

103D CONGRESS
1ST SESSION

S. 778

AN ACT

To amend the Watermelon Research and Promotion Act to expand operation of the Act to the entire United States, to authorize the revocation of the refund provision of the Act, to modify the referendum procedures of the Act, and for other purposes.

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To amend the Watermelon Research and Promotion Act to expand operation of the Act to the entire United States, to authorize the revocation of the refund provision of the Act, to modify the referendum procedures of the Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Watermelon Research and Promotion Improvement Act
4 of 1993”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Change to majority vote in referendum procedures.
- Sec. 3. Expansion of watermelon plans to entire United States.
- Sec. 4. Clarification of differences between producers and handlers.
- Sec. 5. Clarification of collection of assessments by the Board.
- Sec. 6. Changes to assessment rate not subject to formal rulemaking.
- Sec. 7. Elimination of watermelon assessment refund.
- Sec. 8. Equitable treatment of watermelon plans.
- Sec. 9. Definition of producer.
- Sec. 10. Amendment procedure.

7 **SEC. 2. CHANGE TO MAJORITY VOTE IN REFERENDUM PRO-**
8 **CEDURES.**

9 Section 1653 of the Watermelon Research and Pro-
10 motion Act (7 U.S.C. 4912) is amended—

- 11 (1) by inserting “(a)” after “SEC. 1653.”;
- 12 (2) by striking the third sentence; and
- 13 (3) by adding at the end the following new sub-
14 section:

15 “(b) A plan issued under this subtitle shall not take
16 effect unless the Secretary determines that the issuance
17 of the plan is approved or favored by a majority of the
18 producers and handlers (and importers who are subject
19 to the plan) voting in the referendum.”.

1 **SEC. 3. EXPANSION OF WATERMELON PLANS TO ENTIRE**
2 **UNITED STATES.**

3 (a) DEFINITIONS.—Section 1643 of the Watermelon
4 Research and Promotion Act (7 U.S.C. 4902) is amend-
5 ed—

6 (1) in paragraph (3), by striking “the forty-
7 eight contiguous States of”; and

8 (2) by adding at the end the following new
9 paragraph:

10 “(10) The term ‘United States’ means each of
11 the several States and the District of Columbia.”.

12 (b) ISSUANCE OF PLANS.—The last sentence of sec-
13 tion 1644 of such Act (7 U.S.C. 4903) is amended by
14 striking “the forty-eight contiguous States of”.

15 **SEC. 4. CLARIFICATION OF DIFFERENCES BETWEEN PRO-**
16 **DUCERS AND HANDLERS.**

17 Section 1647(c) of the Watermelon Research and
18 Promotion Act (7 U.S.C. 4906(c)) is amended by adding
19 at the end the following new paragraph:

20 (1) by inserting “(1)” after “(c)”; and

21 (2) by adding at the end the following new
22 paragraph:

23 “(2) A producer shall be eligible to serve on the
24 Board only as a representative of handlers, and not as
25 a representative of producers, if—

1 “(A) the producer purchases watermelons from
2 other producers, in a combined total volume that is
3 equal to 25 percent or more of the producer’s own
4 production; or

5 “(B) the combined total volume of watermelons
6 handled by the producer from the producer’s own
7 production and purchases from other producers’ pro-
8 duction is more than 50 percent of the producer’s
9 own production.”.

10 **SEC. 5. CLARIFICATION OF COLLECTION OF ASSESSMENTS**

11 **BY THE BOARD.**

12 Section 1647 of the Watermelon Research and Pro-
13 motion Act (7 U.S.C. 4906) is amended—

14 (1) in subsection (f), by striking “collection of
15 the assessments by the Board” and inserting “pay-
16 ment of the assessments to the Board.”; and

17 (2) in paragraphs (1) and (3) of subsection (g),
18 by striking “collected” each place it appears and in-
19 serting “received”.

20 **SEC. 6. CHANGES TO ASSESSMENT RATE NOT SUBJECT TO**

21 **FORMAL RULEMAKING.**

22 Section 1647(f) of the Watermelon Research and
23 Promotion Act (7 U.S.C. 4906(f)) is amended by adding
24 at the end the following new sentences: “In fixing or
25 changing the rate of assessment pursuant to the plan, the

1 Secretary shall comply with the notice and comment pro-
2 cedures established under section 553 of title 5, United
3 States Code. Sections 556 and 557 of such title shall not
4 apply with respect to fixing or changing the rate of assess-
5 ment.”.

