

For the reasons set forth in the preamble, 7 CFR Part 953 is amended as follows:

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

1. The authority citation for 7 CFR Part 953 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new § 953.246 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 953.246 Expenses and assessment rate.

Expenses of \$11,000 by the Southeastern Potato Committee are authorized, and an assessment rate of \$0.01 per hundredweight of potatoes is established for the fiscal period ending May 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: June 2, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-13559 Filed 6-7-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 982

[FV-89-039FR]

Expenses and Assessment Rate for Filberts/Hazelnuts Grown in Oregon and Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 982 for the 1989-90 marketing year established under the filbert/hazelnut marketing order. The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable filberts/hazelnuts handled from the beginning of such year. An annual budget of expenses is prepared by the Filbert/Hazelnut Marketing Board (Board), the agency responsible for local administration of the filbert/hazelnut marketing order, and submitted to the U.S. Department of Agriculture for approval. The members of the Board are handlers and producers of filberts/hazelnuts. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The assessment rate recommended by the

Board is derived by dividing the anticipated expenses by expected shipments of filberts/hazelnuts. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1989, through June 30, 1990.

FOR FURTHER INFORMATION CONTACT:

Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524-S, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 982 (7 CFR Part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor" rule under criteria contained therein.

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 proposed 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. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of filberts/hazelnuts grown in Oregon and Washington subject to regulation under the filbert/hazelnut marketing order, and approximately 1,300 producers of filberts/hazelnuts in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of filbert/hazelnut producers and handlers may be classified as small entities.

The filbert/hazelnut marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable filberts/hazelnuts handled from the beginning of such year. An annual budget of expenses is prepared by the Filbert/Hazelnut Marketing Board (Board) and submitted to the U.S. Department of Agriculture for approval. The members of the Board are handlers and producers of filberts/hazelnuts. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and assessment rate are usually acted upon by the Board shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approvals must be expedited so that the Board will have funds to pay its expenses.

The Board conducted a telephone vote on April 3, 1989, and unanimously recommended 1989-1990 marketing order expenditures of \$426,060 and an assessment rate of \$14.00 per ton of filberts/hazelnuts. In comparison, 1988-89 marketing year budgeted expenditures were \$424,100 and the assessment rate was \$14.00 per ton. Major expenditure categories in the 1989-90 budget are \$67,560 for administration, \$250,000 for promotion, and \$100,000 for the emergency reserve fund. Assessment income for 1989-90 is expected to total \$280,000 based on a crop estimate of 20,000 tons of filberts/hazelnuts. Interest and incidental income is estimated at \$35,000. Reserve funds are adequate to meet the anticipated \$111,060 deficit in assessment and other income.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have

a significant economic impact on a substantial number of small entities.

This action adds a new § 982.334 and is based on Board recommendations and other information. A proposed rule was published in the May 5, 1989, issue of the *Federal Register* (54 FR 19377). Comments on the proposed rule were invited from interested persons until May 15, 1989. No comments were received.

After consideration of the information and recommendations submitted by the Board and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Board at public meetings. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* (5 U.S.C. 553).

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements and orders, Oregon, Washington.

For the reasons set forth in the preamble, 7 CFR Part 982 is amended as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new 982.334 is added to read as follows:

§ 982.334 Expenses and assessment rate.

Expenses of \$426,060 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate payable by each handler in accordance with § 982.61 is fixed at \$14.00 per ton of assessable filberts/hazelnuts for the 1989-90 marketing year ending June 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: June 2, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-13560 Filed 6-7-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1210

[FV-88-1, AMS-FV-88-063]

RIN 0581-AA32

Watermelon Research and Promotion Plan; Decision Establishing Final Plan Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final decision establishes a Watermelon Research and Promotion Plan as authorized by the Watermelon Research and Promotion Act of 1985. The plan was favored by a majority of producers and a majority of handlers accounting for more than two-thirds of the total volume of watermelons produced and handled by both producers and handlers voting in a referendum conducted by the Department on February 6-21, 1989. The plan authorizes establishment of projects relating to research, development, advertising, and promotion to maintain and expand existing markets and establish new or improved markets and uses for watermelons. This plan also defines the powers and duties of the 29 member National Watermelon Board, provides for collection of assessments, specifies the objectives of Board activities, and provides a mechanism for terminating the plan if its continuance is not favored by producers and handlers as demonstrated in a referendum.

