

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1218

[Doc. No. FV-03-701-FR]

#### **Blueberry Promotion, Research, and Information Order; Amendment No. 2 To Change the Name of the U.S.A. Cultivated Blueberry Council and Increase Membership**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule changes the title of the U.S.A. Cultivated Blueberry Council to the "U.S. Highbush Blueberry Council" (Council). The purpose of this change is to avoid any confusion in the industry regarding the specific type of blueberry and industry segment represented by the Council. Additionally, this change makes the name of the Council consistent with industry nomenclature, and adds one member and alternate to the Council to represent the state of Washington—the sixth largest highbush blueberry producing state.

**DATES:** *Effective Date:* September 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** Daniel Rafael Manzoni, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535-S, Washington, DC 20250-0244, telephone (202) 720-5951, fax (202) 205-2800, or e-mail [daniel.manzoni@usda.gov](mailto:daniel.manzoni@usda.gov).

**SUPPLEMENTARY INFORMATION:** *Legal authority.* The Blueberry Promotion, Research, and Consumer Information Order (Order) [7 CFR Part 1218] became effective on August 16, 2000 [65 FR 43961, July 17, 2000]. It was issued under the Commodity Promotion,

Research, and Information Act of 1996 (Act) [7 U.S.C. 7401-7425].

#### **Executive Order 12866**

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

#### **Executive Order 12988**

This rule has been reviewed under E.O.12988, Civil Justice Reform. The rule is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and may request a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

#### **Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], AMS has examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

There are approximately 2,000 producers, 200 first handlers, 50 importers, and 4 exporters of blueberries subject to the program. Most of the

producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. Most importers and first handlers would not be classified as small businesses, and, while most exporters are large, the U.S. Department of Agriculture (USDA) assumes that some are small. The SBA defines small agricultural handlers as those whose annual receipts are less than \$6.5 million, and small agricultural producers are defined as those having annual receipts of not more than \$750,000 annually.

This rule amends the Order to change the title of the U.S.A. Cultivated Blueberry Council to the "U.S. Highbush Blueberry Council" (Council), and to add one member and alternate to the Council to represent the state of Washington.

The amendments are not considered to be substantial and do not significantly impact the blueberry industry. The title change will help avoid confusion regarding the specific type of blueberry and industry segment represented by the Council. Adding a producer and alternate member representing the state of Washington means that four additional producers are required to submit background forms to USDA in order to be considered for appointment to the Council. This is because two names must be submitted to the Secretary for consideration for each position on the Council. However, serving on the Council is optional. Taking into account alternatives, these changes accomplish the purpose of these amendments.

There are no relevant federal rules that duplicate, overlap, or conflict with the final rule.

In accordance with the OMB regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35], the background form, which represents the information collection and recordkeeping requirements imposed by this rule, has been approved by OMB under OMB Number 0505-0001.

The public reporting burden for this collection of information is estimated to average 0.5 hours per response for each producer of the 4 respondents.

The estimated annual cost of providing the information by the four producers is \$6.00 or \$1.50 per producer.

This additional burden will be included in the existing information collections approved for use under OMB Number 0505-0001.

### Background

During the rulemaking process to implement the Order in 2000, members of the wild blueberry industry in Maine raised objections to the original name of the U.S.A. Blueberry Council. While USDA did not change the name at that time, the wild blueberry industry continued to have concerns regarding the generic name of the Council. Therefore, USDA issued a proposed rule to change the name of the Council to the U.S.A. Cultivated Blueberry Council on September 21, 2000 [65 FR 57104]. The new name became effective on August 16, 2001, with the publication of a final rule published in the **Federal Register** on July 17, 2001 [66 FR 37117].

Subsequently, the Council was appointed and decided that the term "cultivated" in its name should be changed to "highbush" because cultivated blueberries are commonly called highbush blueberries. Additionally, horticultural publications use the nomenclature of highbush and lowbush for blueberries. Using the terms highbush and lowbush provides a simple means for the consumer to differentiate between these two types of blueberries and for industry members to determine whether or not they owe assessments to the Council.

The Council voted unanimously on October 5, 2002, to change the Council's name to the U.S. Highbush Blueberry Council. At the same meeting, the Council voted unanimously to add one member and alternate to the Council to represent the state of Washington.