6 **SEC. 7. ELIMINATION OF WATERMELON ASSESSMENT RE-**
7 **FUND.**

8 Section 1647(h) of the Watermelon Research and
9 Promotion Act (7 U.S.C. 4906(h)) is amended—

10 (1) by striking “(h) The” and inserting “(h)(1)

11 Except as provided in paragraph (2), the”; and

12 (3) by adding at the end the following new
13 paragraphs:

14 “(2) If approved in the referendum required by sec-
15 tion 1655(b) relating to the elimination of the assessment
16 refund under paragraph (1), the Secretary shall amend
17 the plan that is in effect on the day before the date of
18 the enactment of the Watermelon Research and Promotion
19 Improvement Act of 1993 to eliminate the refund provi-
20 sion.

21 “(3)(A) Notwithstanding paragraph (2) and subject
22 to subparagraph (B), if importers are subject to the plan,
23 the plan shall provide that an importer of less than
24 150,000 pounds of watermelons per year shall be entitled

1 to apply for a refund that is based on the rate of assess-
2 ment paid by domestic producers.

3 “(B) The Secretary may adjust the quantity of the
4 weight exemption specified in subparagraph (A) on the
5 recommendation of the Board after an opportunity for
6 public notice and opportunity for comment in accordance
7 with section 553 of title 5, United States Code, and with-
8 out regard to sections 556 and 557 of such title, to reflect
9 significant changes in the 5-year average yield per acre
10 of watermelons produced in the United States.”.

11 **SEC. 8. EQUITABLE TREATMENT OF WATERMELON PLANS.**

12 (a) DEFINITIONS.—Section 1643 of the Watermelon
13 Research and Promotion Act (7 U.S.C. 4902), as amended
14 by section 3(a), is further amended—

15 (1) in paragraph (3), by striking the semicolon
16 at the end and inserting the following: “or imported
17 into the United States.”;

18 (2) by redesignating paragraphs (6) and (7) as
19 paragraphs (8) and (9), respectively; and

20 (3) by inserting after paragraph (5) the follow-
21 ing new paragraphs:

22 “(6) The term ‘importer’ means any person
23 who imports watermelons into the United States.

24 “(7) The term ‘plan’ means an order issued by
25 the Secretary under this subtitle.”.

1 (b) ISSUANCE OF PLANS.—Section 1644 of such Act
2 (7 U.S.C. 4903), as amended by section 3(b), is further
3 amended—

4 (1) in the first sentence, by striking “and han-
5 dlers” and inserting “, handlers, and importers”;

6 (2) by striking the second sentence; and

7 (3) in the last sentence, by inserting “or im-
8 ported into the United States” before the period.

9 (c) NOTICE AND HEARINGS.—Section 1645(a) of
10 such Act (7 U.S.C. 4904(a)) is amended—

11 (1) in the first sentence, by striking “and han-
12 dlers” and inserting “, handlers, and importers”;
13 and

14 (2) in the last sentence, by striking “or han-
15 dlers” and inserting “, handlers, or importers”.

16 (d) MEMBERSHIP OF BOARD.—Section 1647(c) of
17 such Act (7 U.S.C. 4906(c)), as amended by section 4,
18 is further amended—

19 (1) in the second sentence of paragraph (1), by
20 striking “producer and handler members” and in-
21 serting “other members”; and

22 (2) by adding at the end the following new
23 paragraph:

24 “(3)(A) If importers are subject to the plan, the
25 Board shall also include 1 or more representatives of im-

1 porters, who shall be appointed by the Secretary from
2 nominations submitted by importers in such manner as
3 may be prescribed by the Secretary.

4 “(B) Importer representation on the Board shall be
5 proportionate to the percentage of assessments paid by im-
6 porters to the Board, except that at least 1 representative
7 of importers shall serve on the Board.

8 “(C) If importers are subject to the plan and fail to
9 select nominees for appointment to the Board, the Sec-
10 retary may appoint any importers as the representatives
11 of importers.

12 “(D) Not later than 5 years after the date that im-
13 porters are subjected to the plan, and every 5 years there-
14 after, the Secretary shall evaluate the average annual per-
15 centage of assessments paid by importers during the 3-
16 year period preceding the date of the evaluation and ad-
17 just, to the extent practicable, the number of importer rep-
18 resentatives on the Board.”.

