

Public Law 103-189  
103d Congress

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.

Dec. 14, 1993

[S. 778]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

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

(b) **TABLE OF CONTENTS.**—The table of contents for 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.

Watermelon  
Research and  
Promotion  
Improvement  
Act of 1993.  
7 USC 4901 note.

**SEC. 2. CHANGE TO MAJORITY VOTE IN REFERENDUM PROCEDURES.**

Section 1653 of the Watermelon Research and Promotion Act (7 U.S.C. 4912) is amended—

(1) by inserting “(a)” after “SEC. 1653.”;

(2) by striking the third sentence; and

(3) by adding at the end the following new subsection:

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

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

(a) **DEFINITIONS.**—Section 1643 of the Watermelon Research and Promotion Act (7 U.S.C. 4902) is amended—

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

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

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

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

**SEC. 4. CLARIFICATION OF DIFFERENCES BETWEEN PRODUCERS AND HANDLERS.**

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

(1) by inserting “(1)” after “(c)”; and  
 (2) by adding at the end the following new paragraph:  
 “(2) A producer shall be eligible to serve on the Board only as a representative of handlers, and not as a representative of producers, if—

“(A) the 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

“(B) the combined total volume of watermelons handled by the producer from the producer’s own production and purchases from other producers’ production is more than 50 percent of the producer’s own production.”.

**SEC. 5. CLARIFICATION OF COLLECTION OF ASSESSMENTS BY THE BOARD.**

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

(1) in subsection (f), by striking “collection of the assessments by the Board” and inserting “payment of the assessments to the Board.”; and

(2) in paragraphs (1) and (3) of subsection (g), by striking “collected” each place it appears and inserting “received”.

**SEC. 6. CHANGES TO ASSESSMENT RATE NOT SUBJECT TO FORMAL RULEMAKING.**

Section 1647(f) of the Watermelon Research and Promotion Act (7 U.S.C. 4906(f)) is amended by adding at the end the following new sentences: “In fixing or changing the rate of assessment pursuant to the plan, the Secretary shall comply with the notice and comment procedures established under section 553 of title 5, United States Code. Sections 556 and 557 of such title shall not apply with respect to fixing or changing the rate of assessment.”.

**SEC. 7. ELIMINATION OF WATERMELON ASSESSMENT REFUND.**

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

(1) by striking “(h) The” and inserting “(h)(1) Except as provided in paragraph (2), the”; and

(3) by adding at the end the following new paragraphs:  
 “(2) If approved in the referendum required by section 1655(b) relating to the elimination of the assessment refund under paragraph (1), the Secretary shall amend the plan that is in effect on the day before the date of the enactment of the Watermelon Research and Promotion Improvement Act of 1993 to eliminate the refund provision.

“(3)(A) Notwithstanding paragraph (2) and subject to subparagraph (B), if importers are subject to the plan, the plan shall provide that an importer of less than 150,000 pounds of water-

melons per year shall be entitled to apply for a refund that is based on the rate of assessment paid by domestic producers.

“(B) The Secretary may adjust the quantity of the weight exemption specified in subparagraph (A) on the recommendation of the Board after an opportunity for public notice and opportunity for comment in accordance with section 553 of title 5, United States Code, and without regard to sections 556 and 557 of such title, to reflect significant changes in the 5-year average yield per acre of watermelons produced in the United States.”.

#### SEC. 8. EQUITABLE TREATMENT OF WATERMELON PLANS.

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

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

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

(3) by inserting after paragraph (5) the following new paragraphs:

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

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

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

(1) in the first sentence, by striking “and handlers” and inserting “, handlers, and importers”;

(2) by striking the second sentence; and

(3) in the last sentence, by inserting “or imported into the United States” before the period.

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

(1) in the first sentence, by striking “and handlers” and inserting “, handlers, and importers”; and

(2) in the last sentence, by striking “or handlers” and inserting “, handlers, or importers”.

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

(1) in the second sentence of paragraph (1), by striking “producer and handler members” and inserting “other members”; and

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

“(3)(A) If importers are subject to the plan, the Board shall also include 1 or more representatives of importers, who shall be appointed by the Secretary from nominations submitted by importers in such manner as may be prescribed by the Secretary.

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

“(C) If importers are subject to the plan and fail to select nominees for appointment to the Board, the Secretary may appoint any importers as the representatives of importers.

“(D) Not later than 5 years after the date that importers are subjected 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.”

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

(1) in paragraph (4)—

(A) by striking “(4) assessments” and inserting “(4) Assessments”; and

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

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

“(5) If importers are subject to the plan, an assessment shall also be made on watermelons imported into the United States by the importers. The rate of assessment for importers who are subject to the plan shall be equal to the combined rate for producers and handlers.”

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

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

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

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

(1) in subsection (a)—

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

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

“(2)(A) If importers are subject to the plan, each importer required to pay assessments under the plan shall be responsible for payment of the assessment to the Board, as the Board may direct.

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

“(C) Each importer required to pay assessments under the plan shall maintain a separate record that includes a record of—

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

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

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

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

(2) in subsection (b), by inserting “and importers” after “Handlers”; and

(3) in subsection (c)(1), by inserting “or importers” after “handlers”.

