# Rules and Regulations

Federal Register
Vol. 60, No. 39
Tuesday, February 28, 1995

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

**[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 Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456; telephone (202) 720–9916.

**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

on all producers, except those persons engaged in the growing of less than five acres of watermelons, and handlers of watermelons. 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.

U.S. production of watermelons is estimated through the use of U.S. shipment statistics. Shipments of U.S.-produced watermelons totaled about 1,895.6 million pounds in 1993, 7 percent less than in 1992. Imports of watermelons in 1993 totalled 343.5 million pounds, an increase of 12 percent. Therefore, domestic production is about six times as great as the volume of imports.

A referendum was conducted in 1989 to determine if majority of watermelon growers and handlers favored the passage of an industry funded research and promotion program for watermelons. The Plan was intended to collect assessments for research and promotion of watermelons. At that time, any individual not favoring the program could request a refund of the assessments paid by that individual. Procedures to request a refund of assessments were explained in the Plan.

A proposed rule was published in the **Federal Register** on April 14, 1994 [59 FR 17739]. That rule contained the proposed amendments to the Plan, rules and regulations, rules of practice for petitions, and referendum procedures. In order to have the referendum procedures in place for the referendum, the Department decided to separately make final the referendum procedures. A final rule was published in the **Federal Register** on August 30, 1994 [59 FR 44613] containing the referendum procedures. A proposed rule containing the proposed amendments to the Plan, rules and regulations, rules of practice for petitions, and ordering that a referendum be conducted was published separately on August 30, 1994 [59 FR 44646].

The deadline for comments on the proposed amendments published on April 14 was May 16, 1994. Twenty-one comments were received. The comments were addressed in the rules published on August 30, 1994.

A referendum was conducted in November 1994 among watermelon producers, handlers, and importers to determine whether they favor: (1) eliminating the provisions for assessment refunds and (2) implementing assessments on imported watermelons and adding importer member(s) to the Board.

The voting period was from November 1 through November 30, 1994. Ballots were mailed to all known eligible watermelon producers, handlers, and importers on October 14, 1994.

Sonia N. Jimenez and Martha B. Ransom were designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The Procedure for the Conduct of Referenda in Connection with the Watermelon Research and Promotion Plan were used to conduct the referendum.

The results of the referendum indicate that 61 percent of those who voted in the referendum favor elimination of refunds of assessments under the program and that 81 percent of those who voted in the referendum favor assessing watermelon imports and adding watermelon importers to the Board.

A simple majority of votes was required to approve each of the two changes.

The amendments to the Act authorize an assessment on watermelons imported into the United States and the addition of importer members to the Board. Watermelon imports enter the country primarily during the winter season. Imports of watermelons in 1993 totalled 343.5 million pounds. The assessment rate for imports will be the combined total assessment rate paid by producers and handlers of domestic watermelons. The current assessment rate for producers is 2 cents per hundredweight and for handlers is 2 cents per hundredweight. The combined assessment rate for importers, therefore, will be 4 cents per hundredweight. Assessments will be paid at the time the watermelons enter the country. The collection of assessments on imported watermelons will be expected to generate an additional $137,400 per year in revenue to the Board. In order to make these changes, this rule amends sections 1210.305, 1210.320, 1210.321, 1210.328, 1210.341, 1210.350, 1210.351, 1210.352, 1210.363, and 1210.364 of the Plan; sections 1210.402 and 1210.405 of the nomination procedures; and sections 1210.515, 1210.518, 1210.519, 1210.521, 1210.530, 1210.531, and 1210.532 of the rules and regulations. In addition, a new section 1210.314 will be added to the Plan.

To facilitate the collection of assessments on imported watermelons, the Secretary proposes that the Customs Service of the Department of the Treasury be designated as the collecting agency for assessments levied on such imports. Other commodity research and promotion programs utilize the Customs Service as a means of collecting assessments on imported products, and the Customs Service is agreeable to collecting these watermelon assessments. An agreement between the USDA and the Customs Service will be entered into to implement this action. In order to make this change, this rule would amend section 1210.518 of the Rules and Regulations.