The Council currently consists of nine producers, one importer, one exporter from a foreign production area, one handler, and one public member. Each member has an alternate. The nine producer members are allocated as follows: one producer member for each of the top five producing states and one producer member from each of the four regions. The states of Georgia, Michigan, New Jersey, North Carolina, and Oregon currently have representation on the Council.

In recent years, highbush blueberry production in the state of Washington has increased. In 2001, Washington represented 8 percent of U.S. production, and the estimated production for that state in 2002 is 12.5 million pounds of highbush blueberries. In addition, the five additional states producing highbush blueberries (Alabama, Arkansas, Florida, Indiana, and New York) together represent only

7 percent of U.S. production, and the seventh highest producing state—Indiana—is expected to produce a total of 3 million pounds. Therefore, the Council determined that it was appropriate for Washington producers to have a member and alternate on the Council.

As requested by the Council, USDA issued a proposed rule to change the name of the U.S.A. Cultivated Blueberry Council and to increase membership on March 12, 2003 [68 FR 11756]. The deadline for comments was May 12, 2003.

In response to the proposed rule, USDA received five comments. A summary of the comments and USDA's responses follow.

One commenter from the wild blueberry industry supported the proposals to change the name of the U.S.A. Cultivated Blueberry Council to the U.S. Highbush Blueberry Council and to increase membership. However, the commenter objected to the term "lowbush" to identify wild blueberries. The commenter indicated that the term "wild blueberries" is universally recognized by the trade and consumer markets. As this rule does not affect the wild blueberry industry, the wild blueberry industry can continue use the term wild to identify their products. Accordingly, no changes to the rule are made as a result of this comment.

Four comments were received that strongly supported the name change to the U.S. Highbush Blueberry Council. These comments were from the Executive Director of the U.S.A. Cultivated Blueberry Council, an officer of the Washington Blueberry Commission, the President of the North American Blueberry Council, and a blueberry grower. Two of these commenters also supported adding one producer and alternate members from the state of Washington to the Council.

Accordingly, this final rule changes all references in the Blueberry Promotion, Research, and Consumer Information Order from the U.S.A. Cultivated Blueberry Council to the U.S. Highbush Blueberry Council, and changes all references to the "USACBC" with the "Council." In addition, this rule revises § 1218.40(a)(2) to specify that there will be one producer member and alternate from each of the top six (rather than five) blueberry producing states. The Council will have 14 members and alternates as a result of this final rule. Therefore, a change is made in § 1218.40(a) to remove the Council member limit of 13. USDA has also removed obsolete language from §§ 1218.40 and 1218.41.

After consideration of all relevant material presented, including comments, the Council's recommendation, and other information, it is determined that this final rule is consistent with and will effectuate the purpose of the Act.

### List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberries, Consumer information, Marketing agreements, Blueberry promotion, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 1218 is amended as follows:

■ 1. The authority citation for part 1218 continues to read as follows:

Authority: 7 U.S.C. 7401-7425.

### PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION

#### Subpart A—Blueberry Promotion, Research, and Information Order

■ 2. In § 1218.3, the words "U.S.A. Cultivated Blueberry Council" are removed and the words "U.S. Highbush Blueberry Council" are added in their place, and "USACBC" is removed, and the word "Council" is added in its place.

■ 3. Revise § 1218.23 to read as follows:

#### § 1218.23 U.S. Highbush Blueberry Council.

*U.S. Highbush Blueberry Council* or the *Council* means the administrative body established pursuant to § 1218.40.

■ 4. The undesignated center heading preceding § 1218.40 is revised to read as follows:

#### U.S. Highbush Blueberry Council

■ 5. In § 1218.40, the introductory text of paragraph (a) and paragraphs (a)(2) and (b) are revised to read as follows:

#### § 1218.40 Establishment and membership.

(a) *Establishment of the U.S. Highbush Blueberry Council.* There is hereby established a U.S. Highbush Blueberry Council, hereinafter called the Council, composed of no more than 14 members and alternates, appointed by the Secretary from nominations as follows:

\* \* \* \* \*

(2) One producer member and alternate from each of the top six blueberry producing states, based upon the average of the total tons produced over the previous three years. Average tonnage will be based upon production

and assessment figures generated by the Council.