19 (e) ASSESSMENTS.—Section 1647(g) of such Act (7
20 U.S.C. 4906(g)) is amended—

21 (1) in paragraph (4)—

22 (A) by striking “(4) assessments” and in-
23 serting “(4) Assessments”; and

24 (B) by inserting “in the case of producers
25 and handlers” after “such assessments”; and

1 (2) by adding at the end the following new
2 paragraph:

3 “(5) If importers are subject to the plan, an as-
4 sessment shall also be made on watermelons im-
5 ported into the United States by the importers. The
6 rate of assessment for importers who are subject to
7 the plan shall be equal to the combined rate for pro-
8 ducers and handlers.”.

9 (f) REFUNDS.—Paragraph (1) of section 1647(h) of
10 such Act (7 U.S.C. 4906(h)), as amended by section 7,
11 is further amended—

12 (1) by inserting after “or handler” the first two
13 places it appears the following: “(or importer who is
14 subject to the plan)”; and

15 (2) by striking “or handler” the last place it
16 appears and inserting “, handler, or importer”.

17 (g) ASSESSMENT PROCEDURES.—Section 1649 of
18 such Act (7 U.S.C. 4908) is amended—

19 (1) in subsection (a)—

20 (A) by inserting “(1)” after “(a)”; and

21 (B) by adding at the end the following new
22 paragraph:

23 “(2)(A) If importers are subject to the plan, each im-
24 porter required to pay assessments under the plan shall

1 be responsible for payment of the assessment to the
2 Board, as the Board may direct.

3 “(B) The assessment on imported watermelons shall
4 be equal to the combined rate for domestic producers and
5 handlers and shall be paid by the importer to the Board
6 at the time of the entry of the watermelons into the United
7 States.

8 “(C) Each importer required to pay assessments
9 under the plan shall maintain a separate record that in-
10 cludes a record of—

11 “(i) the total quantity of watermelons imported
12 into the United States that are included under the
13 terms of the plan;

14 “(ii) the total quantity of watermelons that are
15 exempt from the plan; and

16 “(iii) such other information as may be pre-
17 scribed by the Board.

18 “(D) No more than 1 assessment shall be made on
19 any imported watermelon.”;

20 (2) in subsection (b), by inserting “and import-
21 ers” after “Handlers”; and

22 (3) in subsection (c)(1), by inserting “or im-
23 porters” after “handlers”.

24 (h) INVESTIGATIONS.—Section 1652(a) of such Act
25 (7 U.S.C. 4911(a)) is amended—

1 (1) in the first sentence, by striking “a handler
2 or any other person” by inserting “a person”;

3 (2) in the fourth sentence, by inserting “(or an
4 importer who is subject to the plan)” after “a han-
5 dler”; and

6 (3) in the last sentence, by striking “the han-
7 dler or other person” and inserting “the person”.

8 (i) REFERENDUM.—Subsection (a) of section 1653 of
9 such Act (7 U.S.C. 4912), as amended by section 2, is
10 further amended—

11 (1) in the first sentence—

12 (A) by striking “and handlers” both places
13 it appears and inserting “, handlers, and im-
14 porters”; and

15 (B) by striking “or handling” and insert-
16 ing “, handling, or importing”;

17 (2) by striking the second sentence; and

18 (3) in the sentence beginning with “The bal-
19 lots”—

20 (A) by striking “or handler” and inserting
21 “, handler, or importer”; and

22 (B) by striking “or handled” and inserting
23 “, handled, or imported”.

24 (j) TERMINATION OF PLANS.—Section 1654(b) of
25 such Act (7 U.S.C. 4913(b)) is amended—

1 (1) in the first sentence—

2 (A) by striking “10 per centum or more”
3 and inserting “at least 10 percent of the com-
4 bined total”; and

5 (B) by striking “and handlers” both places
6 it appears and inserting “, handlers, and im-
7 porters”;

8 (2) in the second sentence—

9 (A) by striking “or handle” and inserting
10 “, handle, or import”;

11 (B) by striking “50 per centum” and in-
12 serting “50 percent of the combined total”; and

13 (C) by striking “or handled by the han-
14 dlers,” and inserting “, handled by the han-
15 dlers, or imported by the importers”; and

16 (3) by striking the last sentence.