The importer representation on the Board will be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers will serve on the Board if importers are subject to the Plan. This representation will enable importers to participate in developing the Board's programs, plans, and projects, and express their views and concerns on how Board funds are used if imports are assessed under the Plan. Importers will nominate individuals to serve as importer members on the Board, and as required for other members of the Board, two nominees would be submitted to the Secretary for each vacancy. The Act requires the number of importers members to be proportionate to the assessments paid by importers. It is necessary to calculate the number of initial importer members on the volume of imports because imports are not currently being assessed. There are currently 14 producers and 14 handlers on the Board. This is the equivalent of one domestic industry member for every 67.7 million pounds of domestic production. Based on the average annual volume of imports during the last 3-year period (323.1 hundredweight), four importers would be added to the current Board. In order to make this change, this rule would amend sections 1210.320, 1210.321, and 1210.401.

The Act provides for the elimination of refunds of assessments after passed in the referendum. The refund provision has been in effect since the beginning of the program. Refunds have been increasing every year from 9 percent in 1990 to almost 29 percent in 1993. The elimination of the refund provision from the Plan is estimated to provide the Board with additional $250,000 per year for research and promotion activities. In order to make this change, this rule amends sections 1210.343 and 1210.520.

The Act increases the acreage for exempt producers from ''less than 5 acres'' to ''less than 10 acres'' of watermelons. Importers of less than 150,000 pounds of watermelons per year will be entitled to apply for a refund which will be the producer equivalent of the import assessments. The 150,000-

pound exemption level for importers is the level determined to be equivalent to 10 acres of watermelons for domestic producers. In addition, the Act provides that the Board has the authority to establish rules for producers to certify whether they are exempt from the assessments. In order to make these changes, this rule amends sections 1210.341, 1210.342, 1210.518, and 1210.521.

The Act also increases applicability of the law from the 48 contiguous States to the 50 States and the District of Columbia. This amendment would expand the Plan to cover producers, handlers, and importers in Hawaii, Alaska, and the District of Columbia. In order to make these changes, this rule amends section 1210.305 and would add a new section 1210.315.

Section 1647(f) of the Act permits changes in the assessment rate through notice and comment rulemaking. No change to the Plan is necessary to implement this amendment to the Act because section 1210.341 of the Plan states that assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act.

The Act provides that a producer is eligible to serve on the Board as a representative of handlers (1) if a producer purchases watermelons from other producers in a combined total volume that is equal to 25 percent or more of the producer's own production or (2) if the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production. This provision facilitates the eligibility of producers and handlers to serve on the Board as representatives of their specific group. In order to make these changes, this rule amends sections 1210.321, 1210.363, 1210.368, and 1210.402.

The Act also provides that all future promulgation and amendment referenda do not have to be conducted at Extension Service county offices. This procedure proved to be expensive and difficult to administer. The Act now allows referenda to be conducted by mail ballot which reduces the costs involved in conducting referenda and facilitates a more timely tabulation of the results. In order to make this change, this rule amends section 1210.363.

In addition, the Act changes the criteria for determining the outcome of referenda. The Act previously provided that the Plan should not be effective unless approved by not less than two-thirds of the producers and handlers voting in the referendum, or producers and handlers of not less than two-thirds of the watermelons produced and handled during the representative period by producers and handlers voting in the referendum, and by not less than a majority of the producers and a majority of the handlers voting in the referendum. The Act now specifies that the determination of the results of a referendum should be on the basis of a simple majority of the producers, handlers, and importers voting in the referendum. In order to make this change, this rule amends section 1210.363.

Furthermore, section 1210.252 will be revised to correct a wording error made during the promulgation of the Plan and section 1210.322 will be revised to delete obsolete language.

In addition, section 1210.325 will be changed to reflect a change in the number of Board members that constitute a majority. This revision reflects the addition of importer members to the Board.

Section 1210.505 will be amended to reflect the fact that the Department issues user fee bills to the Board monthly rather than quarterly.

