



This document is scheduled to be published in the Federal Register on 09/14/2020 and available online at [federalregister.gov/d/2020-17581](https://www.federalregister.gov/d/2020-17581), and on [govinfo.gov](https://www.govinfo.gov)

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1210**

**[Document Number AMS-SC-19-0109]**

**Watermelon Research and Promotion Plan; Realignment**

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Final rule.

**SUMMARY:** This rule realigns the representation on the National Watermelon Promotion Board (Board) under the Agricultural Marketing Service's (AMS) regulations regarding a national research and promotion program for watermelons. This rule reduces the number of production districts and the number of importers on the Board, accordingly. This rule also makes administrative changes to other provisions of the Watermelon Research and Promotion Plan (Plan).

**DATES:** Effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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**SUPPLEMENTARY INFORMATION:**

This final rule affecting 7 CFR part 1210 is authorized under the Watermelon Research and Promotion Act (Act) (7 U.S.C. 4901-4916). The Watermelon Research and Promotion Plan is codified at 7 CFR part 1210.

**Executive Orders 12866, 13563, and 13771**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This final rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of

January 30, 2017, titled `Reducing Regulation and Controlling Regulatory Costs'” (February 2, 2017).

**Executive Order 13175**

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this rule will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Under section 1650 of the Act (7 U.S.C. 4909), a person subject to an order may file a written petition with USDA stating that the plan, any provision of the plan, or any obligation imposed in connection with the plan, is not established in accordance with the law, and request a modification thereof or an exemption therefrom. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. If the petitioner disagrees with USDA's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner

is an inhabitant or in which the person's principal place of business is located.

### **Background**

This rule realigns the Board's representation and procedures under the Plan. The realignment reduces the number of production districts under the Plan for producer and handler representation on the Board, and proportionally reduces the number of importer seats from twelve to nine. The Board administers the Plan with oversight by USDA. Under the Plan, assessments are collected from watermelon producers, handlers and importers. The assessments are used to strengthen watermelon's position in the marketplace and to establish, maintain, and expand markets for watermelons.

### **Board Membership**

Currently, § 1210.320(a) specifies that the Board shall be comprised of producers, handlers, importers and one public representative appointed by the Secretary. Pursuant to § 1210.320(b), the Plan originally divided the United States into seven districts of comparable production volumes of watermelons, and each district is allocated two producer members and two handler members. Section 1210.320(d) specifies that importer representation on the Board shall be proportionate to the percentage of

assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board.

The current Board is comprised of 41 members - 14 producers (two from each district), 14 handlers (two from each district), 12 importers, and one public member.

### **Review of U.S. Production**

Section 1210.320(c) requires the Board, at least every five years, to review the districts to determine whether realignment is necessary. In conducting the review, the Board must consider: (1) The most recent three years of USDA production reports or Board assessment reports if USDA production reports are unavailable; (2) shifts and trends in quantities of watermelon produced, and (3) other relevant factors. As a result of the review, the Board may recommend to USDA that the districts be realigned.

Pursuant to section 1210.501, the seven current districts are as follows:

District 1 - The State of Florida;

District 2 - The States of Kentucky, North Carolina, South Carolina, Tennessee, Virginia and West Virginia;

District 3 - The State of Georgia;

District 4 - The States of Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts,

Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Wisconsin, and Washington, DC;

District 5 - The State of California;

District 6 - The State of Texas;

District 7 - The States of Alabama, Alaska, Arizona, Arkansas, Colorado, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

The districts listed above were recommended by the Board in 2016 and established through rulemaking by USDA in 2017 (82 FR 44966).

In 2019, the Board's Executive Committee conducted a review of the U.S. watermelon production districts to determine whether realignment was necessary. The committee held teleconferences on August 14 and September 11, 2019, and reviewed production data for 2016, 2017 and 2018 from USDA's National Agricultural Statistics Service's (NASS) Vegetables Annual Summary for 2018 and Market News Reports. Due to changes in the geographical coverage of USDA's data collection on watermelon production, Board assessment data was used for the states for which USDA data was not available. To protect personally identifiable information

(PII) of watermelon producers and handlers, the average of 2016-2018 assessment data was converted to a percentage of production. The combined data is shown in Table 1 below.

