

Rules and Regulations

Federal Register

Vol. 72, No. 208

Monday, October 29, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[Doc. No. AMS-FV-07-0038; FV-07-701]

Watermelon Research and Promotion Plan; Assessment Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Watermelon Research and Promotion Plan (Plan) to increase the assessment rate on producers, handlers, and importers of watermelons from four cents to six cents per hundredweight. Domestic producers and handlers will pay three cents per hundredweight each and importers will pay six cents per hundredweight. The increase is provided for under the Plan which is authorized by the Watermelon Research and Promotion Act (Act). The National Watermelon Promotion Board (Board), which administers the Plan, recommended this action to sustain and expand their promotional, research, and communications programs.

DATES: *Effective Date:* January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Daniel Manzoni, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0634, Stop 0244, Washington, DC 20250-0244; telephone: (202) 720-9915; or fax: (202) 205-2800; or e-mail: Daniel.Manzoni@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under the Watermelon Research and Promotion Plan [7 CFR part 1210]. This rule will increase the assessment rate by one cent per hundredweight for producers and handlers each, and by two cents per hundredweight for importers. The Plan

is authorized under the Watermelon Research and Promotion Act [7 U.S.C. 4901-4916].

Executive Order 12866

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

Executive Order 12988

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, handlers, and importers 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 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.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) has considered the economic impact of this action on the small businesses and has prepared this final regulatory analysis. 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.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than \$6.5 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 National Watermelon Promotion Board (Board), there are approximately 1,301 producers, 442 first handlers, and 346 importers who are subject to the provisions of the Plan.

Under the current Plan, domestic producers of 10 acres or more and handlers of watermelon each pay a mandatory assessment rate of two cents per hundredweight, and importers of more than 150,000 pounds of watermelon per year pay an assessment of four 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 assessments at the current four cents per hundredweight generate about \$1.5 million in annual revenues. The two cents per hundredweight assessment rate each for domestic watermelon producer and handler was established in April 1990. The four cents per hundredweight assessment rate on imported watermelons became effective when the Plan was amended in February 1995 to authorize the collection of assessments on importers. The Plan is administered by the Board under U.S. Department of Agriculture supervision.

According to the Board, additional revenue is required in order to sustain and expand the promotional, research, and communications programs. The Board approved the proposed assessment rate increase at its February 24, 2007, meeting. This increase is consistent with section 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 section 1647(f) of the Act. Section 1210.515(a) of the Plan states that an assessment of two 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 four cents per hundredweight shall be levied on watermelons imported into the U.S. 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.

The Board conducted an inflation analysis based on the current assessment rate of four cents per hundredweight starting from 1995. The analysis results show that, adjusted for inflation, the 1995 four cents per hundredweight total assessment is equivalent to three cents per hundredweight for the current program year. On an inflation adjusted basis, using 1995 as the base year, the watermelon industry's program to support research and promotion activities has lost 25 percent of its effective buying power. This erosion in buying power 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. 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.

With the increased assessment, the financial commitment of the U.S. watermelon industry for generic research and promotion activity will increase 50 percent in current dollars. For example, if we apply the assessment increase to the 2005–2006 crop year, in which collections totaled \$1,583,983 on 3,959,957,500 pounds of watermelons, the increase in assessments collected would have been approximately \$791,991. The Board plans to use the additional funds to expand promotional activities, and to increase the Board's reserve fund over a two-year period to provide for adequate cash flow. By changing the assessment rate to six cents per hundredweight, the Board stated that it will maintain its research and promotional activities, expand its programs, and sustain marketing activities in the future with rising cost expenditures.

The Board estimates the two cents per hundredweight increase in assessments would increase the cost to watermelon producers from \$16.00 per truckload of watermelons to \$24.00 per truckload of watermelons. At Freight on Board (FOB) prices of about \$0.14 per pound of watermelons, this amounts to a total assessment of 0.00429 percent of the value of a truck load of watermelons.

This is based on a 40,000 pound net weight of watermelons per truck load.