In addition, miscellaneous conforming changes will be made to sections 1210.251, 1210.302, 1210.328, 1210.340, and 1210.362.

Minor changes are made in this final rule for the purpose of clarity.

After consideration of all relevant material presented, it is found that this regulation, as set forth herein, tends to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule amends the Plan and the Rules and Regulations issued thereunder, in accordance with the provisions of the Act as amended by the Watermelon Research and Promotion Improvement Act of 1993; (2) watermelon producers, handlers, and importers voted in November 1994 to implement two of the major changes; and (3) no useful purpose will be served in delaying the effective date until 30 days after publication of this final rule. Therefore, this final rule will be effective on the date of publication in the **Federal Register**.

### List of Subjects in 7 CFR Part 1210

Agricultural promotion, Agricultural research, Market development, Reporting and recordkeeping requirements, Watermelons.

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.

## Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Plans

### § 1210.251 [Amended]

2. In Section 1210.251, paragraph (a) is amended by removing ';'' and adding in its place '', as amended;''.

### § 1210.252 [Amended]

3. In Section 1210.252, paragraph (b)(3) is amended by removing the word ''order'' and adding in its place ''Plan''.

## Subpart—Watermelon Research and Promotion Plan

### § 1210.302 [Amended]

4. Section 1210.302 is amended by adding '', as amended'' at the end of the sentence.

5. Section 1210.305 is revised to read as follows:

### § 1210.305 Watermelon.

''Watermelon'' means all varieties of the Family Curcubitaceae; Genus and Species; Citrullus Lanatus, popularly referred to as watermelon grown by producers in the United States or imported into the United States.

### § 1210.306 [Amended]

6. Section 1210.306 is amended by removing the word ''five'' and adding in its place ''10''.

7. A new § 1210.314 is added to read as follows:

### § 1210.314 Importer.

''Importer'' means any person who imports watermelons into the United States as a principal or as an agent, broker, or consignee for any person who produces watermelons outside of the United States for sale in the United States.

8. A new section 1210.315 is added to read as follows:

### § 1210.315 United States.

''United States'' means each of the several States and the District of Columbia.

9. Section 1210.320 is amended by revising paragraph (a) and adding new paragraphs (d), (e), and (f) to read as follows:

### § 1210.320 Establishment and membership.

(a) There is hereby established a National Watermelon Promotion Board, hereinafter called the ''Board.'' The

Board shall be composed of producers, handlers, importers, and one public representative appointed by the Secretary. An equal number of producer and handler representatives shall be nominated by producers and handlers pursuant to § 1210.321. The Board shall also include one or more representatives of importers, who shall be nominated in such manner as may be prescribed by the Secretary. The public representative shall be nominated by the Board members in such manner as may be prescribed by the Secretary. If producers, handlers, and importers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided in § 1210.324. If the Board fails to adhere to procedures prescribed by the Secretary for nominating a public representative, the Secretary shall appoint such representative.

* * * * *

(d) 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.

(e) Not later than 5 years after the date that importers are subject to the Plan, and every 5 years thereafter, the Secretary shall evaluate the average annual percentage of assessments paid by importers during the 3-year period preceding the date of the evaluation and adjust, to the extent practicable, the number of importer representatives on the Board.

(f) The Board consists of 14 producers, 14 handlers, at least one importer, and one public member appointed by the Secretary.

10. Section 1210.321 is amended by redesignating paragraphs (a), (b), and (c) as (b), (c), and (e) respectively; redesignating paragraph (d) as paragraph (f); removing new paragraph (f)(1) and redesignating new paragraphs (f)(2) and (f)(3) as paragraphs (f)(1) and (f)(2); revising new paragraphs (b) introductory text, (b)(1), (b)(4), (e), (f) introductory text, and (f)(1); removing in new paragraph (c) the word ''positions'' and adding in its place the phrase ''producer and handler positions''; and adding new paragraphs (a) and (d) to read as follows:

**§ 1210.321 Nominations and selection.**

* * * * *

(a) There shall be two individuals nominated for each vacant position.

