fresh-cut processors, and other persons who arrange the sale or transfer of watermelons. These handlers would also be subject to the same penalties for non-payment of assessments.

The additional handlers would also be eligible to serve as handler members on the Board and vote in referenda. Serving on the Board provides the opportunity to participate in the development and implementation of marketing and research projects which can impact all aspects of the industry, from the field to the consumer's table. Voting in referenda provides the right to vote on changes in the program—including the current proposed amendment—and on whether the program should continue or be terminated.

To include all handlers under the Plan, this proposed rule would revise § 1210.305 by eliminating the reference to the first person who performs the handling function and by adding a statement that handler does not mean a retailer, wholesale retailer, foodservice distributor, or foodservice operator.

In addition, this rule would amend §§ 1210.308 and 1210.341(a) of the Plan, §§ 1210.402(b) and 1210.404(d) of the nominating procedures issued under the

Plan, and §§ 1210.515(a) and 1210.518(a) and (b) of the rules and regulations issued under the Plan in order to remove references to first handlers. It is also necessary to amend §§ 1210.341(c) and 1210.350(a) of the Plan to clarify the assessment and reporting requirements for all handlers. Since § 1210.517 (which concerns determining first handlers) would no longer be necessary if all handlers are covered by the Plan, that section would be removed and reserved. In addition, this rule would add a new § 1210.518(b)(3) to state that the handling party is responsible for the payment of assessments on any handling of watermelons.

This rule would also redesignate §§ 1210.301 through 1210.314 of the Plan as necessary to arrange the definitions in alphabetical order.

A final rule establishing procedures for the referendum on these amendments to the Plan and for future referenda is published separately in this issue of the **Federal Register**.

The final rule on referendum procedures also adds letter designations to the various subparts of the watermelon research and promotion program as follows: the Plan [§§ 1210.301 through 1210.367] will become Subpart A; the Procedures for Nominating Members to the National Watermelon Promotion Board [§§ 1210.400 through 1210.405] will become Subpart B; the Rules and Regulations [§§ 1210.500 through 1210.540] will become Subpart C; and the Referendum Procedures [§§ 1210.600 through 1210.607] will become Subpart D.

The Act requires a referendum for all amendments to the Plan (Subpart A) except a change in the rate of assessment, which may be made after notice-and-comment rulemaking. The Act does not require a referendum for changes to Subparts B, C, and D. Therefore, the proposed amendments to the Plan which are contained in this rule would be the subject of the upcoming referendum. The proposed amendments to Subpart B (nominating procedures) and Subpart C (rules and regulations) which are contained in this rule can be made without a referendum. However, since they are needed only if the amendments to the Plan are approved in the referendum, they will be adopted only if the amendments to the Plan are approved in the referendum.

USDA published a proposed rule on amending the Plan in the **Federal Register** on April 30, 2001 [66 FR 21602]. Comments on the proposed rule were due on June 29, 2001.

AMS received 23 comments regarding the proposed amendments to the Plan. Of the 23 comments, 15 supported the proposed amendments, and eight comments did not support the proposed amendments.

In summary, the 14 comments supporting the amendments cited what they believed were the benefits of the current program and how the revenue from the proposed amendments would improve it by enhancing the industry's ability to compete in a very competitive global marketplace.

The fifteenth comment that supported the proposed amendments expressed concern regarding Board representation of the additional handlers who would be covered by the program if the amendments are adopted. The commenter is opposed to increasing the size of the Board. As explained in the April 30, 2001, proposed rule, the additional handlers would be eligible to serve in the existing handler positions on the Board. There are two handlers for each of seven districts established under the Plan, and this would not change. Therefore, there would be no increase in the size of the Board.

One commenter opposed the proposed amendments because he believed that he would have to pay an additional 2 cents per cwt. However, the commenter may have misunderstood the proposal. Any current producer-handler would not be considered an additional handler required to pay an additional 2 cents per cwt. if the amendments are adopted. A producer-handler's assessment obligation would remain the same, i.e., to pay the 2 cents per cwt. as a producer and the 2 cents per cwt. as a handler.

Three commenters asserted that the current program is unworkable and does not benefit the watermelon industry. They want the Department to conduct a referendum on whether the current watermelon program should be terminated. The Department would conduct a referendum on the entire program if requested by the Board or by 10 percent of the industry.

Two commenters stated that the watermelon program is working well and does not need to be amended. The Department is conducting public rulemaking and a national referendum to determine the level of industry support for the amendments. Therefore, these comments are denied.

One commenter expressed the opinion that the proposed amendments would not treat wholesalers fairly. However, the purpose of the amendments is to treat all watermelon handlers in the same manner. Currently, only first handlers are assessed under

the program. The proposed amendments would also assess other handlers, such as wholesalers, in the watermelon marketing chain. Therefore, this comment is denied.

The last comment opposed to the amendments stated that the proposed amendments are unfair because a majority of the people who would be affected by the proposed amendments will not have a chance to vote on them and national supermarkets would be exempt. The Department and the Board are compiling a list of the additional handlers who would be covered by the amendments so that they will have the opportunity to vote on whether the amendments become effective. In addition, USDA will have a toll-free telephone number for these handlers to call if they do not receive a ballot so that USDA can provide them with a ballot. Also, national supermarkets would not be covered by the amendment because they are in the retail segment of the marketing chain. The purpose of the proposed amendments is to cover all handlers between the grower and the retail segment. Therefore, this comment is denied.

**Referendum Order**

It is hereby directed that a referendum be conducted among eligible watermelon producers, handlers, and importers to determine whether the Plan and the regulations issued under the Plan should be amended to cover all handlers of watermelons. The amendments to the Plan will be implemented if they are approved by a simple majority of the eligible watermelon producers, handlers, and importers voting in the referendum.

