

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1218

[FV-00-706-PR]

#### Blueberry Promotion, Research, and Information Order; Amendment No. 1 to Revise the Name of the Program

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

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

**SUMMARY:** The purpose of this rule is to seek comments on changing the title of the Blueberry Promotion, Research, and Information Order to the "Promotion, Research, and Information Order for Cultivated Blueberries" and the title for the U.S.A. Blueberry Council (USABC) to the "U.S.A. Cultivated Blueberry Council (USACBC)." In addition, this rule would change every reference to blueberries in the Order to "cultivated blueberries." The purpose of these changes is to help avoid confusion in the industry regarding the types of blueberries covered by the program.

**DATES:** Comments must be received by November 20, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535-S, 1400 Independence Avenue, S.W., Washington, D.C. 20250-0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: [malinda.farmer@usda.gov](mailto:malinda.farmer@usda.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: [www.ams.usda.gov/fv/rpdocketlist.htm](http://www.ams.usda.gov/fv/rpdocketlist.htm).

#### FOR FURTHER INFORMATION CONTACT:

Margaret B. Irby, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535-S, Washington, D.C. 20250-0244; telephone (202) 720-5057, fax (202) 205-2800, or e-mail [margaret.irby@usda.gov](mailto:margaret.irby@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].

#### Question and Answer Overview

*Why Does the U.S. Department of Agriculture (USDA or the Department) Want to Change the Name of the Program and the USABC?*

USDA has become aware of confusion in parts of the industry over which type of blueberries will be covered by the program. Changing the title of the program, the title of the USABC, and references to blueberries in the Order to "cultivated blueberries" will help eliminate this confusion, while keeping all other provisions of the program the same.

#### *Will USDA Consider Other Names?*

Yes. USDA will consider other names as long as they meet the goal of alleviating the potential for confusion.

#### *Will Anything Else Change About the Program?*

No. The program as published on July 17, 2000 in the **Federal Register** remains the same.

#### *Will this Proposed Rule Delay the Appointment of the USABC or the Beginning of the Collection of Assessments Under the Program?*

No. The appointment process will begin soon after the Order becomes effective, and assessments will begin on January 1, 2001.

#### Executive Orders 12866 and 12988

This rule has been determined "not significant" for purposes of Executive Order (E.O.) 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

In addition, 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 requesting 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.*], the Agency is required to examine the impact of the proposed 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. AMS has examined the impact of this proposed rule on small entities.

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, we assume that some are small. The SBA defines small agricultural handlers as those whose

annual receipts are less than \$5 million, and small agricultural producers are defined as those having annual receipts of not more than \$500,000 annually.

This proposed amendment to the Order is being issued as a result of comments received during the initial comment period on the first proposed rule. Comments were received in favor of and against changing the name of the proposed blueberry program. After further analysis, we are proposing a change to the name of the program to clarify that the program is for the promotion of cultivated blueberries. The goal of this action is to eliminate confusion among industry members and consumers.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

This rule is intended to amend the Order to revise the name of the program and change references to blueberries in the Order to "cultivated blueberries." All other provisions of the Order as published on July 17, 2000, in the **Federal Register** [65 FR 43961] will remain the same. The amendment is not considered a substantial change that will impact the cultivated blueberry industry.

The proposed amendment to the Order would not impose additional recordkeeping requirements on first handlers, producers, or importers or exporters of cultivated blueberries. Therefore, recordkeeping and reporting requirements for the promotion, research, and information program for cultivated blueberries would remain unchanged by the proposed amendment.

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

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed amendment to the Order on small entities, and we invite comments concerning potential effects of the proposed amendment.

### Background

Under the Order, the USABC will begin collecting assessments on domestic and imported cultivated blueberries in 2001. The funds will be used to expand markets for cultivated

blueberries in the United States and abroad. The USABC, which will be appointed by the Secretary of Agriculture (Secretary), will operate under the supervision of the USDA's Agricultural Marketing Service (AMS).

Although the Order states that the program covers only cultivated blueberries and not native blueberries, there has been some confusion in parts of the industry because the title of the program and the name of the Council do not specifically reference cultivated blueberries.

Two comments were received regarding this issue and summarized in the February 15, 2000, proposed rule [65 FR 7657] which contains an analysis of comments on the national research and promotion program for blueberries. The commenters requested that, throughout the proposal and in the Council's title, the term "blueberry" be changed to "cultivated blueberry." The commenters stated that the generic use of the term "blueberry" was misleading as to the specific type of blueberry and industry segment represented by the proposed Council. The commenters noted that the wild blueberry industry promotes its product as unique from the cultivated blueberry. Though this request for a name change was originally not accepted by USDA, it has come to our attention that such a name change could help to avoid confusion in the industry regarding the types of blueberries covered by the program. Therefore, USDA is proposing that the official title of the program be changed to the "Promotion, Research and Information Order for Cultivated Blueberries" and that the title for the USABC be changed to the "U.S.A. Cultivated Blueberry Council." In addition, this rule would change all references to "blueberries" in the Order to "cultivated blueberries."

We welcome written comments on the proposed changes.

### 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, we are proposing to amend chapter XI of title 7 of the Code of Federal Regulations as follows:

### PART 1218—PROMOTION, RESEARCH, AND INFORMATION ORDER FOR CULTIVATED BLUEBERRIES

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

**Authority:** 7 U.S.C. 7401–7425.

2. The heading for part 1218 is revised to read as set forth above.

3. Revise the heading of Subpart A to read as follows:

### Subpart A—Promotion, Research, and Information Order for Cultivated Blueberries

4. Revise § 1218.2 to read as follows:

#### § 1218.2 Cultivated Blueberries.

*Cultivated blueberries* means blueberries grown in or imported into the United States of the genus *Vaccinium* *Corymbosum* and *Ashei*, including the northern highbush, southern highbush, rabbit eye varieties, and any hybrid, and excluding the lowbush (native) blueberry *Vaccinium Angustifolium*.