(b) The Board shall issue a call for nominations by February first of each year in which an election is to be held. The call shall include at a minimum, the following information:

(1) A list of the vacancies and qualifications as to producers and handlers by district and to importers nationally for which nominees may be submitted.

* * * * *

(4) The date, time, and location of any next scheduled meeting of the Board, national and State producer or handler associations, importers, and district conventions, if any.

* * * * *

(d) Nominations for importers positions that become vacant may be made by mail ballot, nomination conventions, or by other means prescribed by the Secretary. The Board shall provide notice of such vacancies and the nomination process to all importers through press releases and any other available means as well as direct mailing to known importers. All importers may participate in the nomination process: *Provided,* That a person who both imports and handles watermelons may vote for importer members and serve as an importer member if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

(e) All producers and handlers within the district may participate in the convention: *Provided,* That a person that produces and handles watermelons may vote for handler members only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and *provided further,* That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(f) The district convention chairperson shall conduct the selection process for the nominees in accordance with procedures to be adopted at each such convention, subject to requirements set in § 1210.321(e).

(1) No State in Districts 3, 4, 5, and 7 as currently constituted shall have more than three producers and handlers representatives concurrently on the Board.

* * * * *

11. Section 1210.322 is amended by revising paragraphs (a), (b), and (d) to read as follows:

**§ 1210.322 Term of office.**

(a) The term of office of Board members shall be three years.

(b) Except in the case of mid-term vacancies, the term of office shall begin on January 1, or such other date as may be recommended by the Board and approved by the Secretary.

* * * * *

(d) No person shall serve more than two successive terms of office.

12. Section 1210.325 is amended by revising paragraph (a) to read as follows:

**§ 1210.325 Procedure.**

(a) A simple majority of Board members shall constitute a quorum and any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings all votes shall be cast in person.

* * * * *

**§ 1210.328 [Amended]**

13. Section 1210.328 is amended by removing in paragraphs (d) and (g) the word ''collected'' and adding in its place ''received''; removing in paragraphs (g), (i), and (m) the phrase ''and handlers'' and adding in its place '', handlers, and importers''; removing in paragraph (k) the phrase ''or handler'' and adding in its place '', handler or importer''; and removing in paragraph (n) the word ''handlers'' and adding in its place ''handlers, importers,''.

**§ 1210.340 [Amended]**

14. Section 1210.340 is amended by removing in paragraph (b) the word ''collected'' and adding in its place ''received''.

15. Section 1210.341 is amended by revising paragraphs (a), and (b); redesignating paragraphs (d) through (i) as (e) through (j); revising redesignated paragraph (e); adding a new paragraph (d); removing in redesignated paragraphs (f) and (g) the word ''handler'' wherever it appears and adding in its place ''handler or importer''; removing in redesignated paragraph (h) the word ''handlers'' wherever it appears and adding in its place ''handlers and importers''; and removing redesignated in paragraph (f) the letter ''(d)'' and adding in its place ''(e)'' to read as follows:

**§ 1210.341 Assessments.**

(a) During the effective period of this subpart, assessments shall be levied on all watermelons produced and first handled in the United States and all

watermelons imported into the United States for consumption as human food. No more than one assessment on a producer, handler, or importer shall be made on any lot of watermelons. The handler shall be assessed an equal amount on a per unit basis as the producer. If a person performs both producing and handling functions on any same lot of watermelons, both assessments shall be paid by such person. In the case of an importer, the assessment shall be equal to the combined rate for domestic producers and handlers and shall be paid by the importer at the time of entry of the watermelons into the United States.

(b) Assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act. No assessments shall be levied on watermelons grown by producers of less than 10 acres of watermelons.

* * * * *

(d) Each importer shall be responsible for payment of the assessment to the Board on watermelons imported into the United States through the U.S. Customs Service or in such other manner as may be established by rules and regulations approved by the Secretary.

(e) Producer-handlers and handlers shall pay assessments to the Board at such time and in such manner as the Board, with the Secretary's approval, directs, pursuant to regulations issued under this part. Such regulations may provide for different handlers or classes of handlers and different handler payment and reporting schedules to recognize differences in marketing practices or procedures used in any State or production area.

* * * * *

16. Section 1210.342 is amended by designating the existing text as paragraph (a) and adding new paragraphs (b), (c), and (d) to read as follows:

**§ 1210.342 Exemption from assessment.**

* * * * *

(b) Importers of less than 150,000 pounds of watermelons per year shall be entitled to apply for a refund that is equal to the rate of assessment paid by domestic producers.

(c) The Secretary may adjust the quantity of the weight exemption specified in paragraph (b) of this section on the recommendation of the Board after an opportunity for public notice and comment to reflect significant changes in the 5-year average yield per acre of watermelons produced in the United States.

(d) The Board shall have the authority to establish rules, with the approval of the Secretary, for certifying whether a person meets the definition of a producer under section 1210.306.

**§ 1210.343 [Removed and Reserved]**

17. Section 1210.343 is removed and reserved.

18. Section 1210.350 is amended by redesignating paragraphs (a) through (d) as (a) (1) through (4); designating the introductory paragraph as paragraph (a) introductory text; and adding new paragraphs (b) and (c) to read as follows:

**§ 1210.350 Reports.**

* * * * *

(b) Each importer of watermelons shall maintain a separate record that includes a record of:

(1) the total quantity of watermelons imported into the United States that are included under the terms of this Plan;

(2) the total quantity of watermelons that are exempt from the Plan; and

(3) such other information as may be prescribed by the Board.

(c) Each importer shall report to the Board at such times and in such manner as it may prescribe such information as may be necessary for the Board to perform its duties under this part.

**§ 1210.351 [Amended]**

19. Section 1210.351 is amended by removing the word ''handler'' and adding in its place ''handler and importer'' and removing the word ''two'' and adding in its place ''2''.

**§ 1210.352 [Amended]**

20. Section 1210.352 is amended by removing in paragraph (a)(1) the word ''handlers'' and adding in its place ''handlers or importers''.

**§ 1210.362 [Amended]**

21. Section 1210.362 is amended by removing the word ''collected'' and adding in its place ''received''; and removing the word ''plan'' and adding in its place ''Plan''.

22. Section 1210.363 is amended by revising paragraph (b) to read as follows:

**§ 1210.363 Suspension or termination.**

* * * * *

(b) The Secretary may conduct a referendum at any time and shall hold a referendum on request of the Board or at least 10 percent of the combined total of the watermelon producers, handlers, and importers to determine if watermelon producers, handlers, and importers favor termination or suspension of this Plan. The Secretary shall suspend or terminate this Plan at the end of the marketing year whenever the Secretary determines that the suspension or termination is favored by a majority of the watermelon producers, handlers, and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production, handling, or importing of watermelons and who produced, handled, or imported more than 50 percent of the combined total of the volume of watermelons produced, handled, or imported by those producers, handlers, and importers voting in the referendum. For purposes of this section, the vote of a person who both produces and handles watermelons will be counted as a handler vote if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production. *Provided,* That the vote of a person who both imports and handles watermelons will be counted as an importer vote if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person. Any such referendum shall be conducted by mail ballot.

**§ 1210.364 [Amended]**

23. Section 1210.364 is amended by removing in paragraph (d) the phrase ''and handlers'' and adding in its place '', handlers and importers''.

24. The subpart heading ''Subpart—Procedures for Nominating Producer and Handler Members to the National Watermelon Promotion Board'' is revised; and a new undesignated center heading is added to read as follows:

## Subpart—Procedures for Nominating Members to the National Watermelon Promotion Board

### Producer and Handler Members

25. In Section 1210.401, paragraph (b) is revised to read as follows:

**§ 1210.401 District conventions.**

* * * * *

(b) District conventions are to be held to nominate producers and handlers as candidates for membership on the National Watermelon Promotion Board. Each district, as defined in § 1210.501, is entitled to two producer and two handler members on the Board.

* * * * *

26. Section 1210.402 is amended by revising paragraph (a); removing in paragraph (b) the phrase ''or first handling'' and adding in its place '', first handling or importing''; and removing

in paragraph (b) the phrase ''§ 1210.403'' and adding in its place ''§ 1210.403 and § 1210.404'' to read as follows:

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

(a) All producers and handlers within a district may participate in their district convention for the purpose of nominating candidates for appointment to the Board: *Provided*, That a producer who both produces and handles watermelons may vote for handler member nominees and serve as a handler member nominee only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production or the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and *Provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board. For the purpose of participation in initial nominating conventions, such election shall be made in writing, at the address provided, to the Department official identified in the call for a district convention.

* * * * *

27. A new undesignated center heading and section 1210.404 are added to read as follows:

## Importer Members

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

(a) The Board shall include one or more representatives of importers, who shall be appointed by the Secretary from nominations submitted by watermelon importers. Importers' 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 if importers are subject to the Plan. Nominations for importer positions that become vacant shall be made by importers at nomination conventions or by mail ballot.

(b) The initial nomination of importer members shall be made not later than 90 days after the Plan is amended.

(c) There shall be two individuals nominated for each vacant position. The importer receiving the highest number of votes for a vacancy shall be the first choice nominee, and the importer receiving the second highest number of votes shall be the second choice nominee submitted to the Secretary.

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

(e) *Nomination Conventions.* If nominations are made by nomination conventions, the Board shall widely publicize such conventions and provide importers and the Secretary at least 10 days notice prior to each convention.

(1) Proxy voting by importers shall be permitted at all conventions. Any person wanting to cast proxy votes must demonstrate authorization to do so. Authority to cast a proxy vote on behalf of another person shall be demonstrated through documentation containing:

(i) The proxy voter's name, address, and telephone number;

(ii) Signature and date signed;

(iii) A certification identifying the proxy voter as an importer; and

(iv) A statement identifying the person being given authority by the proxy voter to cast the proxy vote.

(2) The Board shall provide to the Secretary a typed copy of each convention's minutes and shall arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of completion of a convention.

(f) *Mail balloting.* If nominations are conducted by mail ballot, the Board shall request importers to submit nominations of eligible importers. It is the importer's responsibility to prove the individual's eligibility. After the names of nominees are received, the Board shall print ballots and ask eligible importers to vote to nominate their candidates. After the vote is received, the Board shall tabulate the results and shall send to the Department the nominees in order of preference. The Board shall provide the Secretary with a report on the results, number of importers participating in the vote, and the volume of imports, and shall arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of receiving the ballots.

(g) Any individual who both imports and handles watermelons will be considered an importer if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

**§ 1210.503 [Redesignated as § 1210.405]**

28. Section 1210.503 is redesignated as § 1210.405, the first sentence of paragraph (a) is revised, and a new undesignated center heading is added to read as follows:

## Public Member

**§ 1210.405 Public member nominations and selection.**

(a) The public member shall be nominated by the other members of the Board. * * *

* * * * *

## Subpart—Rules and Regulations

**§ 1210.505 [Amended]**

29. Section 1210.505 is amended by removing the word ''quarterly'' and adding in its place ''monthly''.

30. Section 1210.515 is amended by revising paragraph (a); redesignating paragraph (b) as (c); and adding a new paragraph (b) to read as follows:

**§ 1210.515 Levy of assessments.**

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

(b) The import assessment shall be uniformly applied to imported watermelons that are identified by the numbers 0807.10.30007 and 0807.10.40005 in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh watermelons for consumption as human food. The U.S. Customs Service (USCS) will collect assessments on such watermelons at the time of entry and will forward such assessment as per the agreement between USCS and USDA. Any importer or agent who is exempt from payment of assessments may submit the Board adequate proof of the volume handled by such importer for the exemption to be granted.

* * * * *

31. Section 1210.518 is amended by revising paragraphs (a) and (b);

removing in paragraph (c)(1) the letter ''(e)'' and adding in its place ''(b) and (e)'' and removing the word ''handler'' and adding in its place ''handler and importer''; removing in paragraph (c)(2)(viii) the word ''five'' and adding in its place ''10''; and removing in paragraph (d)(1) the word ''handler'' wherever it appears and adding in its place ''handler and importer'' to read as follows:

**§ 1210.518 Payment of assessments.**

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

(b) Responsibility for payment.

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

(2) The U.S. Customs Service shall collect assessments on imported watermelons from importers and forward such assessments under an agreement between the U.S. Customs Service and the U.S. Department of Agriculture. Importers shall be responsible for payment of assessments directly to the Board of any assessments due but not collected by the U.S. Customs Service at the time of entry, or withdrawal, on watermelons imported into the United States for human consumption.

* * * * *

**§ 1210.519 [Amended]**

32. Section 1210.519 is amended by removing in the introductory paragraph the word ''handler'' and adding in its place ''handler and importer''; by removing in paragraph (a) the word ''handler's'' and adding in its place ''handler's and importer's''; and removing the word ''Watermelon'' from the introductory paragraph and paragraphs (a) and (b).

33. Section 1210.520 is revised to read as follows:

**§ 1210.520 Refunds.**

Each importer of less than 150,000 pounds of watermelons during any calendar year shall be entitled to apply for a refund of the assessments paid in an amount equal to the amount paid by domestic producers.

(a) Application form. The Board shall make available to all importers a refund application form.

(b) Submission of refund application to the Board. The refund application form shall be submitted to the Board within 90 days of the last day of the year the watermelons were actually imported. The refund application form shall contain the following information:

(1) Importer's name and address;

(2) Number of hundredweight of watermelon on which refund is requested;

(3) Total amount to be refunded;

(4) Proof of payment as described below; and

(5) Importer's signature.

(c) Proof of payment of assessment. Evidence of payment of assessments satisfactory to the Board shall accompany the importer's refund application. An importer must submit a copy of the importer's report or a cancelled check. Evidence submitted with a refund application shall not be returned to the applicant.

(d) Payment of refund. Immediately after receiving the properly executed application for refund, the Board shall make remittance to the applicant.

34. Section 1210.521 is revised to read as follows:

**§ 1210.521 Reports of disposition of exempted watermelons.**

The Board may require reports by handlers or importers on the handling/importing and disposition of exempted watermelons and/or on the handling of watermelons for persons engaged in growing less than 10 acres of watermelons or in the case of importers, the importing of less than 150,000 pounds per year. Authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

**§ 1210.530 [Amended]**

35. Section 1210.530 is amended by removing the word ''handler'' from the introductory text and adding in its place ''handler and importer''.

**§ 1210.531 [Amended]**

36. Section 1210.531 is amended by removing the word ''handler'' and adding in its place ''handler and importer''.

37. Section 1210.532 is revised to read as follows:

**§ 1210.532 Confidential books, records, and reports.**

All information obtained from the books, records, and reports of handlers and importers and all information with respect to refunds of assessments made to importers shall be kept confidential in the manner and to the extent provided for in § 1210.352.

Dated: February 21, 1995.

**Lon Hatamiya,**

*Administrator.*

[FR Doc. 95–4736 Filed 2–27–95; 8:45 am]

BILLING CODE 3410–02–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 94–NM–128–AD; Amendment 39–9146; AD 95–03–09]**

## Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Fokker F28 Mark 0100 series airplanes, that requires inspecting the teleflex cable of the landing gear to detect corrosion, moisture, or improper greasing, and replacing discrepant teleflex cables with serviceable parts. This amendment is prompted by reports of difficulties with the operation of the selector handle of the landing gear when ''gear down'' is selected, due to improper greasing of the teleflex cable of the landing gear during production. The actions specified by this AD are intended to prevent moisture from accumulating on the teleflex cable, which could result in corrosion of the teleflex cable that could inhibit operation of the selector handle of the landing gear.

**DATES:** Effective March 30, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 30, 1995.

**ADDRESSES:** The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**