\* \* \* \* \*

(b) *Adjustment of membership.* At least once every five years, the Council will review the geographical distribution of United States production of blueberries and the quantity of imports. The review will be conducted through an audit of state crop production figures and Council assessment records. If warranted, the Council will recommend to the Secretary that the membership on the Council be altered to reflect any changes in the geographical distribution of domestic blueberry production and the quantity of imports. If the level of imports increases, importer members and alternates may be added to the Council.

■ 6. Section 1218.41 is revised to read as follows:

**§ 1218.41 Nominations and appointments.**

(a) Voting for regional and state representatives will be made by mail ballot.

(b) When a state has a state blueberry commission or marketing order in place, the state commission or committee will nominate members to serve on the Council. At least two nominees shall be submitted to the Secretary for each member and each alternate.

(c) Nomination and election of regional and state representatives where no commission or order is in place will be handled by the Council staff. The Council staff will seek nominations for members and alternates from the specific states and/or regions. Nominations will be returned to the Council office and placed on a ballot which will then be sent to producers in the state and/or region for a vote. The final nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the final nominee for alternate. The persons with the third and fourth highest number of votes cast will be designated as additional nominees for consideration by the Secretary.

(d) Nominations for the importer, exporter, first handler, and public member positions will be made by the Council. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

(e) From the nominations, the Secretary shall select the members and alternate members of the Council.

**§§ 1218.42, 1218.43, 1218.44, 1218.45, 1218.46, 1218.47, 1218.48, 1218.50, 1218.51, 1218.52, 1218.53, 1218.54, 1218.55, 1218.56, 1218.60, 1218.62, 1218.70, 1218.73, 1218.75, and 1218.77 [Nomenclature Change]**

■ 7. In §§ 1218.42, 1218.43, 1218.44, 1218.45, 1218.46, 1218.47, 1218.48, 1218.50, 1218.51, 1218.52, 1218.53, 1218.54, 1218.56, 1218.60, 1218.62, 1218.70, 1218.73, 1218.75, and 1218.77, “USCABC” is removed and the word “Council” is added in its place.

Dated: August 1, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6-12760 Filed 8-4-06; 8:45 am]

**BILLING CODE 3410-02-P**

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 268

[Docket No. OP-1264]

#### Rules Regarding Equal Opportunity

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Board of Governors of the Federal Reserve System (the Board) is soliciting comments on a new interim rule that would amend the section of its Rules Regarding Equal Opportunity (EEO Rules) which governs the employment of persons who are not United States citizens consistent with the Board’s requirements for the security of its information. The amendment revises an earlier interim rule that clarified the limitations on access to sensitive information by non-citizen employees to Federal Open Market Committee (FOMC) information.

The amendment, which concerns the internal management of the Board, is issued as an immediately effective interim rule, with opportunity for public comment, to ensure that hiring decisions facing the Board can be made as soon as possible.

**DATES:** *Effective Date:* This interim rule is effective August 7, 2006.

*Applicability Date:* This interim rule is applicable to all decisions on access to Sensitive Information of the Board as of August 7, 2006.

*Comment Date:* Submit comments on or before October 6, 2006.

**ADDRESSES:** You may submit comments, identified by Docket No. OP-1264, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at

<http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail:

[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.

- FAX: 202/452-3819 or 202/452-3102.

- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board’s Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board’s Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:**

Alicia S. Foster, Senior Counsel (202-452-5289), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf (“TDD”) only, contact 202/263-4869.

**SUPPLEMENTARY INFORMATION:** The Board proposes to amend § 268.205 of its Rules Regarding Equal Opportunity (12 CFR 268.205), governing the employment of persons who are not United States citizens in accordance with the Board’s security requirements. The amendments are effective immediately, subject to revision based on public comment.

On November 7, 2005, by an immediately effective interim rule, the Board amended § 268.205 to permit the Board to hire certain Non-Citizens into positions requiring access to information of the Federal Open Market Committee (FOMC), subject to certain conditions and a preference for U.S. citizens over equally qualified non-citizens. The Board received no comments on the November 2005 interim rule. After the Board published the November 2005 interim rule and before the Board published the rule in final form, however, it became apparent that the hiring needs that exist with respect to FOMC information that prompted the need to change the rules also exist with respect to Confidential Supervisory Information, a second category of Sensitive Information.