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

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

(2) in the fourth sentence, by inserting “(or an importer who is subject to the plan)” after “a handler”; and

- (3) in the last sentence, by striking “the handler or other person” and inserting “the person”.
- (i) REFERENDUM.—Subsection (a) of section 1653 of such Act (7 U.S.C. 4912), as amended by section 2, is further amended—
- (1) in the first sentence—
    - (A) by striking “and handlers” both places it appears and inserting “, handlers, and importers”; and
    - (B) by striking “or handling” and inserting “, handling, or importing”;
  - (2) by striking the second sentence; and
  - (3) in the sentence beginning with “The ballots”—
    - (A) by striking “or handler” and inserting “, handler, or importer”; and
    - (B) by striking “or handled” and inserting “, handled, or imported”.
- (j) TERMINATION OF PLANS.—Section 1654(b) of such Act (7 U.S.C. 4913(b)) is amended—
- (1) in the first sentence—
    - (A) by striking “10 per centum or more” and inserting “at least 10 percent of the combined total”; and
    - (B) by striking “and handlers” both places it appears and inserting “, handlers, and importers”;
  - (2) in the second sentence—
    - (A) by striking “or handle” and inserting “, handle, or import”;
    - (B) by striking “50 per centum” and inserting “50 percent of the combined total”; and
    - (C) by striking “or handled by the handlers,” and inserting “, handled by the handlers, or imported by the importers”; and
  - (3) by striking the last sentence.
- (k) CONFORMING AND TECHNICAL AMENDMENTS.—Such Act is further amended—
- (1) in section 1642(a)(5) (7 U.S.C. 4901(a)(5)), by striking “and handling” and inserting “handling, and importing”;
  - (2) in the first sentence of section 1642(b) (7 U.S.C. 4901(b))—
    - (A) by inserting “, or imported into the United States,” after “harvested in the United States”; and
    - (B) by striking “produced in the United States”;
  - (3) in section 1643 (7 U.S.C. 4902), as amended by subsection (a) and section 3(a)—
    - (A) by striking “subtitle—” and inserting “subtitle.”;
    - (B) in paragraphs (1) through (5), by striking “the term” each place it appears and inserting “The term”;
    - (C) in paragraphs (1), (2), (4), and (5), by striking the semicolon at the end of each paragraph and inserting a period;
    - (D) in paragraph (8), as redesignated by subsection (a)(2)—
      - (i) by striking “the term” and inserting “The term”; and
      - (ii) by striking “; and” and inserting a period;

- (E) in paragraph (9), as redesignated by subsection (a)(2)—
  - (i) by striking “the term” and inserting “The term”; and
  - (ii) by striking “1644” and inserting “1647”; and
- (4) in section 1647(g) (7 U.S.C. 4906(g)), as amended by subsection (e) and section 5(2)—
  - (A) by striking “that—” and inserting “the following:”;
  - (B) in paragraph (1)—
    - (i) by striking “(1) funds” and inserting “(1) Funds”; and
    - (ii) by striking the semicolon at the end and inserting a period;
  - (C) in paragraph (2)—
    - (i) by striking “(2) no” and inserting “(2) No”; and
    - (ii) by striking the semicolon at the end and inserting a period;
  - (D) in paragraph (3)—
    - (i) by striking “(3) no” and inserting “(3) No”; and
    - (ii) by striking “; and” and inserting a period.

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

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

(b) CERTIFICATION.—Section 1647 of such Act (7 U.S.C. 4906) is amended by adding at the end the following new subsection:

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

**SEC. 10. AMENDMENT PROCEDURE.**

Section 1655 of the Watermelon Research and Promotion Act (7 U.S.C. 4914) is amended to read as follows:

**“SEC. 1655. AMENDMENT PROCEDURE.**

“(a) IN GENERAL.—Before a plan issued by the Secretary under this subtitle may be amended, the Secretary shall publish the proposed amendments for public comment and conduct a referendum in accordance with section 1653.

“(b) SEPARATE CONSIDERATION OF AMENDMENTS.—

“(1) IN GENERAL.—The amendments described in paragraph (2) that are required to be made by the Secretary to a plan as a result of the amendments made by the Watermelon Research and Promotion Improvement Act of 1993 shall be subject to separate line item voting and approval in a referendum conducted pursuant to section 1653 before the Secretary alters the plan as in effect on the day before the date of the enactment of such Act.

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

“(A) section 7 of the Watermelon Research and Promotion Improvement Act of 1993 relating to the elimination of the assessment refund; and

“(B) section 8 of such Act relating to subjecting importers to the terms and conditions of the plan.

Publication.

**“(3) IMPORTERS.—**When conducting the referendum relating to subjecting importers to the terms and conditions of a plan, the Secretary shall include as eligible voters in the referendum producers, handlers, and importers who would be subject to the plan if the amendments to a plan were approved.”.

Approved December 14, 1993.

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**LEGISLATIVE HISTORY—S. 778 (H.R. 3515):**

**HOUSE REPORTS:** No. 103-394 accompanying H.R. 3515 (Comm. on Agriculture).  
**CONGRESSIONAL RECORD**, Vol. 139 (1993):

Nov. 20, S. 778 considered and passed Senate. H.R. 3515 considered and passed House.

Nov. 21, S. 778 considered and passed House.