

**Authority:** 7 U.S.C. 7711–7714, 7731, 7734, and 8311; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

#### **§ 352.30 [Amended]**

2. Section 352.30 is amended as follows:

- a. In paragraph (b)(2), by removing the words “Brownsville,” and “Hidalgo,”.
- b. In paragraph (b)(3)(iii), by removing the words “Brownsville or”.
- c. In paragraph (c)(1), by removing the words “Brownsville, or”.
- d. In paragraph (c)(3), in the paragraph heading and in paragraphs (c)(3)(i) and (c)(3)(ii), by removing the words “Brownsville or” each time they appear.

Done in Washington, DC, this 10th day of July, 2002.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 02–17796 Filed 7–15–02; 8:45 am]

**BILLING CODE 3410–34–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 1209**

[Doc # FV–02–706 IFR]

#### **Mushroom Promotion, Research, and Consumer Information Order; Reallocation of Mushroom Council Membership**

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

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

**SUMMARY:** This interim final rule invites comments on adjusting representation on the Mushroom Council (Council) to reflect shifts in production since the original producer regions were established and the increased volume of imports. These adjustments are required by the Mushroom Promotion, Research, and Consumer Information Order (Order) and would result in changing the number of Council members in three of the four producer regions and adding a fifth region to provide an importer position on the Council.

**DATES:** Effective date: July 17, 2002. Comments must be received by August 15, 2002.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), Department of Agriculture (USDA), Stop 0244, Room 2535–S, 1400 Independence

Avenue, SW., 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 <http://www.ams.usda.gov/fv/rpdocketlist.htm>.

#### **FOR FURTHER INFORMATION CONTACT:**

Deborah S. Simmons, Research and Promotion Branch, FV, AMS, USDA, Room 2535–S, Stop 0244, Washington, DC 20250–0244; telephone (202) 720–9915 or (888) 720–9917 (toll free); e-mail to [deborah.simmons@usda.gov](mailto:deborah.simmons@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Mushroom Promotion, Research, and Consumer Information Order (Order) [7 CFR Part 1209]. The Order is authorized under the Mushroom Promotion, Research and Consumer Information Act of 1990 (Act) (7 U.S.C. 6101–6112).

#### **Executive Orders 12866 and 12988**

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

In addition, this rule has been reviewed under E.O. 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act allows producers and importers to file a written petition with USDA 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 will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a final decision on behalf of the Department. If the petitioner disagrees with the Judicial Officer's decision, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

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

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*],

AMS has examined the economic impact of this rule on small entities that would be affected by this rule. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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 (importers) as having receipts of no more than \$5 million. Under these definitions, the majority of producers and importers that would be affected by this rule would be considered small entities. Producers and importers of less than 500,000 pounds or less of mushrooms for the fresh market are exempt from the Order.

According to the Council, there are approximately 137 non-exempt producers and 135 non-exempt importers who are eligible to serve on the Council.

The overall impact would be favorable for producers and importers because the producers and importers would have more equitable representation on the Council.

The addition of one importer position on the Council would mean two additional nominees. However, this rule would also reduce the number of producer nominees from 18 to 16. Therefore, there is no increase in overall burden, but only a change in the type of respondent under the Order.

As such, with regard to the information collection requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], there are no new requirements contained in this rule. The information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB control number 0505–0001. This rule, however, does add a new category of respondents—importers. The estimated burden for importer nominee information is 0.50 hours per response with two responses once every three years. This is the same burden that applies to producer nominees. Since producer nominees are reduced by this rule from 18 to 16, the estimated total annual burden on respondents associated with nominee background forms is 2.7 hours. The estimated cost of providing nomination information by eighteen persons eligible to be nominated to serve as members on the Council remains at \$27.00 or \$1.50 per person.

In terms of alternatives to this rule, this action reflects the volume thresholds and procedures that have been established previously under the

provisions of the Order for reallocation of Council membership.

There are no federal rules that duplicate, overlap, or conflict with this rule.

