This document is scheduled to be published in the
Federal Register on 2026-08-25 and available online at
https://www.federalregister.gov/d/2026-17296, and on
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DEP

Agricultural Marketing Service

7 CFR Part 1209

[Doc. No. AMS-SC-25-0551]

Membership Adjustment of the Mushroom Council

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on realigning and reallocating representation on the Mushroom Council as prescribed in the Mushroom Promotion, Research, and Consumer Information Order by adjusting the states in Regions 1 and 3 and reallocating a member from Region 1 to Region 3.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments may be mailed to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0244, Washington, DC 20250-0237; submitted by fax: (202) 720-8938; submitted electronically by email: SM.USDA.MRP.AMS.MDDComment@usda.gov; or via at the internet at https://www.regulations.gov. Comments should reference the document number and the date and page number of this issue of the *Federal Register*. Comments submitted in response to this proposed rule will be included in the record, will be made available to the public and may be viewed at https://www.regulations.gov. Please be advised that all information submitted with your comment will be posted to regulations.gov without change.

FOR FURTHER INFORMATION CONTACT: Kelly Robertson, Marketing Specialist or Alexandra Caryl, Branch Chief, Mid-Atlantic Region Branch, Market

Development Division, Specialty Crop Program, AMS, USDA; telephone: (202) 720-8085 or via email: KellyM.Robertson@usda.gov or Alexandra.Caryl@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule affecting the Mushroom Promotion, Research, and Consumer Information Order (7 CFR part 1209) is authorized by the Mushroom Promotion, Research, and Consumer Information Act (7 U.S.C. 6101-6112) (Act).

Executive Order 12866

This proposed action is exempt from the Office of Management and Budget (OMB) review process required by Executive Order 12866. This proposed rule would amend existing Mushroom Promotion, Research, and Consumer Information Order, as amended (7 CFR part 1209) and is necessary for the continued operation of the program. Additionally, this proposed action is exempt from the requirements of Executive Order 14192, "Unleashing Prosperity Through Deregulation," pursuant to section 5(c).

Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." AMS has assessed the impact of this proposed rule on Indian Tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, "Civil Justice Reform." It is not intended to have retroactive effect. Section 1930 of the Act (7 U.S.C. 6109) provides that it is not to be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State.

Background

This proposed rule invites comments on adjusting the membership of the Mushroom Council (Council) established under the Mushroom Promotion, Research and Consumer Information Order (Order). The Order is administered by the Council with oversight by USDA. This action was recommended by the Council after a review of the geographic distribution of mushroom production throughout the United States and imports. The U.S. states that comprise Regions 1 and 3 would be adjusted and a member seat would be moved from Region 1 to Region 3. This action is necessary to ensure equitable representation of producers and importers on the Council.

Section 1209.30(a) of the Order specifies that the Council shall consist of not less than four or more than nine members who are mushroom producers and importers. Pursuant to section 1209.30(b), for purposes of nominating and appointing producers to the Council, the U.S. is divided into four geographic regions.

Section 1209.230, Reallocation of Council members, currently specifies the number of members from each region as follows:

Region 1: All other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California – 3 members;

Region 2: The State of Pennsylvania – 4 members;

Region 3: The State of California – 1 member;

Region 4: Importers – 1 member.

The current allocation of members above was recommended by the Council in 2018 and established through rulemaking by USDA in 2019 (84 FR 17059, April 24, 2019).

Section 1209.30(d) prescribes that, at least every five years, and not more than every three years, the Council must review changes in the geographic distribution of mushroom production volume throughout the U.S. and import volume, using the average annual mushroom production and imports over the preceding four years. The Council

must recommend to the Secretary reapportionment of the regions and/or modification of the number of members from such regions as necessary to best reflect the geographic distribution of mushroom production volume in the U.S. and representation of imports.

Section 1209.30(e) prescribes a procedure to determine the number of members for each region to serve on the Council, subject to the nine-member maximum limitation. Each region that produces, on average, at least 50,000,000 pounds of mushrooms annually is entitled to one representative on the Council. Importers are represented by a single, separate region, which is entitled to one representative if the region imports, on average, at least 50,000,000 pounds of mushrooms annually. If the annual production of a region is greater than 110,000,000 pounds, but less than or equal to 180,000,000 pounds, the region must be represented by one additional member. If the annual production of a region is greater than 180,000,000 pounds, but less than or equal to 260,000,000 pounds, the region must be represented by two additional members. If the annual production of a region is greater than 260,000,000 pounds, the region must be represented by three additional members. Finally, if in the aggregate, regions are entitled to levels of representation that would exceed the nine-member limit on the Council, the seat or seats assigned shall be assigned to that region or those regions with greater on-average production or import volume than the other regions otherwise eligible at that increment level.

The Council met on February 11, 2025, and reviewed the geographic distribution of mushroom production volume throughout the U.S. and import volume to assess whether reapportionment of the current regions or modification of the number of members from such regions, or both, were warranted. Table 1. below includes Council assessment data on domestic shipments for the preceding four years (2021 through 2024).