The Board considered three alternatives prior to the recommendation to increase the assessment rate. First, the Board engaged in several cost saving measures as an alternative to increasing the assessment rate which included moving to less expensive offices, changes in the staff health insurance program, change in independent auditors, and the elimination of one professional staff position. The results of the savings were over \$120,000 which equals approximately 10 percent of the Board's revenue for the 2005–2006 crop year.

The second alternative considered by the Board was a prior attempt to increase additional revenue by expanding the handler base for watermelons. A referendum was conducted by AMS between December 2001 and January 2002. The proposed amendment to the Plan requested the watermelon industry to expand the program to cover all handlers of watermelons which would have included wholesalers, persons who arrange the sale or transfer of watermelon (such as brokers) and fresh cut processors. The amendment was not approved in referendum. Therefore, the Plan continues to cover domestic producers of 10 acres or more, first handlers, and importers of 150,000 pounds or more of watermelon annually.

The final alternative considered by the Board was the current assessment rate proposal. The Board discussed increasing the assessment rate by one cent per hundredweight for each producer of 10 acres or more, handler, and importer of 150,000 pounds or more of watermelon annually. The one cent increase was rejected by the Board on the basis that an increase of this size would only return the program to the 1995 adjusted funding level. In order to sustain and expand the promotional, research, and communication programs, the Board decided on the increased assessment rate of two cents per hundredweight for a total assessment rate of six cents per hundredweight (three cents per hundredweight paid by producers, three cents per hundredweight paid by handlers, and six cents per hundredweight paid by importers of watermelons).

This rule does 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 rule.

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 rule does not result in a change to the information collection and recordkeeping requirements previously approved.

Background

Under the Plan, the 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. This program is financed by assessments on producers growing 10 acres or more of watermelons, handlers of watermelons, and importers of 150,000 or more pounds of watermelons 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 and Border Protection.

This rule increases the assessment rate by one cent per hundredweight for producers and handlers each, and by two cents per hundredweight for importers. Currently, the assessment rate is two cents per hundredweight levied on watermelons produced and two cents per hundredweight on watermelons handled within the 50 States of the United States and four cents per hundredweight on imports of watermelon. In order to sustain and expand the promotion, research, and communications programs at present levels, the Board contends that additional revenue is required. The two cents per hundredweight assessment rate increase is estimated to generate \$750,000–\$800,000 in new revenue, depending upon production levels. For the 2005–2006 crop year, total production was 3,959,957,500 pounds of watermelons resulting in \$1,583,983 in assessment collections. Based on assessments collected for that crop year, about 75 percent of this production total was from domestic assessments, with

the remainder from imports. The Board states that the assessment rate increase will enable it to expand media services, educational programs, research programs, and establish, maintain, and expand domestic and foreign markets for watermelons. Some of the additional revenue, the Board states, would be used to increase the reserve fund over a two-year period and to provide for adequate cash flow. Also, it is estimated that the Board will receive \$2.3 million in total assessments with a six cents per hundredweight assessment rate on watermelons.

In addition, the Board, whose members represent all watermelon producing states as well as importers, voted for the assessment rate increase at its February 24, 2007, meeting which was open to the public like all other meetings. The vote to recommend the assessment increase was 22 in favor and 1 against of the Board members present at the meeting. In the case of the one dissenting vote, the producer member stated that he opposed the two cents per hundredweight increase; however, he would support an increase of one cent per hundredweight. The assessment rate of one cent per hundredweight was rejected by the Board on the basis that such an increase would only return the program to its 1995 inflation adjusted funding level. According to the Board, the one cent per hundredweight would not allow the program to expand its activities.

This rule amends the rules and regulations issued under the Plan. This rule increases the assessment rate by two cents per hundredweight. The rate will increase from four cents to six cents per hundredweight. Producers of 10 acres or more and handlers of watermelons will each pay three cents per hundredweight and importers of 150,000 pounds or more of watermelons annually will pay six cents per hundredweight. This increase is consistent with section 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 section 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.

