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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[FV-93-706FR-A]

RIN 0581-AB21

Watermelon Research and Promotion Plan; Amendments to the Plan, Rules and Regulations, and Rules of Practice for Petitions

AGENCY: Agricultural Marketing Service,

USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Watermelon Research and Promotion Plan (Plan) to: eliminate the refund provision of the Plan; assess watermelon importers and add importer member(s) to the Plan; exempt from assessments producers with less than 10 acres of watermelons rather than 5 acres and importers of less than 150,000 pounds; cover all 50 States by the Plan; and revise the criteria for determining the eligibility of producers to serve on the Board. In addition, conforming changes would be made to the rules and regulations issued under the Plan and the rules of practice for petitions.

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable

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SUPPLEMENTARY INFORMATION: This final rule amends the Watermelon Research and Promotion Plan [7 CFR part 1210], hereinafter referred as the Plan. The Plan is effective under the Watermelon Research and Promotion Act, as amended by the Watermelon Research and Promotion Improvement Act of 1993, [7 U.S.C. 4901–4916] hereinafter referred as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1650 of the Act, a person subject to the Plan may file a petition with the Secretary stating that the Plan or any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with law and requesting a modification of the Plan or an exemption from the Plan. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 750 watermelon handlers and 5,000 watermelon producers in the United States who are subject to the Plan. There are approximately 140 importers of watermelons. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$5 million and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of watermelon handlers, producers, and importers may be classified as small entities.

The changes in the Plan, rules and regulations, and rules of practice for petitions reflect amendments to the Act. The overall economic impact of these changes is not expected to be significant. Including all 50 States and the District of Columbia under the Plan will have little impact. The producer exemption from assessments is being increased from 5 acres to 10 acres. This change will benefit small producers because it will increase the exemption level, and small producers will not have to pay the assessment. The eligibility criteria for determining if a person is a handler or a producer will not have any economic impact. The elimination of refunds may have some impact on a small amount of producers and handlers who are currently entitled to refunds. There will also be a new burden on importers caused by the assessment of imports, but importers are currently benefiting from the activities which promote watermelons without paying assessments. The research and promotion program is expected to continue to benefit producers, handlers, and importers subject to the Plan by expanding and maintaining new and existing markets. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 [40 U.S.C. Chapter 35], the information collection requirements contained in the Plan have previously been approved by the Office of Management and Budget (OMB) and assigned OMB number 0581–0093. There will be a new reporting burden on importers, but the burden has been already approved by the OMB and assigned OMB control number 0581–0093. This action adds no additional reporting burden.

Background

Under the Plan, the National Watermelon Promotion Board (Board) administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the watermelon's position in the market place and to establish, maintain, and expand markets for domestic watermelons. In the past, this program was financed by assessments