

year beginning on July 1, 2009, which shall be free and restricted, respectively, are designated as follows: Free percentage, 32 percent and restricted percentage, 68 percent.

Dated: March 11, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010-5772 Filed 3-16-10; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1218

[Document Number AMS-FV-09-0022; FV-09-705]

#### Blueberry Promotion, Research, and Information Order; Increase Membership

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to add two importer members and their alternates to the U.S. Highbush Blueberry Council (Council) to reflect changes in the quantity of highbush blueberry imports in the past three years. The change was proposed by the Council in accordance with the provisions of the Blueberry Promotion, Research, and Information Order (Order) which is authorized by the Commodity Promotion, Research, and Information Act of 1996 (Act). The Order requires that the Council review the geographical distribution of the United States production and the quantity of imports of highbush blueberries at least every five years. As a result of these changes, the total Council membership would increase from 14 to 16 members and their alternates. In addition, this rule proposes to increase the quorum minimum from seven to nine members.

**DATES:** Comments must be received by April 6, 2010.

**ADDRESSES:** Interested persons are invited to submit written comments on the Internet at: <http://www.regulations.gov> or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, (Department) Room 0632-S, Stop 0244, 1400 Independence Avenue, SW., Washington, DC 20250-0244; facsimile: (202) 205-2800. All comments should reference the docket number and the date and page number of this issue of

the **Federal Register** and will be made available for public inspection in the above office during regular business hours or it can be viewed at <http://www.regulations.gov>. All comments received will be posted without change, including any personal information provided.

#### FOR FURTHER INFORMATION CONTACT:

Jeanette Palmer, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, Stop 0244, 1400 Independence Avenue, SW., Room 0632-S, Washington, DC 20250-0244; telephone: (888) 720-9917; facsimile: (202) 205-2800; or electronic mail: [Jeanette.Palmer@ams.usda.gov](mailto:Jeanette.Palmer@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Blueberry Promotion, Research, and Information Order [7 CFR part 1218]. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7411-7425].

#### Executive Order 12866

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

#### Executive Order 12988

This rule has been reviewed under Executive Order 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 State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act provides that any person subject to an order may file a written petition with the Department if they believe that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with law. In any petition, the person may request a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or conducts business shall have the jurisdiction to review the Department's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

#### Initial Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601-612], AMS has considered the economic

impact of this action on the small producers, first handlers, importers, and exporters that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms as those having annual receipts of no more than \$7 million. There are approximately 2,000 producers, 200 first handlers, 50 importers, and 4 exporters of highbush blueberries subject to the program. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration. Most importers, first handlers, and exporters would not be classified as small businesses. Producers who produce less than 2,000 pounds of highbush blueberries annually are exempt from this program. Importers who import less than 2,000 pounds of fresh and frozen highbush blueberries annually are also exempt from this program.

The Department's National Agricultural Statistics Service (NASS) data for the 2008 crop year shows that about 5,790 pounds of highbush blueberries were produced per acre. The 2008 average grower price for highbush blueberries published by NASS was \$1.54 per pound. Thus, the value of highbush blueberry production per acre in 2008 averaged about \$8,917 (5,790 pounds multiplied by \$1.54). At that average value, a producer would have to farm over 84 acres to receive an annual income from highbush blueberries of \$750,000 (\$750,000 divided by \$8,916 per acre equals 84). Accordingly, as previously noted, a majority of the producers of highbush blueberries would be classified as small businesses.

According to the Council, assessments received in 2008 reached \$2.4 million. Of the total, the Council received \$830,222 from import assessment collections which is approximately 35 percent of the Council's total budget. The Council has projected import assessment collections at \$850,000 for the 2009 budget year.

According to the Council's World Blueberry Acreage and Production Report, highbush blueberry acreage in North America increased from 71,075 acres in 2005 to an estimated 95,607 acres in 2008, a 35 percent increase in just three years. The United States' share of this total increased from 56,665 acres in 2005 to 74,992 acres in 2008, a 32 percent increase. Most of this

acreage growth is coming from the higher yielding western and southern States. Highbush blueberry production volume is expected to increase significantly from these regions in the coming years.

In 2008, the United States exported 13,791 metric tons of fresh highbush blueberries worth over \$69 million. Canada is the principal destination for United States exports—accounting for nearly 84 percent of the total in 2008. Other key markets included the United Kingdom at 7 percent and Japan at 6 percent of the total. Most of the remaining 3 percent of the United States exports were to Asian countries.