A proposed rule concerning this action was published in the **Federal Register** on May 8, 2007 (72 FR 26005). Copies of the rule were made available through the Internet by USDA and the Office of the **Federal Register**. In addition, AMS published a press release announcing the comment period. That

rule provided a 60-day comment period which ended July 9, 2007. Forty comments were received by the deadline.

Summary of Comments

In response to the proposed rule, USDA received 40 comments regarding the proposed amendment to the Plan to increase the assessment rate on producers, handlers, and importers of watermelons from four cents to six cents per hundredweight. Domestic producers and handlers will pay three cents per hundredweight each and importers will pay six cents per hundredweight. Of the 40 comments, 27 supported the proposed amendment and 13 comments did not support the proposed amendment. There were 5 duplicate comments. Two of the supporting comments were letters responding to a commenter who opposed the proposed amendment.

In general, commenters supporting the amendment stated that the watermelon industry benefits from the current program. Four commenters stated that the additional revenue from the proposed amendment will improve the program by enhancing the industry's ability to continue promoting watermelons, as it can no longer assume watermelons are going to receive shelf space or be a preferred item in advertising. According to the commenters, the Board is fighting for promotional opportunities and has done an outstanding job of promoting the health benefits, convenience, and the great taste of watermelons to customers. According to these commenters, consumers are more health-conscious than ever and the public needs to be more informed of the nutritional and health value of watermelons. Two commenters further stated that the industry must educate the consumer about watermelons availability all year round.

Six commenters stated that customers rely exclusively on the Board for product information and marketing support in areas where there are no branded watermelon programs. These commenters also stated that increasing awareness of watermelons in the market place will lead to an increase in consumption. The commenters further stated that an increase in revenue will help the Board continue its work of promoting watermelons.

Eleven commenters supported the assessment increase in order to sustain the Board's program of research and consumer information. The commenters stated that the increased funding will help the Board put more emphasis on research as they have done for

Lycopene, assisting in solving the mature vine decline problem plaguing the industry, target consumer research, emphasize media relations, and fund successful promotions like the Weight Watchers Pick of the Season promotion, and Teachers Kits promotions. Other commenters stated that recent research conducted on Citrulline and Lycopene should be further explored to formally validate the specific health attributes of Citrulline and Lycopene. However, further studies will require more money, and that is a sufficient reason for supporting the assessment rate increase.

Two commenters stated that programs like the mango research and promotion program have large budgets to support research at the consumer and trade level. Three commenters stated that the Board's budget has not increased significantly since 1995 and that, taking into consideration inflation, the Board is working with 25 percent less funds. According to the commenters, worthwhile programs and opportunities are being eliminated because of ever-tightening budgets.

Two commenters stated that consumer studies in 2002, 2004, and 2006 show increased consumption of watermelons by consumers. The commenters believed that the results could be better if the Board had more funds to position watermelons as a year-round fruit, increase awareness of watermelon health benefits, and provide recipes and appealing ways to incorporate watermelons into consumer diets.

Thirteen commenters stated that the Board does not need a food safety crisis similar to what happened in other commodities in order to realize the importance of having sufficient monies available to respond with a coordinated emergency response to maintain the public's confidence in the safety of watermelons. The commenters recommended that the Board continue developing training in the areas of crisis prevention and crisis management plan in order to be prepared if a crisis in the industry occurs. The commenters believed in having the necessary resources to deal with food safety issues that may arise in the future. Currently, the Board has a crisis management plan in place which is revised every year.

One commenter stated that before requesting the increase, the Board considered other alternatives such as reducing operating cost by \$120,000 and include wholesalers and brokers in the program. This last measure failed in referendum.

One commenter stated that the growers, shippers, and importers on the Board work hard to use the assessments

in the most prudent and cost effective manner.

Another commenter stated that when research and promotion programs increase their assessment rates, there is a measurable increase to the return on investment to the industry. The commenter cited an evaluation conducted in December 2002, by Dr. Ronald W. Ward from the Food and Resource Economics Department of the University of Florida titled the Generic Promotions of Watermelons: Measuring the Impact on Watermelon Demand, which addressed the question of whether generic promotion of watermelons has a measurable impact on the domestic demand for watermelons. The evaluation's conclusions were based on a subset of U.S. cities with data recorded over the months from 1992–1999. The evaluation concluded that generic promotion of watermelons does have a measurable impact on domestic demand.