17 (k) CONFORMING AND TECHNICAL AMENDMENTS.—

18 Such Act is further amended—

19 (1) in section 1642(a)(5) (7 U.S.C.
20 4901(a)(5)), by striking “and handling” and insert-
21 ing “handling, and importing”;

22 (2) in the first sentence of section 1642(b) (7
23 U.S.C. 4901(b))—

1 (A) by inserting “, or imported into the
2 United States,” after “harvested in the United
3 States”; and

4 (B) by striking “produced in the United
5 States”;

6 (3) in section 1643 (7 U.S.C. 4902), as amend-
7 ed by subsection (a) and section 3(a)—

8 (A) by striking “subtitle—” and inserting
9 “subtitle.”;

10 (B) in paragraphs (1) through (5), by
11 striking “the term” each place it appears and
12 inserting “The term”;

13 (C) in paragraphs (1), (2), (4), and (5), by
14 striking the semicolon at the end of each para-
15 graph and inserting a period;

16 (D) in paragraph (8), as redesignated by
17 subsection (a)(2)—

18 (i) by striking “the term” and insert-
19 ing “The term”; and

20 (ii) by striking “; and” and inserting
21 a period; and

22 (E) in paragraph (9), as redesignated by
23 subsection (a)(2)—

24 (i) by striking “the term” and insert-
25 ing “The term”; and

1 (ii) by striking “1644” and inserting
2 “1647”; and

3 (4) in section 1647(g) (7 U.S.C. 4906(g)), as
4 amended by subsection (e) and section 5(2)—

5 (A) by striking “that—” and inserting
6 “the following:”;

7 (B) in paragraph (1)—

8 (i) by striking “(1) funds” and insert-
9 ing “(1) Funds”; and

10 (ii) by striking the semicolon at the
11 end and inserting a period;

12 (C) in paragraph (2)—

13 (i) by striking “(2) no” and inserting
14 “(2) No”; and

15 (ii) by striking the semicolon at the
16 end and inserting a period;

17 (D) in paragraph (3)—

18 (i) by striking “(3) no” and inserting
19 “(3) No”; and

20 (ii) by striking “; and” and inserting
21 a period.

22 **SEC. 9. DEFINITION OF PRODUCER.**

23 (a) IN GENERAL.—Section 1643(5) of the Water-
24 melon Research and Promotion Act (7 U.S.C. 4902(5))
25 is amended by striking “five” and inserting “10”.

1 (b) CERTIFICATION.—Section 1647 of such Act (7
2 U.S.C. 4906) is amended by adding at the end the follow-
3 ing new subsection:

4 “(l) The plan shall provide that the Board shall have
5 the authority to establish rules for certifying whether a
6 person meets the definition of a producer under section
7 1643(5).”.

8 **SEC. 10. AMENDMENT PROCEDURE.**

9 Section 1655 of the Watermelon Research and Pro-
10 motion Act (7 U.S.C. 4914) is amended to read as follows:

11 **“SEC. 1655. AMENDMENT PROCEDURE.**

12 “(a) IN GENERAL.—Before a plan issued by the Sec-
13 retary under this subtitle may be amended, the Secretary
14 shall publish the proposed amendments for public com-
15 ment and conduct a referendum in accordance with section
16 1653.

17 “(b) SEPARATE CONSIDERATION OF AMEND-
18 MENTS.—

19 “(1) IN GENERAL.—The amendments described
20 in paragraph (2) that are required to be made by
21 the Secretary to a plan as a result of the amend-
22 ments made by the Watermelon Research and Pro-
23 motion Improvement Act of 1993 shall be subject to
24 separate line item voting and approval in a referen-
25 dum conducted pursuant to section 1653 before the

1 Secretary alters the plan as in effect on the day be-
2 fore the date of the enactment of such Act.

3 “(2) AMENDMENTS.—The amendments referred
4 to in paragraph (1) are the amendments to a plan
5 required under—

6 “(A) section 7 of the Watermelon Research
7 and Promotion Improvement Act of 1993 relat-
8 ing to the elimination of the assessment refund;
9 and

10 “(B) section 8 of such Act relating to sub-
11 jecting importers to the terms and conditions of
12 the plan.

13 “(3) IMPORTERS.—When conducting the ref-
14 erendum relating to subjecting importers to the
15 terms and conditions of a plan, the Secretary shall
16 include as eligible voters in the referendum produc-
17 ers, handlers, and importers who would be subject to
18 the plan if the amendments to a plan were ap-
19 proved.”.

Passed the Senate November 20 (legislative day, No-
vember 2), 1993.

Attest:

Secretary.

S 5 ES—2