#### § 1218.3 [Amended]

5. In § 1218.3 the words "U.S.A. Blueberry Council" are removed and the words "U.S.A. Cultivated Blueberry Council" are added in its place and "USABC" is removed and "USACBC" is added in its place.

#### §§ 1218.6, 1218.7 and 1218.9 [Amended]

6. In §§ 1218.6, 1218.7, and 1218.9 the word "blueberries" is removed and the words "cultivated blueberries" are added in its place wherever it appears.

#### § 1218.10 [Amended]

7. In § 1218.10 the word "blueberries" is removed and the words "cultivated blueberries" are added in its place wherever it appears, and the word "blueberry" is removed and the words "cultivated blueberry" are added in its place wherever it appears.

#### § 1218.11 [Amended]

8. In § 1218.11 the word "blueberries" is removed and the words "cultivated blueberries" are added in its place wherever it appears.

#### § 1218.13 [Amended]

9. In § 1218.13 the words "Blueberry Promotion Research, and Information Order" are removed and the words "Promotion, Research, and Information Order for Cultivated Blueberries" are added in their place.

#### §§ 1218.15, 1218.16, 1218.17, and 1218.18 [Amended]

10. In §§ 1218.15, 1218.16, 1218.17, and 1218.18 the word "blueberries" is removed and the words "cultivated blueberries" are added in its place wherever it appears.

#### § 1218.23 [Amended]

11. In § 1218.23 "USABC" is removed and "USACBC" is added in its place

and "U.S.A. Blueberry Council" is removed and "U.S.A. Cultivated Blueberry Council" is added in its place.

**§ 1218.40 [Amended]**

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

**U.S.A. Cultivated Blueberry Council**

**§ 1218.40 [Amended]**

13. In § 1218.40 the word "blueberries" is removed and the words "cultivated blueberries" are added in its place wherever it appears, the words "U.S.A. Blueberry Council" are removed and the words "U.S.A. Cultivated Blueberry Council" are added in its place wherever it appears, and "USABC" is removed and "USACBC" is added in its place wherever it appears.

**§§ 1218.41, 1218.42, 1218.43, 1218.44, 1218.45, 1218.46, 1218.47, 1218.48, 1218.50, 1218.51, 1218.55, 1218.56, 1218.62, 1218.70, 1218.73, 1218.75, and 1218.77 [Amended]**

14. In §§ 1218.41, 1218.42, 1218.43, 1218.44, 1218.45, 1218.46, 1218.47, 1218.48, 1218.50, 1218.51, 1218.55, 1218.56, 1218.62, 1218.70, 1218.73, 1218.75, and 1218.77 "USABC" is removed and "USACBC" is added in its place wherever it appears.

**§§ 1218.52, 1218.53, 1218.54 and 1218.60 [Amended]**

15. In §§ 1218.52, 1218.53, 1218.54, and 1218.60 the word "blueberries" is removed and the words "cultivated blueberries" are added in its place wherever it appears, and "USABC" is removed and "USACBC" is added in its place wherever it appears.

**§§ 1218.71 and 1218.72 [Amended]**

16. In §§ 1218.71 and 1218.72 the word "blueberries" is removed and the words "cultivated blueberries" are added in its place wherever it appears.

Dated: September 15, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00-24219 Filed 9-20-00; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Parts 71 and 85**

**[Docket No. 98-023-1]**

**Interstate Movement of Swine Within a Production System**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to establish an alternative to the current requirements for moving swine interstate. Under this alternative, persons may move swine interstate without meeting individual swine identification and certain other requirements if they move the swine within a single swine production system, and if swine producers participating in that system sign agreements with the Animal and Plant Health Inspection Service and involved State governments to monitor the health of animals moving within the swine production system and to facilitate traceback of these animals if necessary. This action would facilitate the interstate movement of swine while continuing to provide protection against the interstate spread of swine diseases. This action would affect persons engaged in swine production who regularly move swine interstate in their business operations.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive by November 20, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 98-023-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 98-023-1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are

available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Taft, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737-1231; (301) 734-4916.

**SUPPLEMENTARY INFORMATION:**

**Background**

The swine production industry has dramatically changed its business practices and operating procedures over the last generation. Fifty years ago swine production facilities were mainly small operations that typically produced a small number of swine (up to a few hundred). Often the same premises would breed swine, farrow them, wean the offspring, and feed them until they reached slaughter weight. Today, market economies have resulted in specialization that has created separate operations, often on separate premises, for the three stages of swine production—sow herds, nursery herds, and growing or finishing herds. Piglets are born and weaned in a sow herd, moved to a nursery herd for several weeks, then moved to a growing herd where they are fed until they reach slaughter weight after about 180 days.

A single producer may own all three types of facilities, or may have standing relationships with facilities owned by another producer. The result is that swine may move through all three types of herds, often crossing State lines in the process, either without changing ownership, or changing ownership but remaining under the control of a single producer. This swine production model is distinctly different from the commercial model reflected in the current Animal and Plant Health Inspection Service (APHIS) regulations for interstate movement of swine. When those regulations were written, swine (other than valued breeding stock) were generally moved interstate only when a change in ownership occurred, usually when they were shipped to slaughter. Today, millions of swine move interstate while they are raised for slaughter or breeding under a swine production system, and while they remain under the control of a single owner or a group of contractually related owners. In response to these changes in commercial practice, APHIS is reexamining its regulations for moving swine interstate, including requirements for swine identification and health certificates, to determine what requirements should apply to