EFFECTIVE DATE: Final Rule is effective June 8, 1989.

FOR FURTHER INFORMATION CONTACT: Richard H. Mathews, Marketing Specialist, Marketing Order Administration Branch, Room 2525-South, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 475-3915.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include the following. A Notice of Hearing issued February 2, 1987, and published in the February 4, 1987, issue of the *Federal Register* (52 FR 3588). A seven day Extension of Time for Receipt of Post Hearing Briefs requested by proponents, granted on April 17, 1987, and published in the *Federal Register* on April 21, 1987 (52 FR 13086). A Recommended Decision and Opportunity to File Written Exceptions published in the March 24, 1988, issue of the *Federal Register* (53 FR 9637). A Secretary's Decision and Referendum Order on the Proposed Plan published in the December 20, 1988, issue of the *Federal Register* (53 FR 51110).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the U.S. Code, and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement

This plan is issued pursuant to the applicable rules of practice and procedure governing proceedings to formulate and amend an order (plan) (7 CFR Part 1200). This plan is effective pursuant to the provisions of the Watermelon Research and Promotion Act, hereafter referred to as the "Act" (Pub. L. 99-198, 99th Congress, effective January 1, 1986, 7 U.S.C. 4901-4916).

The plan was formulated on the record of a public hearing conducted in Las Vegas, Nevada, on February 18 and 19, 1987, and Atlanta, Georgia, on February 24 and 25, 1987. Notice of the sessions was published in the February 4, 1987, issue of the *Federal Register* (52 FR 3588). That notice contained a proposed plan submitted by the National Watermelon Association, Inc.

Upon the basis of evidence introduced at the hearing and the record thereof, a Recommended Decision and Opportunity to File Written Exceptions was published in the March 24, 1988, issue of the *Federal Register* (53 FR 9637). Eleven exceptions were received. Three favored the proposed plan as written in the recommended decision, seven expressed opposition to certain provisions in the proposed plan, and one was not in favor of the proposed plan. Each of the eleven exceptions was discussed and ruled upon in the Secretary's Decision.

The Secretary's Decision was issued December 20, 1988, directing that a referendum be conducted for the Watermelon Research and Promotion Plan in accordance with the procedure for the conduct of referenda (7 CFR Part 1210.200) as published in the December 20, 1988, issue of the *Federal Register* (53 FR 51089), to determine whether the issuance of the proposed plan was approved or favored by producers and handlers, as defined in the plan, who during the representative period were engaged in the production or first handling of watermelons within the contiguous 48 States. The representative period was determined to be the calendar year January 1, 1988, through December 31, 1988. The referendum ballot provided only for the approval or disapproval of the plan. In the referendum, a majority of producers (52 percent) and a majority of handlers (56 percent) voted in favor of the proposed plan. Those in favor of the plan accounted for 73 percent of the volume

voted in the referendum. Thus, the plan meets statutory criteria for industry approval.

The plan authorizes, with the approval of the Secretary, the collection of equal assessments on producers and handlers of watermelons. Handlers will be responsible for collecting and submitting assessments and for maintaining appropriate records. Refunds of collected assessments can be obtained by producers and handlers who do not support the plan. Assessment funds will be used to promote watermelons through a variety of market research and product promotion programs. These programs will be developed and administered by a national-level, Watermelon Promotion Board (Board) composed of 14 producer members, 14 handler members, and a public member. Daily administration of the plan will be carried out by a staff directly responsible to the Board. All administrative rules and regulations, as well as research and promotion programs developed by the Board, must be submitted to the Secretary of Agriculture for approval.

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the RFA. The purpose of the RFA is to fit regulatory action to the scale of business subject to such action, in order that small businesses will not be unduly or disproportionately burdened. Research and promotion programs, and their rules and regulations, are unique in that they are normally brought about through group action of essentially small entities acting for their own benefit.