One commenter stated that the assessment increase will result in an overall assessment of \$24 per truckload of watermelon. The commenter believed that this modest increase will have virtually no effect on the bottom line of companies in the industry but an enormous impact on the industry by increasing the budget for watermelon promotions.

Another commenter argued that the Board's reserve has stayed at \$100,000 for a number of years, and compared to most other programs, the Board's reserve does not have enough funds to cover unforeseen expenses during a crisis. For that reason, the commenter stated, the Board needs to increase its reserve, and increasing the assessment rate is the only way to accomplish that objective.

Three commenters submitted comments supporting the increase but did not provide any further detail. In addition, two commenters submitted letters in response to commenters opposed to the assessment increase. The issues raised and the two commenters views are generally reflected in the discussion of opposition comments that follows.

One commenter opposed the proposal on the basis that the assessment on growers will be passed on to consumers. The same commenter believed in the need to lower watermelon prices. The assessment increase will be imposed on producers, handlers and importers who pay assessments under the Plan. Business decisions on how to manage any increase in assessments are made by producers, handlers, and importers based on their respective business practices.

One commenter disagreed with the Board's promotion, research and development programs. The commenter did not feel that promotional dollars should be spent on research. However, the Board's role is to initiate and implement promotion, research and communication programs under the Plan.

Four commenters opposed the increase and expressed the opinion that the program should be terminated. The commenters also requested information on how to initiate a referendum to terminate the Board. Section 1210.363 (b) of the Plan outlines the procedures to request a referendum in order to determine if the industry favors continuance of the program. The Secretary will hold a referendum if requested by the Board or 10 percent of those that are covered by the program. Interested parties may collect the necessary signatures and submit a request to the Secretary. After verification of the information, the Secretary may call for a referendum.

Another commenter opposed the assessment increase and stated that the watermelon business has not increased, and therefore no assessment increase was needed. However, as previously discussed, assessments are needed to sustain the Board's programs in promotion, research and communication in order to increase the demand for watermelons.

Two commenters stated that they have not seen any increase in watermelon consumption because of the Board's efforts. The commenters stated that the increase in watermelon consumption fails to take into consideration the increase in population and demographics. The study conducted by Dr. Ronald Ward of the University of Florida addressed these issues. The evaluation conducted in December 2002, the Generic Promotions of Watermelons: Measuring the Impact on Watermelon Demand, addressed demographic effects such as age, income, and other demographic effects across cities. For example, the study showed that the watermelon demand increased as the median age increased and that income had a positive impact on the demand for watermelons. The evaluation concluded that demographics are far much more important in impacting the demand.

Another commenter questioned why consumers need "research" on watermelons and that watermelons are fine just as they are. Research is one of the core objectives of the program and it has shown to be beneficial to the industry. For example, nutrition research has assisted the Board's efforts

in educating consumers about the health benefits of consuming watermelons. In addition, the Board conducts production research, consumer research, and other types of research that benefit the industry.

The same commenter stated opposition to any increase in bureaucratic costs. The Board is industry-funded and as such taxpayers' dollars are not used to cover the expenses of this program.

Another commenter stated that the program does not benefit the industry. This program benefits watermelon producers, handlers, and importers by strengthening the competitive position of watermelon in the marketplace. It also provides the industry with valuable market research, and consumers and commercial users of watermelons with information on buying, storing, and preparing watermelons.

Two commenters stated that the producer absorbs all program costs. This assertion is not correct. While assessments impose some additional costs, the costs are minimal and uniform on all producers, handlers, and importers.

Three commenters were opposed to the assessment increase but did not provide more details. One commenter also stated that the funds collected now are sufficient and there is no need for an increase. The Board provided information showing that not increasing the assessment rate has kept them with a 25 percent less purchasing power when conducting promotions.