**Table 1. State Production based on USDA and Board Assessment Data 2016-2018**

State	% of 3-Year Average of U.S. Production
Alabama	0.2%
Arizona	2.9%
Arkansas	0.8%
California	13.8%
Colorado	0.4%
Delaware	2.8%
Florida	17.9%
Georgia	18.0%
Hawaii	0.1%
Illinois	1.8%
Indiana	10.6%
Kentucky	0.2%
Louisiana	0.1%
Maryland	1.9%
Michigan	2.3%
Mississippi	0.2%
Missouri	4.3%
Nebraska	0.2%
New Mexico	0.6%
New York	0.6%
North Carolina	4.0%
Ohio	0.1%
Oklahoma	0.2%
Oregon	1.0%
South Carolina	1.8%
Texas	11.8%
Virginia	0.3%
Washington	1.1%

Upon review, the Board, at its October 26, 2019 meeting, recommended a reduction in the number of U.S. production districts from seven to five, resulting in a total of ten producer members and ten handler members. The proposed action recommended eliminating two districts, retaining two districts as drawn, and creating three new production districts as follows:

District 1 - The State of Florida (no change);

District 2 - The State of Georgia (formerly District 3).

District 3 - The States of Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

District 4 - The States of Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin, and Washington, DC.

District 5 - The States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

As shown in Table 2, each district will represent close to 20 percent of the total U.S. production, with a range of approximately 18 to 24.5 percent. USDA has reviewed NASS, Market News, and Board assessment data, and as shown in Table 2, determined that the production estimates are consistent with the Board's recommendation.

**Table 2. Percent of U.S. Production by District<sup>1</sup>**

<b>District</b>	<b>Board Data</b>	<b>USDA Analysis</b>	<b>Difference</b>
<b>1</b>	17.8%	18.2%	+0.4%
<b>2</b>	18.0%	18.0%	None
<b>3</b>	19.0%	19.2%	+0.2%
<b>4</b>	20.6%	20.7%	+0.1%
<b>5</b>	24.5%%	23.9%	-0.6%

Section 1210.501 will be revised accordingly.

### **Review of Imports**

Section 1210.320(e) requires USDA to evaluate the average annual percentage of assessments paid by importers during the three-year period preceding the date of the evaluation and adjust, to the extent practicable, the number of importer representatives on the Board.

Table 4 below shows domestic and import assessment data for watermelons for the years 2016, 2017 and 2018. The data is from the Board's financial audits for 2016, 2017<sup>2</sup> and 2018.

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<sup>1</sup> Table values were rounded to the nearest percent.

<sup>2</sup> National Watermelon Promotion Board, Financial Statements and Supplementary Information, Years Ending March 31, 2016, 2017, and 2018, BDO USA, LLP

**Table 4. U.S. and Import Assessment Data for 2016-2018**

<b>Year</b>	<b>Domestic (U.S.) Assessments</b>	<b>Import Assessments</b>	<b>Total</b>
<b>2016</b>	\$2,319,704	\$1,172,834	\$3,492,538
<b>2017</b>	\$2,347,522	\$1,049,875	\$3,397,397
<b>2018</b>	\$2,311,116	\$1,041,244	\$3,352,360
<b>3-Year Average</b>	\$2,326,114	\$1,087,984	\$3,414,098
<b>Percent of Total</b>	68 percent	32 percent	

Based on this data, the three-year average annual import assessments for watermelons for 2016-2018 was \$1,087,984, approximately 32 percent of the Board's assessment income. To make the number of importers on the Board proportionate to the assessments paid as well as to the percentages of U.S. watermelon produced by the reduced number of production districts, the number of importers should decrease from twelve to nine members.

With this amendment, the new composition of board membership will be reflected in section 1210.502. According to the Board, this action will accurately reflect the distribution of the production and handling of watermelons, and the resulting reduced number of producer, handler, and importer seats will contribute to the effective administration of the program.

**Final Regulatory Flexibility Act Analysis**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the economic impact of this rule on small entities. Accordingly, AMS has considered the economic impact of this action on such 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. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$1,000,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than \$30 million.

According to the Board, there are 505 producers, 140 handlers, and 252 importers who were required to pay assessments under the Plan in 2018. NASS data for the 2018 crop year estimated about 350.5 hundredweight (cwt.) of watermelons were produced per acre in the United States, and the 2018 grower price was \$16.90 per cwt.<sup>3</sup> Thus, the value of watermelon production per acre in 2018 averaged about \$5,923 (350.5 cwt. x \$16.90). At that average valuation, a producer would have to farm over 169 acres to

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<sup>3</sup> Vegetables, 2018 Summary, March 2019, USDA, p. 10.; <https://downloads.usda.library.cornell.edu/usda-esmis/files/02870v86p/gm80j322z/5138jn50j/vegean19.pdf>

receive an annual income from watermelons of \$1,000,000 (\$1,000,000 divided by \$5,923 per acre equals approximately 169 acres). Using 2017 USDA Census of Agriculture data, a maximum of 373 farms had watermelon acreage greater than or equal to 100 acres, and 13,147 out of a total of 13,520 farms producing watermelons reported less than 100 acres of watermelon on their farms.<sup>4</sup> Therefore, assuming watermelon producers operate no more than one farm, a majority of all U.S. watermelon farms would be classified as small businesses.

Also based on the Board's data, using a price of \$0.169 per pound and the number of pounds handled annually, none of the watermelon handlers have receipts over the \$30 million threshold.<sup>5,6</sup> Therefore, all watermelon handlers will be considered small businesses. A handler would have to ship over 177 million pounds of watermelons to be considered large (177,514,793 x \$0.169 f.o.b. equals approximately \$30,000,000).

Based on 2018 Customs data, over 99 percent of watermelon importers shipped less than \$30 million worth of

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4 2017 Census of Agriculture, April 11, 2019, USDA, National Agricultural Statistics Service, p. 39;  
[https://www.nass.usda.gov/Publications/AgCensus/2017/Full\\_Report/Volume\\_1,\\_Chapter\\_1\\_US/usv1.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf).

5 Vegetables, 2018 Summary, March 2019, USDA,  
<https://downloads.usda.library.cornell.edu/usda-esmis/files/02870v86p/gm80j322z/5138jn50j/vegean19.pdf>

6 National Watermelon Promotion Board assessment records, 2016-2018.

watermelons that year. Based on the above-mentioned data the majority of watermelon producers, handlers and importers that will be affected by this rule will be classified as small entities.

Regarding the value of the commodity, based on 2018 NASS data, the value of the U.S. watermelon crop was about \$656.6 million.<sup>7</sup> According to Customs data, the value of 2018 imports was about \$312.4 million.

The rule revises sections 1210.321, 1210.403, 1210.501 and 1210.502 of the Plan to reduce the number of U.S. production districts from seven to five, thus eliminating two districts, retaining two districts as drawn, and creating three new districts. Accordingly, section 1210.320 requires the number of importer members to also decrease proportionately from 12 to 9 members, for a total of 30 Board members. The revisions are administrative in nature; therefore, there should be no economic impact on producers, handlers, or importers.

Under the program, the United States is currently divided into seven districts of comparable production volumes of watermelons, and each district is allocated two producer members and two handler members. Further,

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<sup>7</sup> Vegetables, 2018 Summary, March 2019, USDA, p. 10.

importer representation on the Board must be, to the extent practicable, proportionate to the percentage of assessments paid by importers, except there must be at least one importer on the Board.

Regarding the economic impact of the proposed rule on affected entities, neither the reduction in the number of production districts nor the reduction in Board membership imposes any additional costs on industry members. The recommended changes are necessary to improve the Board's ability to ensure both a quorum at Board meetings and a sufficient number of potential nominees. Further, the accompanying reduction of importer seats from twelve to nine provides for the equitable representation of producers, handlers and importers on the Board.

Regarding alternatives, the Board considered another scenario in realigning the districts. This scenario (Scenario 1) would have divided the U.S. into four production districts as follows:

District 1 would be comprised of the States of Florida, North Carolina, and South Carolina;

District 2 would be comprised of the States of Connecticut, Delaware, Georgia, Maryland, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania,

Rhode Island, Vermont, Virginia, West Virginia, and Washington, DC;

District 3 would be comprised of the States of Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Ohio, Oklahoma, Tennessee, and Texas.

District 4 would be comprised of the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

In accordance with the Plan, both scenarios preserve the composition of 2 producers and 2 handlers per district. Ultimately the Board recommended Scenario 2 at their October 26, 2019, retaining the State of Florida as District 1, changing the district designation for Georgia from District 3 to District 2, and creating new Districts 3, 4, and 5.