As stated in the notice of hearing, interested persons were invited to present evidence at the hearing on the probable impact of the regulatory and informational requirements of the proposed plan on small businesses for the purposes of RFA. In that regard, such evidence was considered in arriving at the findings and conclusions contained in the recommended decision and the Secretary's decision. Those findings and conclusions are incorporated herein.

The record indicates that most handlers regulated under this program would meet the Small Business Administration's (SBA) definition of small agricultural service firms (13 CFR 121.2). Small agricultural service firms are defined as those having annual gross receipts for the last three years of less than \$3,500,000. There may be as many

as 300 such handlers of watermelons who will be subject to regulation under this plan. Small agricultural producers are defined by the SBA as having revenues for the last three years of less than \$500,000. Hearing evidence indicates that watermelons are produced on almost 12,000 farms in the United States. A vast majority of these farms would meet the SBA definition of small agricultural producers. Many farms produce less than five acres of watermelons, and thus will not be affected by the plan. The industry also includes a few large farms in excess of 400 acres.

Record evidence shows the majority of watermelons are produced for fresh market sales. Proponents of the plan testified that the watermelon industry is in serious trouble because of an apparent decrease in demand for watermelons. Record exhibits indicate a significant and steady decline in per capita consumption of watermelons between 1960 and 1981. Consumption fell 30 percent, from 17.2 pounds to 12.3 pounds per capita, during this period. No testimony was provided that would explain the decline in per capita consumption. However, the record indicates that under the plan, the issue would be studied, possible causes identified and corrective programs initiated.

While consumption declined during the 1960's and 1970's, total value of the crop increased by 400 percent. Most of this increase in value reflected inflationary changes rather than rises in real dollar income. In constant dollars the crop value increased only 15 percent in the 21 year period. Comparable values of vegetables and melons, fresh fruit market prices, and the consumer price index for all foods increased over 300 percent during the same period.

The plan will assess both producers and handlers at equal rates, not to exceed two cents per hundredweight on watermelons produced and two cents per hundredweight on watermelons handled. Testimony at the hearing indicates a unanimous agreement by those testifying that this amount will be relatively insignificant and will not impose a financial burden on large or small producers and handlers. The two cents per hundredweight assessment rate represents less than one percent of producer income and less than one percent of handler income based on a seasonal average selling price of \$6 per hundredweight. The benefits of the program are expected to exceed the costs. Producers and handlers who do not agree with the program may request a refund of assessments paid.

While the plan imposes certain recordkeeping and reporting requirements on handlers, information required to be reported under the plan can be compiled from records currently maintained by handlers. Such recordkeeping and reporting requirements are minimal and should not impose an undue burden on handlers. In addition, the plan provides for referenda to determine if watermelon producers and handlers favor termination or suspension of the plan or any provisions thereof. In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of the PRA, the information collection and recordkeeping requirements contained in the plan were submitted to the OMB for approval. The OMB approved the information collection provisions of the plan under OMB number 0581-0158.

Based on comparable research and promotion programs, it has been estimated that it takes an average of 15 minutes to complete required forms. Approximately 300 handlers could be affected by the reporting and recordkeeping requirements of the plan.

We have reviewed this action in view of the executive order on Federalism, Executive Order 12612 (52 FR 41686) and determined that the plan does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. This action is consistent with the principles and provisions of Executive Order 12612. Implementation of this national plan does not foreclose appropriate State Programs for watermelons.

Findings, Conclusions, and Rulings on Exceptions

The material issues, findings and conclusions, and rulings on exceptions contained in the Recommended Decision and the Secretary's Decision published in the **Federal Register** on March 24, 1988 (53 FR 9637) and December 20, 1988 (53 FR 51110) respectively, are incorporated by reference in this document and are hereby ratified and affirmed.

General Findings

Upon the basis of the evidence introduced at the hearing, and the record thereof, it is found that:

(1) The plan, and all of its terms and conditions thereof, as hereinafter set forth, will tend to effectuate the declared policy of the Act;

(2) The plan regulates the handling of watermelons in the contiguous 48 States

in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed plan upon which a hearing has been held;

(3) The handling of watermelons in the contiguous 48 States, as defined in the plan, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(4) The plan is applicable only to persons involved in the production of and first handling of watermelons, as specified in the Act.

Additional Findings

It is necessary and in the public interest to make this plan effective upon publication in the *Federal Register* so that the Board, the administrative agency provided for in the plan, may be nominated, selected, and may start to function as soon as possible. The start of the 1990 marketing year is January 1, 1990. Before the program can begin, it will be necessary for the Board to recommend regulations for the Secretary's approval and publication in the *Federal Register*. In addition, the Board will have to draft bylaws for approval by the Secretary. It will also be necessary for the Board to recommend a budget of anticipated expenses to the Secretary for approval. Further, it will be necessary for the Board to hire a staff to carry out its necessary administrative functions. Therefore, it appears that no useful purpose would be served by postponing the effective date of this plan for 30 days beyond the date of its publication in the *Federal Register*.

In view of the foregoing it is hereby found and determined that good cause exists for not postponing the effective date of this plan until 30 days after publication in the *Federal Register* (5 U.S.C. 553(d), Administrative Procedure Act).

Conclusions

It is hereby determined that: (1) The issuance of the plan is favored or approved by producers and handlers who participated in a referendum on the question of its approval and who, during the period January 1, 1983, through December 31, 1988 (which was deemed to be a representative period for the purposes of the referendum), were engaged in the production of five or more acres and/or first handling of watermelons within the forty-eight contiguous States of the United States; and (2) The issuance of this plan is the appropriate means for carrying out the declared policy of the Act.

List of Subjects in 7 CFR 1210

Watermelons, Agricultural research, Agricultural promotion, Market development.

Order Relative to Production and Handling of Watermelons

It is hereby ordered, That, on January 1, 1990, the collection of assessments and the handling of watermelons shall be in conformity to and in compliance with the following terms and conditions:

Final Plan

The following plan shall be the detailed means by which the foregoing conclusions may be carried out.

For the reasons set forth in the preamble, 7 CFR Part 1210 is amended 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.

2. 7 CFR Part 1210, is hereby amended by adding Subpart—Watermelon Research and Promotion Plan (§§ 1210.301 through 1210.367), to read as follows:

Subpart—Watermelon Research and Promotion Plan

Definitions

Sec.	
1210.301	Secretary.
1210.302	Act.
1210.303	Plan.
1210.304	Board.
1210.305	Watermelon.
1210.306	Producer.
1210.307	Handle.
1210.308	Handler.
1210.309	Person.
1210.310	Fiscal period and marketing year.
1210.311	Programs and projects.
1210.312	Promotion.
1210.313	Research.

National Watermelon Promotion Board

1210.320	Establishment and membership.
1210.321	Nominations and selection.
1210.322	Term of office.
1210.323	Acceptance.
1210.324	Vacancies.
1210.325	Procedure.
1210.326	Compensation and reimbursement.
1210.327	Powers.
1210.328	Duties.

Research and Promotion

1210.330	Policy and objectives.
1210.331	Programs and projects.

Expenses and Assessments

1210.340	Budget and expenses.
1210.341	Assessments.
1210.342	Exemption from assessment.
1210.343	Producer and handler refunds.

Sec.

1210.344 Operating reserve.

Reports, Books, and Records

1210.350	Reports.
1210.351	Books and records.
1210.352	Confidential treatment.

Miscellaneous

1210.360	Right of the Secretary.
1210.361	Personal liability.
1210.362	Influencing government action.
1210.363	Suspension or termination.
1210.364	Proceedings after termination.
1210.365	Effect of termination or amendment.
1210.366	Separability.
1210.367	Patents, copyrights, inventions, and publications.

Subpart—Watermelon Research and Promotion Plan

Definitions

§ 1210.301 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1210.302 Act.

"Act" means the Watermelon Research and Promotion Act of 1985 (Title XVI, Subtitle C of Pub. L. 99-198, 99th Congress, effective January 1, 1986, 99 Stat. 1622).

§ 1210.303 Plan.