The United States exports of frozen highbush blueberries totaled 5,785 metric tons in 2008 and were valued at over \$17 million. The largest United States export market for frozen highbush blueberries is Canada which accounted for 47 percent of the total quantity exported in 2008. Japan was the second largest United States market accounting for 39 percent. Most of the remaining 14 percent of United States exports were sent to other Asian, United Kingdom, and European countries.

In 2008, the United States imported 45,105 metric tons of fresh highbush blueberries worth over \$229 million. The largest imports of highbush blueberries came from Chile which accounted for 61 percent of the total in 2008. Other major suppliers of fresh highbush blueberries were Canada at 19 percent and Argentina at 17 percent of the total. The remaining 3 percent of imported highbush blueberries came from New Zealand and Uruguay.

The United States imports of frozen highbush blueberries totaled 19,152 metric tons in 2008 and were valued at over \$64 million. The bulk of the United States frozen highbush blueberries imports came from Canada, which accounted for 78 percent of total in 2008. Other major suppliers of frozen highbush blueberries were Chile with 16 percent of the total, Argentina with 5 percent and the Netherlands with 1 percent.

In the international market, highbush blueberry production has increased in Canada, Mexico, South America, Europe, and Asia. The highbush blueberry acreage worldwide has nearly doubled in the past five years from an estimated 83,299 acres in 2003 to an estimated 163,065 acres in 2008. Based on the data in the Council's 2007–2008 World Acreage and Production Report, North America represented 77 percent of the total worldwide highbush blueberry acreage in 2003 (64,360 acres), but just 59 percent of the estimated total acreage in 2008 (95,607 acres).

Most of the worldwide growth over the past five years has taken place in South America which has increased acreage from an estimated 6,939 acres in 2003 to an estimated 39,703 acres in 2008, a nearly sixfold increase with the largest growth in Chile and Argentina. Most of the growth in European production, which has increased from 8,978 acres in 2003 to 18,038 in 2008, has taken place in Spain, Germany, and Poland. Asian highbush blueberry production has increased during this five-year period from 2,372 acres to 7,870 acres with most of the growth taking place in China and to a lesser extent Japan. Acreage in Australia and New Zealand has not significantly increased during this period.

Given worldwide acreage estimates, projections show that given optimal conditions with no crop losses or disruptions, total worldwide highbush blueberry production has the potential to increase from an estimated 606 million pounds in 2008 to an estimated 1.5 billion pounds by the year 2015, more than two times the current level of production in the next seven years. This total does not include lowbush (wild) blueberry production, which at the current time averages around 200 million pounds per year. These projections are considered optimal forecasts and are based on the potential of what has been planted to date as well as upon assumptions of favorable crop years in all international highbush blueberry growing regions. During this period, North American highbush blueberry production is estimated to increase from 407 million pounds in 2008 to 890 million pounds by the year 2015, more than two times the current level of production.

Section 1218.40(b) of the Order requires that the Council review the geographical distribution of United States production of highbush blueberries and the quantity of imports at least once every five years. Based on this review, the Council makes a recommendation to the Secretary of Agriculture (Secretary) to continue without change or make changes to the representation on the Council to reflect changes in the geographical distribution of the production of highbush blueberries and the quantity of imports. On August 13, 2009, the Council voted by electronic mail (e-mail) to add two importer members and their alternates to the Council. The vote to recommend two additional importers and their alternates was based on a three-year average production and imports data. Nine out of the ten Council members who voted were in support of adding these additional members.

The Council consists of a total of 14 members which includes 10 producers, 1 importer, 1 exporter from a foreign production area, 1 handler, and 1 public member. Each member has an alternate. The 10 producer members are allocated as follows: One producer member from each of the four regions and one producer member from each of the six top producing States. The regions are Western, Midwest, Northeast, and Southern. The top-producing States are Georgia, Michigan, New Jersey, North Carolina, Oregon, and Washington.

In 2006, the Council collected assessments on 360,467 million pounds of highbush blueberries. The domestic production of highbush blueberries in the United States was 268,800 million pounds which was 75 percent of the total assessments collected by the Council. Imports of highbush blueberries came in at 91,667 million pounds which represented 25 percent of the total assessments collected by the Council.