The changes to the size of the Board, number of production districts, and number of importer members are administrative in nature and have no economic impact on entities covered under the program. As some producers and handlers operate in multiple districts, they would be able to seek nomination for a district of their choice.

*Reporting and Recordkeeping Requirements*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Plan's information collection requirements have been previously approved by OMB under OMB control number 0581-0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved and does not impose additional reporting requirements or recordkeeping burden on domestic producers, handlers, or importers of watermelon.

As with all Federal research and promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Board met on October 26, 2019, and recommended realignment of the Board by reducing the number of production districts and proportionally reducing the number of importer seats on the Board from twelve to nine.

A proposed rule concerning this action was published

in the *Federal Register* on April 27, 2020 (85 FR 23248). A 30-day comment period ending May 27, 2020, was provided to allow interested persons to submit comments.

### **Analysis of Comments**

Eleven comments were received in response to the proposed rule. Of those eleven comments, ten supported the proposed realignment and reduction in production districts and the reduction of three importer seats. One comment expressed concerns with the proposal.

The comments that supported the proposed changes concur that the proposal accurately reflects changes in the volume of imports and the geographical distribution of watermelon production in the United States. Further, the consolidation of some districts also reflects consolidations throughout the watermelon industry and will make it easier for the Board to find qualified candidates to fill vacancies. Several commenters mentioned that as an added benefit, the reduction in Board membership will also reduce costs for Board meetings, thereby leaving more funds available for watermelon research and promotion activities.

One comment expressed concerns with the proposed rule. The commenter expressed concern that the justification for the Board's recommendation was ambiguous because the "other relevant factors" considered as part of the § 1210.320(c)

review were not formally defined or explained in the proposal. At its October 26, 2019 Board meeting, which was open to the public, the Board discussed three relevant factors in addition to the production and import data presented in the proposal. First, Board members shared their observations that consolidation in the watermelon industry over the past decade had substantially reduced the number of eligible producers and handlers in the production districts as they are currently drawn. A related issue also discussed was the fact that despite concerted outreach efforts, obtaining enough candidates and nominees to be considered for appointment to the Board had become extremely difficult in recent years. Finally, several members observed that attendance at Board meetings has declined to the point where it is consistently difficult to ensure a quorum.

No changes have been made to the proposed rule based on the comments received.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board, the comments received, and other relevant information, it is hereby found that this rule, as hereinafter set forth, is consistent with and would effectuate the purposes 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, 7 CFR part 1210 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 and 7 U.S.C. 7401.

**Subpart C - Rules and Regulations**

2. In § 1210.321, revise paragraph (f) (1) to read as follows:

**§ 1210.321 Realignment of districts.**

\* \* \* \* \*

(f) \* \* \*

(1) No State in a multi-State district shall have more than three producer and handler representatives concurrently on the Board.

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3. In § 1210.403, revise paragraph (c) to read as follows:

**§ 1210.403 Voting Procedures.**

\* \* \* \* \*

(c) In multi-State districts, the convention chairperson will direct the eligible producer voters and handler voters from each State to caucus separately for the purpose of electing a State spokesperson for each group. Election of each State spokesperson shall be by simple majority of all individual voters in attendance. In lieu of written ballots, a State spokesperson may be elected by voice vote or a show of hands. The role of the State spokesperson is to coordinate State voting and to cast all State votes.

\* \* \* \* \*

4. Revise § 1210.501 to read as follows:

**§ 1210.501 Realignment of districts.**

In accordance with § 1210.320(c) of the Plan, the districts shall be as follows:

(a) District 1 - The State of Florida.

(b) District 2 - The State of Georgia.

(c) District 3 - The States of Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

(d) District 4 - The States of Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio,

Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin, and Washington, DC.

(g) District 5 - The States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

5. Revise § 1210.502 to read as follows:

**§ 1210.502 Board members.**

The Board consists of 10 producers, 10 handlers, nine importers, and one public member appointed by the Secretary.

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Bruce Summers, Administrator,  
Agricultural Marketing Service.

[FR Doc. 2020-17581 Filed: 9/11/2020 8:45 am; Publication Date: 9/14/2020]