#### Background

Under the Order, the Council administers a nationally coordinated program of research, development, and information designed to strengthen the fresh mushroom's position in the market place and to establish, maintain, and expand markets for fresh mushrooms. The program is financed by an assessment of 0.21 cents per pound on any person who produces or imports over 500,000 pounds of mushrooms for the fresh market annually. The Order specifies that handlers are responsible for collecting and submitting the producer assessment to the Council, reporting their handling of mushrooms, and maintaining records necessary to verify their reporting(s). Importers are responsible for payment of assessments to the Council on mushrooms imported

into the United States through the U.S. Customs Service.

The Order established a Council of up to nine members. For the purposes of establishing the Council, the United States was divided into four producer regions.

In addition, §§ 1209.30(a) and (c) of the Order state that importers shall be represented by a single, separate region (referred to as Region 5) when imports, on average (2 years), equal or exceed 35 million pounds of mushrooms annually. Currently, there is no Region 5.

Section 1209.30(d) of the Order provides that at least every five years, the Council should review changes in the geographic distribution of mushroom production volume throughout the United States and import volume, using the average annual mushroom production and imports over the preceding four years. Based on the review, the Council would recommend reapportionment of the regions, or modification of the number of members from such regions, or both.

Section 1209.30(e) provides that each producer region that produces, on average, at least 35 million pounds of mushrooms annually is entitled to one member. Further, each producer region is entitled to an additional member for each 50 million pounds of annual production, on average, in excess of the initial 35 million pounds required to qualify for representation, until the nine seats on the Council are filled. Under the Order, "on average" reflects a rolling average of production or imports during the last two fiscal years.

The average production of pounds by producer region for the years 2000 and 2001 is 74.4 million pounds for Region 1; 297.2 million pounds for Region 2; 121.6 million pounds for Region 3, and 107.8 million pounds for Region 4. The average number of pounds imported for the years 2000 and 2001 is 39.3 million.

As a result, the Council recommended the following changes in Council membership:

Region	Average assessed pounds (in millions)	Members earned first 35 million pounds	Members earned next 50 million pounds	Members earned next 50 million pounds	Total members per region	Change in number of members
Region 1 .....	74.4	1	.....	.....	1	-1
Region 2 .....	297.2	1	1	1	3	0
Region 3 .....	121.6	1	1	.....	2	-1
Region 4 .....	107.8	1	1	.....	2	+1
Region 5 .....	39.3	1	.....	.....	1	+1
Total .....	640.3	5	3	1	9	0

Therefore, pursuant to § 1209.30, a new § 1209.230 is added to the regulations under the Order to change the composition of the Council. Nominations based upon the changes made in this rule would be received for the term of office that begins on January 1, 2003.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule should be in place as soon as possible so that the nomination process may be conducted taking into account the changes that appear in this rule. The new term of office begins on January 1, 2003. In addition and for the same reasons, a 30-day period is provided for interested persons to comment on this rule.

#### List of Subjects in 7 CFR Part 1209

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

For the reasons set forth in the preamble, Part 1209, Chapter XI of Title 7 is amended as follows:

#### PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

1. The authority citation for 7 CFR Part 1209 continues to read as follows:

**Authority:** 7 U.S.C. 6101–6112.

2. A new § 1209.230 is added to read as follows:

#### § 1209.230 Reallocation of council members.

Pursuant to § 1209.30 of the Order, the regions and their number of members on the Council shall be as follows:

*Region 1:* Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas,

Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New York, New Hampshire, North Dakota, Ohio, Rhode Island, South Dakota, Vermont, Wisconsin, and Wyoming—1 Producer Member.

*Region 2:* Delaware, Maryland, New Jersey, Pennsylvania, the District of Columbia, West Virginia, and Virginia—3 Producer Members.

*Region 3:* Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington—2 Producer Members.

*Region 4:* Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, the Commonwealth of Puerto Rico, South Carolina, Tennessee, and Texas—2 Producer Members.

*Region 5:*—1 Importer Member.

Dated: July 10, 2002.

**A. J. Yates,**

Administrator, Agricultural Marketing Service.

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