The Council records show that for the years 2003, 2004, and 2005 the United States produced 189,900 million pounds, 209,200 million pounds, and 246,000 million pounds of highbush blueberries respectively. Using this data, the three-year average annual highbush blueberries production for the United States totaled 215,033 million pounds per year (645,100 divided by 3). For this period, domestic production represented approximately 78 percent of the total assessments collected by the Council. For imports for the years 2003, 2004, and 2005, imports were at 63,334 million pounds, 55,000 million pounds, and 66,667 million pounds of highbush blueberries, respectively. Based on this data, the three-year average annual imports for highbush blueberries totaled 61,667 million pounds per year (185,001 divided by 3). Imports represented 22 percent of the total assessments paid to the Council during the period of 2003 through 2005.

The Council reviewed the domestic production of highbush blueberries in the United States. The Council records show that for the years 2006, 2007, and 2008 the United States produced 268,800 million pounds, 281,500 million pounds, and 335,900 million pounds of highbush blueberries respectively. Using this data, the three-year average annual highbush blueberries production for the United States totals 295,400 million pounds per year (886,200 divided by 3). Based on this data, the domestic production represents 72 percent of the total assessments collected by the Council.

Currently 72 percent of the Council's members represent the domestic

production. Therefore, the Council determined that there were no changes required at this time for the domestic member positions.

The Council's assessment records show that for the years 2006, 2007, and 2008 imports came in at 91,667 million pounds, 108,333 million pounds, and 141,667 million pounds of highbush blueberries respectively. Based on this data, the three-year average annual imports for highbush blueberries totals 113,889 million pounds per year (341,667 divided by 3). This represents approximately 28 percent of the total assessments paid to the Council. In contrast in 1997, imports came at 23.7 million pounds or 12 percent of the total of domestic and imports. Accordingly, two importer and alternate seats should be added to the Council. The new Council membership distribution would be 10 producers, 3 importers, 1 exporter, 1 handler, and 1 public member which would bring the percentage of seats for importers and exporters to 28 percent of the total seats on the Council.

Given the adjustment in membership for the Council in 2006 and the proposed changes herein, it is proposed that the minimum quorum at a Council meeting increase from seven to nine members. This would reflect that a majority of the 16 Council members (or their alternates, when appropriate) are present for a quorum.

Nominations and appointments to the Council are conducted pursuant to sections 1218.40, 1218.41, and 1218.42 of the Order. Appointments to the Council are made by the Secretary from a slate of nominated candidates. Pursuant to section 1218.41(d) of the Order, nominations for the importer, exporter, handler, and public member positions will be made by the Council. The nominees for the two importer and alternate positions will be submitted to the Secretary for appointment to the Council.

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 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 that are imposed by the Order have been approved previously under OMB number 0505-0001.

The Order requires that two nominees be submitted for each vacant position. With regard to information collection requirements, adding two importers and their alternates to the Council means that eight additional importers will be required to submit background forms to the Department in order to be

considered for appointment to the Council. However, serving on the Council is optional, and the burden of submitting the background form would be offset by the benefits of serving on the Council. The estimated annual cost of providing the information by eight importers would be \$33 or \$4.12 per importer. The additional burden will be included in the existing information collection package under OMB number 0505-0001.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this 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 this amendment on small businesses.

### Background

The Order became effective on August 16, 2000, and it is authorized under the Act. The Council is composed of 10 producers, 1 importer, 1 exporter from a foreign production area, 1 handler, and 1 public member. Each member has an alternate. The 10 producer members are allocated as follows: One producer member from each of the four regions and one producer member for each of the six top producing States. The regions are Western, Midwest, Northeast, and Southern. The top-producing States that currently have representation on the Council are Georgia, Michigan, New Jersey, North Carolina, Oregon, and Washington. The producer members are nominated by producers or producer groups. The importer, exporter, handler, and public member positions are nominated by the Council.

Under the Order, the Council administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the position of highbush blueberries in the marketplace, and to establish, maintain, and expand markets for highbush blueberries. This program is financed by assessments on producers growing 2,000 pounds or more of highbush blueberries and importers who import 2,000 or more pounds of highbush blueberries per year. The current assessment rate is \$12 per ton levied on highbush blueberries produced within the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States and on imports of more than 2,000 pounds into the United States. The Order specifies that handlers are

responsible for collecting and submitting the producer assessments to the Council and maintaining records necessary to verify their reporting(s). Importers are responsible for payment of assessments to the Council on highbush blueberries imported into the United States through the U.S. Customs Service and Border Protection. Producers who produce less than 2,000 pounds and importers of less than 2,000 pounds of highbush blueberries annually are exempt from this program.