"Plan" means this watermelon research and promotion Plan issued by the Secretary pursuant to the Act.

§ 1210.304 Board.

"Board" means the National Watermelon Promotion Board, hereinafter established pursuant to § 1210.320.

§ 1210.305 Watermelon.

"Watermelon" means all varieties of the Family Cucurbitaceae; Genus and Species; *Citrullus Lanatus*, popularly referred to as watermelon grown by producers in the 48 contiguous States of the United States.

§ 1210.306 Producer.

"Producer" means any person engaged in the growing of five acres or more of watermelons including any person who owns or shares the ownership and risk of loss of such watermelon crop.

§ 1210.307 Handle.

"Handle" means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause watermelons to which one has title or

possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of field run watermelons by the producer thereof to a handler for grading, sizing or processing.

§ 1210.308 Handler.

"Handler" means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. For the purposes of this subpart, the term "handler" means the "first" person who performs the handling functions.

§ 1210.309 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

§ 1210.310 Fiscal period and marketing year.

"Fiscal period" and "marketing year" mean the 12 month period from January 1 to December 31 or such other period which may be approved by the Secretary.

§ 1210.311 Programs and projects.

"Programs" and "projects" mean those research, development, advertising, or promotion programs or projects developed by the Board pursuant to § 1210.331.

§ 1210.312 Promotion.

"Promotion" means any action taken by the Board, pursuant to the Act, to present a favorable image for watermelons to the public with the express intent of improving the competitive position of watermelons in the marketplace and stimulating sales of watermelons, and shall include, but not be limited to, paid advertising.

§ 1210.313 Research.

"Research" means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of watermelons.

National Watermelon Promotion Board

§ 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 and handlers 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 public

representative shall be nominated by the producer and handler Board members in such manner as may be prescribed by the Secretary. If producers and handlers 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.

(b) Membership on the Board shall be determined on the basis of two handler and two producer representatives for each of seven districts in the contiguous States of the United States. Such districts as hereby established have approximately equal production volume according to the three-year average production as set forth in the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981. They are:

District #1—South Florida including all areas south of State Highway 50.

District #2—North Florida including all areas north of State Highway 50.

District #3—The States of Alabama and Georgia.

District #4—The States of South Carolina, North Carolina, Virginia, Delaware, Maryland, West Virginia, Pennsylvania, New Jersey, New York, Ohio, Michigan, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.

District #5—The States of Mississippi, Kentucky, Tennessee, Louisiana, Arkansas, Missouri, Illinois, Indiana, Iowa, Kansas, Nebraska, Oklahoma, Wisconsin, Minnesota, North Dakota, South Dakota, Colorado, and New Mexico.

District #6—The State of Texas.

District #7—The States of Arizona, California, Nevada, Utah, Oregon, Idaho, Wyoming, Washington, and Montana.

(c) After two years, the Board shall review the districts to determine whether realignment of the districts is necessary and at least every five years thereafter the Board shall make such a review. In making such review, it shall give consideration to:

(1) The most recent three years 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 this review, the Board may realign the districts subject to the approval of the Secretary. Any such realignment shall be recommended by the Board to the Secretary at least six months prior to the date of the call for nominations and shall become effective at least 30 days prior to such date.

§ 1210.321 Nominations and selection.

The Secretary shall appoint the members of the Board from nominations to be made in the following manner:

(a) Except for initial Board members whose nomination process should be conducted by the Secretary, 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 for which nominees may be submitted.

(2) The date by which the nominees shall be submitted to the Secretary for consideration to be in compliance with § 1210.323 of this subpart.

(3) A list of those States, by district, entitled to participate in the nomination process.

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

(b) Nominations for positions that will become vacant shall be made by district convention in the district entitled to nominate. Notice of such convention shall be publicized to all producers and handlers within such district, and the Secretary at least ten days prior to said event. The notice shall have attached to it the call for nominations from the Board. The responsibility for convening and publicizing the district convention shall be that of the then members of the Board from that district.

(c) All producers and handlers within the district may participate in the convention; *Provided*, That producers who handle 50 percent or less of their own production may vote for producer members only, and producers who handle more than 50 percent of their own production may vote for handler members only; *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.

(d) The district convention shall conduct the selection process for the nominees in accordance with procedures to be adopted at each such convention, subject to the following requirements:

(1) There shall be two individuals nominated for each vacant position. Each nominee shall meet the

qualifications set forth in the call; *Provided*, That producers who handle 50 percent or less of their own production may be nominated for producer positions only, and producers who handle more than 50 percent of their own production may be nominated for handler positions only; *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.

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

(3) Each State represented at the district convention shall have one vote for each producer position and one vote for each handler position from the District on the Board, which vote shall be determined by the producers and handlers from that State by majority vote. Each State shall further have an additional vote for each five hundred thousand hundredweight volume as determined by the three year average annual crop production summary reports of the USDA, or if such reports are not published, then the three year average of the Board assessment reports; *Provided*, That for the first two calls for nominees, the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes.

§ 1210.322 Term of office.

(a) The term of office of Board members shall be three years, except that the members of the initial Board shall serve terms as follows: The four producers and four handlers from district 1 (south Florida) and district 6 (Texas), and the public member shall serve one-year initial terms; four producers and four handlers from district 2 (north Florida) and district 3 (Georgia and Alabama) shall serve two-year initial terms; and the remaining six producers and six handlers from districts 4, 5, and 7 shall serve three-year initial terms.

(b) The term of office for the initial Board shall begin immediately following appointment by the Secretary. Time in the interim period, from appointment until the term begins pursuant to this section, shall not count towards the initial "term of office". In subsequent years, the term of office shall begin on January 1 or such other period which may be approved by the Secretary.

(c) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member shall serve more than two successive terms; *Provided*, That those members serving initial terms of one year may serve two additional consecutive three-year terms.

§ 1210.323 Acceptance.

Each person nominated for membership on the Board shall qualify by filing a written acceptance with the Secretary. Such written acceptance shall accompany the nominations list required by § 1210.321.

§ 1210.324 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, if the Secretary determines that the person's continual services would be detrimental to the purposes of the Act.

(c) To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1210.321, except that said nomination and replacement shall not be required if the unexpired term of office is less than six months. In the event of failure to provide nominees for such vacancies, the Secretary may appoint other eligible persons.

§ 1210.325 Procedure.

(a) Fifteen 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.

(b) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and for matters of an emergency nature

when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, or by other means of communication; *Provided*, That each member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be promptly confirmed in writing. All votes shall be recorded in the Board minutes.

§ 1210.326 Compensation and reimbursement.

Board members shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties as Board members.

§ 1210.327 Powers.

The Board shall have the following powers subject to § 1210.363:

(a) To administer the provisions of this Plan in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and conditions of this Plan;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this Plan; and

(d) To recommend to the Secretary amendments to this Plan.

§ 1210.328 Duties.

The Board shall, among other things, have the following duties:

(a) To meet, organize, and select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of board members; to adopt such rules for the conduct of its business as it may deem advisable; and it may establish working committees of persons other than Board members.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit for the Secretary's approval, prior to the beginning of each fiscal period, a recommended rate of assessment and a fiscal period budget of the anticipated expenses in the administration of this Plan, including the probable costs of all programs and projects;

(d) To develop programs and projects, which must be approved by the Secretary before becoming effective, and enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of

programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds collected pursuant to this Plan;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(f) To prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board;

(g) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers and handlers;

(h) To investigate violations of the Plan and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the Plan;

(i) To periodically prepare, make public, and make available to producers and handlers reports of its activities carried out.

(j) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;

(k) To act as intermediary between the Secretary and any producer or handler;

(l) To furnish the Secretary such information as the Secretary may request;

(m) To notify watermelon producers and handlers of all Board meetings through press releases or other means;

(n) To appoint and convene, from time to time, working committees drawn from producers, handlers and the public to assist in the development of research and promotion programs for watermelons; and

(o) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of programs or projects to effectuate the declared purpose of the Act.

Research and Promotion

§ 1210.330 Policy and objective.

It shall be the policy of the Board to carry out an effective, continuous, and

coordinated program of research, development, advertising, and promotion in order to:

(a) Strengthen watermelons' competitive position in the marketplace,

(b) Maintain and expand existing domestic and foreign markets, and

(c) Develop new or improved markets.

It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the watermelon industry.

§ 1210.331 Programs and projects.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for advertising and other sales promotion of watermelons designed to strengthen the position of the watermelon industry in the marketplace and to maintain, develop, and expand markets for watermelon;

(b) Establishing and carrying out research and development projects and studies to the end that the acquisition of knowledge pertaining to watermelons or their consumption and use may be encouraged or expanded, or to the end that the marketing and use of watermelons may be encouraged, expanded, improved, or made more efficient: *Provided*, That quality control, grade standards, supply management programs or other programs that would otherwise limit the right of the individual watermelon producer to produce watermelons shall not be conducted under, or as a part of, this Plan;

(c) The development and expansion of watermelon sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any reference to private brand names or use false or unwarranted claims on behalf of watermelons or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each program or project authorized under this Plan to insure that each program or project contributes to an effective and coordinated program of research and promotion and submission of such evaluation to the Secretary. If the Board or the Secretary finds that a program or project does not further the purposes of the Act, then the Board or the Secretary shall terminate such program or project; and

(f) The Board to enter into contracts or make agreements for the development

and carrying out of research and promotion and pay for the costs of such contracts or agreements with funds collected pursuant to § 1210.341.

Expenses and Assessments

§ 1210.340 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this Plan, including probable costs of research, development, advertising, and promotion. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1210.344.

(b) The Board is authorized to incur such expenses for research, development, advertising, or promotion of watermelons, such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, and any referendum and administrative costs incurred by the Department of Agriculture. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1210.341.

§ 1210.341 Assessments.

(a) During the effective period of this subpart, assessments shall be levied on all watermelons produced and all watermelons first handled for consumption as human food. No more than one assessment on a producer nor more than one assessment on a handler 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, both assessments shall be paid by such person.

(b) Assessment rates shall be fixed by the Secretary in accordance with section 1647(f), of the Act; *Provided*, That the maximum assessment shall not exceed two cents per hundredweight for producers and two cents per hundredweight for handlers. No assessments shall be levied on watermelons grown by producers of less than five acres of watermelons.

(c) Each handler, as defined, is responsible for payment to the Board of both the producer's and the handler's assessment pursuant to regulations issued hereunder. The handler may collect producer assessments from the producer or deduct such assessments from the proceeds paid to the producer

on whose watermelons the assessments are made. The handler shall maintain separate records for each producer's watermelons handled, including watermelons produced by said handler. In addition, the handler shall indicate the total quantity of watermelons handled by the handler, including those that are exempt under this Plan, and such other information as may be prescribed by the Board.

(d) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs, pursuant to regulations issued hereunder. 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.

(e) There shall be a late payment charge imposed on any handler who fails to remit to the Board the total amount for which any such handler is liable on or before the payment due date established by the Board under paragraph (d) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(f) There shall also be imposed on any handler subject to a late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary.

(g) The Board is hereby authorized to accept advance payment of assessments by handlers that shall be credited toward any amount for which the handlers may become liable. The Board shall not be obligated to pay interest on any advance payment.

(h) The Board is hereby authorized to borrow money for the payment of administrative expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

(i) The Board may authorize other organizations to collect assessments in its behalf with the approval of the Secretary. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

§ 1210.342 Exemption from assessment.

The Board may exempt watermelons used for nonfood purposes from the provisions of this Plan and shall establish adequate safeguards against improper use of such exemptions.

§ 1210.343 Producer and handler refunds.

Any producer or handler against whose watermelons an assessment is made and collected under this Plan and who is not in favor of supporting the research, development, advertising, and promotion program provided for under this Plan shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer or handler paid the assessment for which refund is sought. Any such demand shall be made personally by such producer or handler on a form which the producer or handler shall sign and within a time period prescribed by the Board pursuant to regulations. Such time period shall give the producer or handler at least 90 days from the date of collection to submit the refund request form to the Board. Any such refund shall be made within 60 days after demand therefor.