One commenter stated that the proposed increase is exorbitant considering that the program benefits are little to none. The commenter also stated that the Board spends a million dollars a year or over 60 percent of its assessment revenue on salaries, staff support, benefits, office expense, board meetings, administration and travel. The Board's financial statement for the year ending March 31, 2006, identifies that the total cost for general and administrative expenses as \$470,001 or 29 percent of the total Board budget. It is common financial practice to allocate a portion of salaries under program expenses.

The commenter also stated that the Board failed to notify the watermelon industry of the proposed rate change before the Board members voted to approve the assessment increase. This assertion is not correct. The Board members reported and presented to their respective districts the Board's intent to increase the assessment rate. In addition, Board staff attended industry meetings to address the proposed assessment increase. Furthermore, the

Board discussed the rate of increase at a number of state and regional association meetings as well as at the national meeting of the NWA in February of 2007. It was at this meeting that the Board conducted a special session with industry leaders to discuss their plans to recommend an assessment rate increase once they received industry input. In addition, the Board's industry newsletter the "Watermelon Update" included articles announcing the proposed assessment increase in their March/April and June 2007 editions. Furthermore, the Board sent a letter to all industry members on May 8, 2007, providing information regarding the proposal and where to send comments.

The commenter further stated that despite a large communications budget, the Board does not provide industry access to the Board's meeting agendas or minutes on its Web site, and it does not routinely mail out notices to its membership. While the Board's Web site does not contain the Board's meeting agenda or minutes, meeting agendas and minutes, however, are available from the Board upon request. The Board utilizes its newsletter the "Watermelon Update" to publicize industry meetings. The Board meets frequently during the year to discuss future programs and those meetings are open to the industry and the public. The Board notifies the watermelon industry on nomination meetings by publishing the nominations on the Board's Web site, contacting the national, state, and regional watermelon associations, and Board's staff attends industry meetings throughout the year in order to disseminate information. In addition, the Department publishes nomination meetings information and other important notices and rulemaking on its Web site.

The commenter further stated that the Board's 50 percent assessment increase adds excessive production costs without any guarantee the grower or handler will get the increase back through sales. Two commenters stated when the market is below normal, the difference between continue farming or not may be the assessment fee. The commenters also stated that there are no safeguards when the producer falls below the break even point. Another commenter stated that farmers are not realizing profits. Under the Plan, the Board administers a 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. The program does not guarantee price

increases on watermelons. However, as previously discussed in this rule, previous evaluations have shown the positive effects of promotional programs for watermelons.

The commenter also stated that the fact that the Board's budget is one of the smallest of all national check-off programs should not be used to increase the assessment rate. The Board provided information from other research and promotion programs for comparison purposes only.

The commenter further stated that the Board's five-year evaluation study by Dr. Ronald Ward presented an opinion when it stated that, when programs such as the watermelon program increase assessments, there is a measurable increase to the return on investment to the industry. An evaluation conducted in December 2002, the Generic Promotions of Watermelons: Measuring the Impact on Watermelon Demand, addressed the question of whether generic promotion of watermelons has a measurable impact on the domestic demand for watermelons. The evaluation concluded that generic promotion of watermelons does have a measurable impact on domestic demand. For the study, demand models were estimated using cross sections of cities and time series of wholesale arrivals to measure demand at the wholesale market level. Wholesale prices were shown to increase about two cents per pound (11 percent) due to generic promotion activities.

The commenter also addressed the Board's example of how the assessment increase would affect the approximate cost per truckload. The example stated that the cost to watermelon producers would range from \$16.00 per truckload of watermelon to \$24.00 per truckload of watermelons. The commenter stated that the increase could cost their company more than \$5,000 per year in additional assessments and this would bring their yearly assessments to around \$15,000. The commenter believed that their company would not receive any benefits from the increase. The Board provided an example of the estimated cost to producers. The Board, however, recognizes the costs will vary among producers and handlers for watermelons based on the size of their watermelon business. Further, the benefits of the program previously have been discussed.