Pursuant to section 515(b)(3) of the Act and section 1218.40(b) of the Order, at least once in each five-year period, the Council shall review the geographical distribution of United States production of highbush blueberries and the quantity of imports and make a recommendation to the Secretary to continue without change or make changes to the representation on the Council to reflect changes in the geographical distribution of the production of highbush blueberries and the quantity of imports.

On August 13, 2009, the Council voted nine to one to increase the membership of the Council by adding two importer and alternate seats. Based on the Council's assessment records for the years 2006, 2007, and 2008, imports came in at 91,667 million pounds, 108,333 million pounds, and 141,667 million pounds of highbush blueberries respectively. Based on this data, the three-year average annual imports for highbush blueberries totals 113,889 million pounds per year (341,667 divided by 3). This represents approximately 28 percent of the total assessments paid to the Council. In contrast in 1997, imports came at 23.7 million pounds or 12 percent of the total of domestic and imports. Accordingly, two importer and alternate seats should be added to the Council. The new Council membership distribution would be 10 producers, 3 importers, 1 exporter, 1 handler, and 1 public member which would bring the percentage of seats for importers and exporters to 28 percent of the total seats on the Council.

This action will add to the Council two importers and two alternates. The Council would be composed of 10 producers, three importers, one exporter from a foreign production area, one handler, and one public member. Each member has an alternate. The addition of two importers and two alternates would allow for more importers representation on the Council's decision making and also potentially provide an opportunity to increase diversity on the Council.

Furthermore, this rule would make amendments to section 1218.40(a) of the

Order to specify that the Council will be composed of 16 members and their alternates rather than 14. Also, this rule would revise section 1218.40(a)(3) of the Order to specify three importers and alternates instead of one importer and alternate. In addition, this rule would revise section 1218.45 (a) of the Order to increase the minimum quorum level at Council meetings from seven to nine members.

Nominations and appointments to the Council are conducted pursuant to sections 1218.40, 1218.41, and 1218.42 of the Order. Appointments to the Council are made by the Secretary from a slate of nominated candidates. Pursuant to section 1218.41(d) of the Order, nominations for the importer, exporter, handler, and public member positions are made by the Council. Nominations are submitted to the Secretary for appointment to the Council.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate so that the proposed amendments, if adopted, may be implemented with the other importer seats up for appointment in spring 2010. All written comments received in response to this rule by the date specified would be considered prior to finalizing this action.

**List of Subjects in 7 CFR Part 1218**

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

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

**PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER**

1. The authority citation for 7 CFR part 1218 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

2. In § 1218.40, paragraph (a) introductory text and paragraph (a)(3) 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 16 members and alternates, appointed by the Secretary from nominations as follows:

\* \* \* \* \*

(3) Three importers and alternates.

\* \* \* \* \*

3. Section 1218.45 paragraph (a) is revised to read as follows:

**§ 1218.45 Procedure.**

(a) At a Council meeting, it will be considered a quorum when a minimum of nine members, or their alternates serving in the absence, are present.

\* \* \* \* \*

Dated: March 11, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010-5773 Filed 3-16-10; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA-2010-0229; Directorate Identifier 2009-NM-115-AD]**

**RIN 2120-AA64**

**Airworthiness Directives; Bombardier, Inc., Model DHC-8-400 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: Certain main landing gear components have experienced premature failure during certification testing. Revision has been made to the DHC-8-400 Maintenance Requirements Manual, Airworthiness Limitation Items, to incorporate the revised safe life limits for the main landing gear lock actuator assembly, retraction actuator assembly rod end and piston, and the upper bearing in the main landing gear shock strut assembly. Failure of these components could adversely affect the structural integrity of the main landing gear. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by May 3, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Fax:* (202) 493-2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401;

e-mail [thd.qseries@aero.bombardier.com](mailto:thd.qseries@aero.bombardier.com); Internet <http://www.bombardier.com>.

You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Craig Yates, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7355; fax (516) 794-5531.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2010-0229; Directorate Identifier 2009-NM-115-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy