



Agricultural Marketing Service

7 CFR Part 1210

[Doc. No. AMS-SC-25-0008]

Watermelon Research and Promotion Plan; Realignment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on realigning the representation on the National Watermelon Promotion Board (Board) prescribed in the Watermelon Research and Promotion Plan (Plan) by adjusting several production districts and reducing the number of importers on the Board. This action would contribute to effective administration of the program.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. You may send comments on this proposed rule to the Federal eRulemaking Portal at <https://www.regulations.gov/>. You can access this proposed rule and instructions for submitting public comments by searching for the rule title.

Comments may also be mailed to the Docket Clerk, Market Development Division, Specialty Crops Program, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), 1400 Independence Avenue SW., Room 1406-S, STOP 0244, Washington, DC 20250-0237; or submitted electronically by Email:

SM.USDA.MRP.AMS.MDDComment@usda.gov. Comments should reference the document number and the date and page number of this issue of the **Federal Register**.

All comments will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at <https://www.regulations.gov>.

Comments submitted in response to this proposed rule will be included in the rulemaking record and will be made available to the public. Please be advised that comments are posted as submitted without change and the identity of the individuals or entities submitting the comments will be public. Do not submit confidential business information, or otherwise proprietary, sensitive or protected information. AMS will not post or consider comments that contain profanity, vulgarity, threats, or other inappropriate language or like content.

FOR FURTHER INFORMATION CONTACT: Alexandra Caryl, Branch Chief, Mid-Atlantic Region Branch, Market Development Division, Specialty Crop Program, AMS, USDA, STOP 0244, 1400 Independence Avenue SW, Room 1406-S, Washington, DC 20250-0244; Telephone: (202) 720-8805; or Email: Alexandra.Caryl@usda.gov, or William Hodges, Marketing Specialist, Mid-Atlantic Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA, STOP 0244, 1400 Independence Avenue SW., Room 1406-S, Washington, DC 20250-0244; Telephone: (443) 571-8456; or Email: William.Hodges2@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule affecting the Watermelon Research and Promotion Plan (7 CFR part 1210) (Plan) is authorized by the Watermelon Research and Promotion Act (7 U.S.C. 4901-4916) (Act).

Executive Orders 12866 and 13563

USDA is issuing this proposed rule in conformance with Executive Orders 12866, as amended by Executive Order 13563. 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 rule is not a significant regulatory action within the meaning of Executive Order 12866. Accordingly, this action has not been reviewed by the Office of Management and Budget under section 6 of the Executive Order 12866.

Executive Order 13175

This action was reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions will have Tribal implications. AMS determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, or the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 12988

This proposed rule was reviewed under Executive Order 12988, Civil Justice Reform. The Act provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 1650 of the Act (7 U.S.C. 4909), a person may 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.

Background

This proposal invites comments on realigning the Board's representation and procedures under the Plan. The Board administers the Plan with oversight by USDA. The Plan is a nationally coordinated program of research, development, advertising, and promotion designed to strengthen watermelon's position in the marketplace and to establish, maintain, and expand markets for watermelons. The program is financed by assessments on producers growing 10 acres or more of watermelons, handlers of watermelons, and importers of 150,000 pounds of watermelons or more per year. The Plan specifies that handlers are responsible for collecting and submitting both 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 paying assessments to the Board on watermelons imported into the United States through U.S. Customs and Border Protection (Customs).

This proposal invites comments on realigning the Board by adjusting several production districts under the Plan for producer and handler representation on the Board and proportionally reducing the number of importer seats on the Board from nine to seven. This is intended to more equally represent the average annual percentage of assessments paid by importers. These changes were recommended by the Board after a review of the production volume and assessments paid in each production district, as well as the assessments paid by importers. The Plan requires that such a review be conducted at least every five years. These changes would help facilitate program operations, and the full Board unanimously voted to recommend these changes to the Secretary at their meeting on October 15, 2024, in Atlanta, Georgia. After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this rule is consistent with and will effectuate the declared policy of the Act.

Section 1210.320(a) of the Plan 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 was 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 30 members: 10 producers (two from each district), 10 handlers (two from each district), nine importers, and one public member.

Review of United States Districts

Section 1210.320(c) of the Plan 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 §1210.501 of the Plan, the five current districts are as follows:

District 1 —The State of Florida;

District 2 —The State of Georgia;

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.

The districts listed above were recommended by the Board in 2019 and established through rulemaking by USDA in 2020 (85 FR 56471).

On September 10, 2024, the Board’s Redistricting Committee met via teleconference to conduct a review of the U.S. watermelon production districts to determine whether realignment was necessary. The committee reviewed production data for 2021, 2022, and 2023 from USDA’s National Agricultural Statistics Services (NASS), Vegetables Annual Summary for 2023, 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. USDA accepts and confirms the methodology the Board used to review production data. To protect personally identifiable information (PII) of watermelon producers and handlers, the assessment data was converted to a percentage of production for the average of 2021-2023. The combined data organized by proposed districts is shown in Table 1 below.