The referendum shall be conducted from December 3, 2001 through January 11, 2002. Ballots will be mailed to all known watermelon producers, handlers and importers on or before November 19, 2001. Eligible voters who do not receive a ballot may call 1-888-720-9917 to request a ballot. All ballots will be subject to verification. Ballots must be received by the referendum agents no later than 4:30 p.m. Eastern Standard Time on January 11, 2002 to be counted.

Daniel R. Manzoni, Margaret B. Irby, and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535-S, Stop 0244, Washington, DC 20250-0244, are designated as the referendum agents of the Secretary of Agriculture to conduct the referendum. Subpart D—Referendum Procedures [7 CFR 1210.600–1210.607], which is being published separately in this issue

of the **Federal Register**, shall be used to conduct the referendum.

**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, it is proposed that Part 1210 of Title 7, Chapter XI of the Code of Federal Regulations, be amended as follows:

**PART 1210—WATERMELON RESEARCH AND PROMOTION**

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

**Authority:** 7 U.S.C. 4901–4916.

2. Redesignate §§ 1210.301 through 1210.314 as follows:

Old section	New section
1210.301 .....	1210.313
1201.302 .....	1210.301
1210.303 .....	1210.308
1210.304 .....	1210.302
1210.305 .....	1210.314
1210.306 .....	1210.309
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1210.312 .....	1210.311
1210.313 .....	1210.312
1210.314 .....	1210.306

3. Revise newly designated § 1210.305 to read as follows:

**§ 1210.305 Handler.**

*Handler* means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. *Handler* shall not mean a retailer, wholesale retailer, foodservice distributor, or foodservice operator.

4. Amend § 1210.341 by revising paragraphs (a) and (c) to read as follows:

**§ 1210.341 Assessments.**

(a) Assessments shall be levied on all watermelons produced and handled in and imported into the United States for consumption as human food. Producers shall be assessed 2 cents per hundredweight on the watermelons that they produce. Handlers shall be assessed 2 cents per hundredweight on all watermelons that they handle, including any watermelons handled after their importation into the United States. If a person performs both a

producing and a handling function on any lot of domestic watermelons, the person shall pay both the producer assessment and the handler assessment on those watermelons. Importers shall be assessed 4 cents per hundredweight on the watermelons they import at the time of entry of the watermelons into the United States.

\* \* \* \* \*

(c) Each handler is responsible for payment of the handler assessment to the Board, and each handler who purchases watermelons from a producer is responsible for the collection and payment to the Board of both the producer assessment and the handler's own assessment. A handler who purchases watermelons from a producer may collect the producer assessment from the producer or deduct the assessment from the proceeds paid to the producer on whose watermelons the assessments are made. A handler who purchases from a producer shall maintain separate records for each producer's watermelons handled, including watermelons produced by the handler. In addition, all handlers shall maintain records that indicate the total quantity of watermelons handled by the handler, including those that are exempt under this Plan, and such other information as may be prescribed by the Board.

\* \* \* \* \*

5. Amend § 1210.350 by revising paragraph (a) introductory text to read as follows:

**§ 1210.350 Reports.**

(a) Handlers shall report to the Board at such times and in such manner as the Board may prescribe by regulations whatever information may be necessary in order for the Board to perform its duties. In addition, each handler who purchases watermelons from a producer shall maintain a record with respect to each producer for whom watermelons were handled and for watermelons produced and handled by the handler. Such reports may include, but shall not be limited to, the following information:

\* \* \* \* \*

6. Amend § 1210.402 by revising paragraph (b) to read as follows:

**§ 1210.402 Voter and board member nominee eligibility.**

\* \* \* \* \*

(b) Any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity which is engaged in the production or handling of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as

provides in § 1210.403 and § 1210.404 of this subpart.

\* \* \* \* \*

7. Amend § 1210.404 by revising paragraph (d) to read as follows:

**§ 1210.404 Importer member nomination and selection.**

\* \* \* \* \*

(d) Any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity which is engaged in the importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in paragraph (e)(1) of this section.

\* \* \* \* \*

8. Amend § 1210.515 by revising paragraph (a) to read as follows:

**§ 1210.515 Levy of assessments.**

(a) An assessment of 2 cents per hundredweight shall be levied on all watermelons produced in the United States for ultimate consumption as

human food. An assessment of 2 cents per hundredweight shall be levied on all watermelons handled for ultimate consumption as human food. An assessment of 4 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 into the United States.

\* \* \* \* \*

9. Remove and reserve § 1210.517.

10. Amend § 1210.518 by revising paragraphs (a) and (b)(1) and by adding a new paragraph (b)(3) to read as follows:

**§ 1210.518 Payment of assessments.**

(a) *Time of payment.* The assessment of domestically produced watermelons shall become due at the time of each handling of the watermelons for non-exempt purposes. The assessment on imported watermelons shall become due at the time of entry, or withdrawal, into the United States and at the time of each subsequent handling.

(b) *Responsibility of payment.* (1) A handler who purchases watermelons from a producer is responsible for collection and payment of both the producer's and the handler's assessment. A handler may collect the producer's assessment from the producer or deduct the producer's assessment from the proceeds paid to the producer on whose watermelons the producer assessment is made. Any such collection or deduction of producer assessment shall be made not later than the time when the handler handles the watermelons.

\* \* \* \* \*

(3) The payment of assessments on any handling of watermelons is the responsibility of the handling party.

\* \* \* \* \*

Dated: October 30, 2001.

**Kenneth C. Clayton,**  
*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 01-27815 Filed 11-6-01; 8:45 am]

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