The commenter further stated that the Board will use the additional funds for communication programs and marketing activities, but did not cite an increase in any administrative costs and it failed to reveal the increase in staff support and benefits. The commenter also stated that

the Board cannot sustain current staff levels and have funds left for promotions. With the additional revenue, the Board stated that it would maintain its research and promotional activities, expand its programs, and sustain marketing activities in the future. The Board does not anticipate to hire additional staff or expand its Board meeting with the increased revenue. In fact, as previously discussed, the Board engaged in several cost savings measures primarily concerning staff expenses, and the results of the savings was over \$120,000 for the 2005–2006 crop year. The increase will cover the cost of running the program in today's financial environment.

The Department has considered all of the comments and is not making any changes to the proposed rule based on them.

After consideration of all relevant material presented, including comments, the Board's recommendation, and other information, it is hereby found that this rule, as published in the **Federal Register** (72 FR 26005) on May 8, 2007, is consistent with and will tend to effectuate the declared policy of the Act.

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. In § 1210.515 paragraph (a) is revised to read as follows:

§ 1210.515 Levy of assessments.

(a) An assessment of three cents per hundredweight shall be levied on all watermelons produced for ultimate consumption as human food, and an assessment of three cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food. An assessment of six 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.

* * * * *

Dated: October 24, 2007.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 07-5348 Filed 10-24-07; 11:39 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2007-29086; Airspace Docket No. 07-ASO-22]

Amendment of Class E Airspace; Aguadilla, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the Class E2 and E5 airspace at Aguadilla, PR. This action corrects the geographical position coordinates for the Rafael Hernandez Airport.

DATES: *Effective Date:* 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5581.

SUPPLEMENTARY INFORMATION:

History

On March 16, 2007, the geographical position coordinates for Rafael Hernandez Airport, Aguadilla, PR, changed from lat. 18°29'38"N, long. 67°07'59"W to lat. 18°29'42"N, long. 67°07'46"W. This action corrects the geographical position coordinates of the airport.

This rule becomes effective on the date specified in the **EFFECTIVE DATE** section. Since this action will have no impact on aircraft operating in the vicinity of Rafael Hernandez Airport, Aguadilla, PR, notice and public procedure under 5 U.S.C. 553(b) are not necessary. Class E airspace areas designated as surface areas and Class E airspace areas designated as airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 6002 and 6005, respectively, of FAA Order 7400.9P, Airspace Designations and Reporting

Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class E2 and E5 airspace at Rafael Hernandez Airport, Aguadilla, PR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6000. Class E Airspace.

* * * * *

ASO PR E2 Aguadilla, PR [Revised]

Rafael Hernandez Airport, PR
(Lat. 18°29'42" N, long. 67°07'46" W)
Borinquen VORTAC
(Lat. 18°29'53" N, long. 67°06'30" W)

Within a 4.5-mile radius of Rafael Hernandez Airport and within 2.4 miles each

side of the Borinquen VORTAC 257° radial, extending from the 4.5-mile radius to 7 miles west of the VORTAC. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO PR E5 Aguadilla, PR [Revised]

Rafael Hernandez Airport, PR
(Lat. 18°29'42" N, long. 67°07'46" W)
Eugenio Maria De Hostos Airport
(Lat. 18°15'21" N, long. 67°08'55" W)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Rafael Hernandez Airport and within a 10-mile radius of Eugenio Maria De Hostos Airport.

* * * * *

Issued in College Park, Georgia, on October 5, 2007.

Barry A. Knight,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 07-5264 Filed 10-26-07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 33, 35, 154, 157, 300, 375, 376

[Docket No. RM07-22-000; Order No. 701]

Delegations to Office of Electric Reliability

Issued October 19, 2007.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final Rule.

SUMMARY: This Final Rule revises the Commission's regulations to delegate authority to the newly established Office of Electric Reliability to allow that office to process routine, non-controversial matters efficiently. The rule also makes conforming changes to account for changes in office names.

DATES: *Effective Date:* This rule will become effective October 29, 2007.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502-8953. wilbur.miller@ferc.gov.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Sudeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellingshoff.

I. Discussion

1. On September 20, 2007, the Commission announced the creation of