Table 1. State Percentages of U.S. Watermelon Production, Based on USDA and Board Assessment Data (3-year averages, 2021-2023), Organized by Proposed Board Districts	
DISTRICT 1	
FL	23.6%
DISTRICT 2	
GA	14.8%
Other States 1/	2.9%
Dist. 2 Total	17.6%
DISTRICT 3	
TX	9.6%

NC	5.6%
MO	3.6%
Other States 2/	0.9%
Dist. 3 Total	19.7%
DISTRICT 4 3/	
IN	9.2%
DE	3.3%
Other States 4/	8.1%
Dist. 4 Total	20.6%
DISTRICT 5 5/	
CA	11.5%
AZ	3.7%
Other States 6/	3.3%
Dist. 5 Total	18.5%
1/ District 2 "Other States" data: SC, AL	
2/ District 3 "Other States" data: TN, OK, AR, MS, LA	
3/ District 4 states with no production data: CT, MA, ME, NH, RI, VT, WI, WV, DC	
4/ District 4 "Other States" data: MI, MD, IL, NY, VA, KY, PA, OH, NJ	
5/ District 5 states with no production data: AK, IA, KS, MT, ND, NV, SD, UT, WY	
6/ District 5 "Other States" data: WA, OR, ID, NM, CO, HI, NE, MN	

On October 15, 2024, the Board reviewed the above data and recommended the realignment of the U.S. production districts as follows:

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

District 2 – The States of Alabama, Georgia, and South Carolina (added Alabama and South Carolina from District 3);

District 3 – The States of Arkansas, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, and Texas (Alabama and South Carolina moved to District 2, Missouri added from District 5);

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 (no change);

District 5 – The States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming (Missouri moved to District 3).

Section 1210.501 of the Plan is proposed to be revised accordingly.

Review of Imports

Section 1210.320(e) of the Plan 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 2 below shows domestic and import assessment data for watermelons for the years 2021, 2022, and 2023 based on the Board’s financial audits from those years. USDA concurs with the methodology the Board used to determine the percentage of U.S. and import assessments borne by the industry.

Table 2. U.S. and Import Assessment Data for 2021-2023

Year	Domestic (U.S.) Assessments	Import Assessments	Total
2021	\$2,059,432	\$1,168,351	\$3,227,783
2022	\$1,964,250	\$1,127,491	\$3,091,741
2023	\$2,092,995	\$1,195,653	\$3,288,648
3-Year Average	\$2,038,892	\$1,163,831	\$3,202,723
Percent of Total	64 percent	36 percent	

Based on this data, the three-year average annual import assessments for watermelons for 2021-2023 was \$1,163,831, approximately 36 percent of the Board’s

assessment income. To make the number of importers on the Board proportionate to the assessments paid, the number of importers should decrease from nine to seven members.

The current Board is made up of 45 percent importers. This is calculated by dividing the nine importers by 20 domestic members (ten handlers and ten producers). Imports equated to about 36 percent of the average total assessments received by the Board between 2021 to 2023 ($\$1,163,831.44/\$3,202,723.84=36.3\%$). Implementing the recommendation to reduce the importer representation to seven members would result in them making up 35 percent of the total Board makeup. This is calculated by dividing the seven importers proposed by the 20 domestic members, which is closely aligned with the percentage of assessments paid by the group, at 36 percent.

To clearly document the change in Board membership for producers, handlers, and importers, §1210.502 of the Plan would be revised to reflect its new composition.

Initial Regulatory Flexibility Act Analysis and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this action on the small producers, handlers, and importers that would be affected by this proposed rule. 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 following analysis was conducted using the most recent data at the time of writing.

Domestic producers of less than 10 acres of watermelons are exempt from this program. Importers of less than 150,000 pounds of watermelons per year are also exempt. According to the Board, there are approximately 429 producers, 121 first handlers, and 183 importers who are subject to the provisions of the Plan.

The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers of watermelons as those having annual receipts equal to or less than \$3.75 million [NAICS code 111219 - Other Vegetable (except Potato) and Melon

Farming] and small agricultural service firms (handlers and importers) as those having annual receipts equal to or less than \$34.0 million [NAICS code 115114 - Postharvest Crop Activities (except Cotton Ginning)]. Under these definitions, the majority of the producers, handlers, and importers that would be affected by this proposed rule would be considered small entities. This conclusion is based on the following computations and data, using the Board assessment rate at the time of six cents per hundredweight. As of January 22, 2025, the assessment rate increased to nine cents per hundredweight following rulemaking (89 FR 104394).

For 2023, National Agricultural Statistics Service (NASS) reported a season average producer price per pound of \$0.214. The Board estimated the freight on board (FOB) price to be \$0.284 for both importers and handlers in 2023. The Board reported that 2023 assessments received from domestic entities totaled \$2.247 million, with equal proportions of \$1.1235 million coming from producers and handlers. Dividing \$1.1235 million by half of the previous assessment rate of \$0.06 per hundredweight, as producers and handlers evenly split the assessment, yields an estimate of total producer pounds assessed of 3,745.0 million (\$1.1235 million divided by \$0.0003 per pound). Dividing the total pounds assessed quantity by 429 producers yields an average assessed pounds per producer estimate of 8.73 million. Multiplying the annual assessed pounds per producer estimate of 8.73 million pounds by the 2023 NASS season average producer price per pound of \$0.214 yields an average annual watermelon sales receipts per producer estimate of \$1.87 million. This is well below the SBA small producer size threshold of \$3.75 million.

With an equal proportion of annual domestic assessments coming from handlers, the total handler pounds assessed is also 3,745.0 million. Dividing total handler pounds assessed by 121 handlers yields an average assessed pounds per handler estimate of 30.95 million pounds. Multiplying this estimate of annual assessed pounds per handler of 30.95

million pounds by the season average handler price per pound of \$0.284, provided by the Board, yields an estimate of average annual watermelon sales receipts per handler of \$8.79 million. This is well below the SBA small handler size threshold of \$34.0 million.

The Board reported that assessments received from importers totaled \$1.196 million in 2023. Dividing \$1.196 million by the previous assessment rate of \$0.06 per hundredweight (\$0.0006 per pound) yields an estimate of total importer pounds assessed of 1,993.3 million. Dividing the total pounds assessed by the number of importers, 183, yields an average assessed pounds per importer estimate of 10.89 million. Multiplying this estimate of annual assessed pounds per importer of 10.89 million pounds by the season average importer price per pound of \$0.284 yields an estimate of average annual watermelon sales receipts per importer of \$3.09 million. This is well below the SBA small importer size threshold of \$34.0 million. Assuming normal distributions, the majority of producers, handlers, and importers would be classified as small businesses according to SBA size standards.

This proposal invites comments on revising sections 1210.501 and 1210.502 of the Plan to realign U.S. production districts. The Plan divides the United States into five districts of comparable production volumes of watermelons, and each district is allocated two producer members and two handler members. Further, 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.

At least every five years, the Board is required to evaluate, based on the preceding three-year period, the average production in each production district and the average annual percentage of assessments paid by importers. The Board conducted this review in 2024 and recommended realigning several districts to align with production trends. Authority for these changes is provided in §1210.320 of the Plan. After consideration of all relevant material presented, including the information and recommendations

submitted by the Committee and other available information, AMS has determined that this rule is consistent with and will effectuate the declared policy of the Act.

Regarding the economic impact of the proposed rule on affected entities, neither the realignment of production districts nor the reduction in Board importer 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 nine to seven provides for the equitable representation of producers, handlers and importers on the Board.

Regarding alternatives, the Board considered three scenarios in realigning the districts. Scenario 1 proposed the following changes:

Scenario 1:

District 1 - Remove the Florida counties of: Alachua, Baker, Bay, Bradford, Calhoun, Clay, Columbia, Duval, Escambia, Franklin, Gadsen, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, St. Johns, Suwannee, Taylor, Union Wakulla, Walton, and Washington.

District 2 - Added Alabama, South Carolina, and the Florida counties of: Alachua, Baker, Bay, Bradford, Calhoun, Clay, Columbia, Duval, Escambia, Franklin, Gadsen, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, St. Johns, Suwannee, Taylor, Union Wakulla, Walton, and Washington.

District 3 - Alabama and South Carolina were moved to District 2, Missouri added from District 5.

District 4 - No changes proposed.

District 5 - Missouri moved to District 3.

Scenario 2 proposed the following changes:

Scenario 2:

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

District 2 – The States of Alabama, Georgia, and South Carolina (added Alabama and South Carolina from District 3);

District 3 – The States of Arkansas, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, and Texas (Alabama and South Carolina moved to District 2, Missouri added from District 5);

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 (no change);

District 5 – The States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming (Missouri moved to District 3).

In addition to realigning Districts 2, 3, and 5, Scenario 2 proposes to reduce the number of importers on the Board from nine to seven.

Scenario 3 proposed the following changes:

Scenario 3:

District 1 - No changes proposed.

District 2 - Added Alabama, Arkansas, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

District 3 – Amended to include Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin.

District 4 – Amended to include Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

Ultimately the Board recommended Scenario 2. In accordance with section 1210.320, the Board recommended the alignment proposed in Scenario 2 as described in this proposed rule because it would: (1) provide for a most proportional geographical representation on the Board for producers and handlers; (2) limit producer or handler vacancies on the Board; (3) increase the pool of candidates to be considered for appointment to the Board by the Secretary; and (4) make the number of importers on the Board more proportionate to the share of assessments paid.

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

AMS performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed amendment to the Plan on small entities and invites comments concerning potential effects of this amendment on small businesses.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS

has determined that this rule is consistent with and will effectuate the declared policy of the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Agricultural research, Consumer protection, Marketing agreements, Reporting and recordkeeping requirements, Watermelon.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 1210 as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 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. Section 1210.501 is revised 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) * * *

(b) District 2 – The States of Alabama, Georgia, and South Carolina.

(c) District 3 – The States of Arkansas, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, and Texas.

(d) * * *

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

3. Section 1210.502 is revised to read as follows:

§ 1210.502 Board members.

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

Erin Morris,

Administrator,

Agricultural Marketing Service.

[FR Doc. 2025-18232 Filed: 9/18/2025 8:45 am; Publication Date: 9/19/2025]