§ 1210.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established; *Provided*, That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

Reports, Books, and Records

§ 1210.350 Reports.

Each handler shall maintain a record with respect to each producer for whom watermelons were handled and for watermelons produced and handled by the handler. Handlers shall report to the Board at such times and in such manner as the Board may prescribe by regulations whatever information as may be necessary in order for the Board to perform its duties. Such reports may include, but shall not be limited to, the following information:

(a) Total quantity of watermelons handled for each producer and by the handler, including those which are exempt under this Plan;

(b) Total quantity of watermelons handled for each producer and by the handler, on which the producer assessment was collected;

(c) Name and address of each person from whom an assessment was collected, the amount collected from each person, and the date such collection was made; and

(d) Name and address of each person claiming exemption from assessment and a copy of each such person's claim of exemption.

§ 1210.351 Books and records.

Each handler subject to this Plan shall maintain, and during normal business hours make available for inspection by employees of the Board or Secretary, such books and records as are necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the fiscal period of their applicability.

§ 1210.352 Confidential treatment.

(a) All information obtained from the books, records, or reports required to be maintained under §§ 1210.350 and 1210.351 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan: Except that nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based on the reports of a number of handlers subject to this Plan if such statements do not identify the information furnished by any person; or

(2) The publication by direction of the Secretary of the name of any person violating this Plan together with a statement of the particular provisions of this Plan violated by such person.

(b) Any disclosure of confidential information by any employee of the Board, except as required by law, shall be considered willful misconduct.

Miscellaneous

§ 1210.360 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1210.361 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1210.362 Influencing government action.

No funds collected by the Board under this plan shall in any manner be used for the purpose of influencing governmental policy or action, except for making

recommendations to the Secretary as provided in this subpart.

§ 1210.363 Suspension or termination.

(a) Whenever the Secretary finds that this Plan or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this Plan or such provision thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or of 10 percent or more of the watermelon producers and handlers to determine if watermelon producers and handlers 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 and handlers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in production or handling of watermelons and who produced or handled more than 50 percent of the volume of watermelons produced or handled by those producers and handlers 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 producer vote if that person handles 50 percent or less of that person's own production during a representative period, and will be counted as a handler vote if that person handles more than 50 percent of that person's own production during a representative period. Any such referendum shall be conducted at county extension offices.

§ 1210.364 Proceedings after termination.

(a) Upon the termination of this Plan, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

- (1) Continue in such capacity until discharged by the Secretary;
- (2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1210.328(d);
- (3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of

the trustees, to person or persons as the Secretary may direct; and

(4) Upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all the funds, property, and claims vested in the Board or the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers and handlers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers and handlers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1210.365 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Plan or any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

- (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this Plan or any regulation issued thereunder; or
- (b) Release or extinguish any violation of this Plan or any regulation issued thereunder; or
- (c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person with respect to any such violation.

§ 1210.366 Separability.

If any provision of this Plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Plan or applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1210.367 Patents, copyrights, inventions, and publications.

Any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this Plan shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same

fiscal, budget, and audit controls as other funds of the Board. Upon termination of this part, § 1210.364 shall apply to determine the disposition of all such property.

Signed at Washington, DC, on May 31, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89-13467 Filed 6-7-89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3250]

Cooper Rand Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New York marketer of consumer products from representing that any lighter-to-lighter charger will restart a discharged battery instantly or as quickly as jumper cables, or from making any other performance claim for the product, unless respondent can substantiate such claims. In addition, the order requires respondent to prominently disclose in each advertisement and in the product instruction insert, either a statement concerning the product's limitations or the specific length of time needed to recharge a battery.

DATE: Complaint and Order issued April 18, 1989.¹

FOR FURTHER INFORMATION CONTACT: Allen Hile, FTC/H-238A, Washington, DC 20580. (202) 326-3122.

SUPPLEMENTARY INFORMATION: On Wednesday, February 8, 1989, there was published in the *Federal Register*, 54 FR 6141, a proposed consent agreement with analysis in the Matter of Cooper Rand Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW, Washington, DC 20580.