Table 1. Mushroom Council Representation with Mushroom Council Data						
a. Current Council Representation						
Region	Seats	Quantity Shipped (million pounds)				
		2021	2022	2023	2024	4-year average
1 All Other States	3	178.4	159.7	153.1	130.7	155.5
2 PA	4	465.5	440.2	411.5	433.7	437.7
3 CA	1	86.1	84.6	81.0	73.6	81.3
Total Domestic Shipments		729.9	684.4	645.6	638.0	674.5
4 Imports	1					
b. New Council Representation						
Region	Proposed Seats	Quantity Shipped (million pounds)				
		2021	2022	2023	2024	4-year average
1 East + AK + HI - PA	2	121.9	117.7	114.9	89.3	111.0
2 PA	4	465.5	440.2	411.5	433.7	437.7
3 West (including TX)	2	142.6	126.5	119.2	115.0	125.8
Total Domestic Shipments		729.9	684.4	645.6	638.0	674.5
4 Imports	1					

Table 1. a. shows domestic shipments by region and the corresponding allocation of seats across the current regions, and Table 1. b. shows the allocation of seats and Council representation under the proposed new regions. The four-year average of total domestic shipments, according to Council data, was 674.5 million pounds, with 437.7 million pounds coming from Pennsylvania alone. The Council's proposed representation would combine the 44.5 million pounds from other western states, including Texas, with the 81.3 million pounds of shipments from California to create a new Region 3 that represents the western U.S., minus Alaska and Hawaii. This would result in Region 1, as it currently stands, losing the 44.5 million pounds that would be allocated to the proposed Region 3, and dropping one Council seat, which would be added to Region 3.

Table 2. below provides a similar analysis based on U.S. production data from USDA's National Agricultural Statistics Service (NASS) and import data from USDA's Global Agricultural Trade System (GATS). NASS production data by state is limited to Pennsylvania, California, and what it classifies as "Other States." Beginning in 2025, state data for California is combined with data for "Other States," leaving Pennsylvania as the only individual state for which NASS publishes data.

Table 2. Mushroom Council Representation with NASS and GATS Data						
a. Current Council Representation						
Region	Seats	Quantity Produced/Imported (million pounds)				
		2021	2022	2023	2024	4-year average
1 All Other States	3	163.0	159.5	154.8	133.8	152.8
2 PA	4	475.2	446.6	465.8	441.3	457.2
3 CA	1	99.2	73.8	82.5	67.7	80.8
Total Domestic Production		737.4	679.9	703.1	642.8	690.8
4 Imports	1	195.2	201.4	191.7	203.9	198.0
b. New Council Representation						
Region	Proposed Seats	Quantity Produced/Imported (million pounds)				
		2021	2022	2023	2024	4-year average
1 East + AK + HI - PA	2	117.3	104.4	106.2	90.1	104.5
2 PA	4	475.2	446.6	465.8	441.3	457.2
3 West (including TX)	2	144.9	128.9	131.2	111.4	129.1
Total Domestic Production		737.4	679.9	703.1	642.8	690.8
4 Imports	1	195.2	201.4	191.7	203.9	198.0

Like Table 1. a., Table 2. a. shows domestic production by current regions and the corresponding Council representation. Table 2. b. shows these for the proposed new regions and the corresponding Council representation. To address the lack of data on mushroom production at the state level, AMS utilized the results from the 2022 Census of Agriculture, published by NASS, to calculate the proportion of square feet in production in states included in the proposed Region 1 (45 percent) and in the proposed Region 3 (55 percent) relative to the total U.S. minus Pennsylvania production. Next, AMS applied these proportions to the "Other States" and California production figures reported by NASS in its annual Mushroom publication. The results are shown in Table 2. b. with the estimated four-year average production for Region 1 in the East at 104.5 million pounds and the estimated four-year average production for Region 3 in the West at 129.1 million pounds. Table 2. also shows import volume solely for informational purposes as the program's statute limits importer members to one.

Council Recommendation

Based on its analysis, the Council unanimously recommended redistributing the States in Regions 1 and 3 and subsequently decreasing the number of members in Region 1 by one while increasing the number of members in Region 3 by one. Accordingly, §

1209.230 would be revised as follows:

Region 1: Alabama, Alaska, Arkansas, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, the District of Columbia and the Commonwealth of Puerto Rico;

Region 3: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming.

No changes are necessary to the number of members in Regions 2 and 4 or to their state make-up.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR 121.201, small agricultural producers of mushrooms (North American Industry Classification System (NAICS) code 111411, Mushroom Production) as those having average annual receipts no greater than $4.5 million and small agricultural service firms, such as importers (NAICS code 115114, Postharvest Crop Activities), as those having average annual receipts no greater than $34 million.

According to the 2022 Census of Agriculture, there were 1,258 farms producing mushrooms nationwide in 2022. Based on data from the Council, there were 99 producers subject to assessment – meaning they produced, on average, more than 500,000 pounds

of mushrooms per year – between 2021 and 2024. To find the number of producers whose average annual receipts exceed the SBA size standard of $4.5 million, AMS applied the average annual fresh market prices received for Agaricus mushrooms for 2021 through 2024, published by NASS, to Council shipment volume for 2021 through 2024. The result is an estimated 45 producers exceeding the SBA size standard of $4.5 million in average annual receipts; therefore, of the 1,258 mushroom producers nationwide, about 1,213, or 96 percent, would be considered small businesses.

According to data from U.S. Customs and Border Protection, there were 301 importers of fresh mushrooms between 2021 and 2024. Of these, four entities had average annual import values exceeding the SBA size standard for a small importer of $34 million in average annual receipts; therefore, of the 301 importers of fresh mushrooms, about 297, or 99 percent, would be considered small businesses.

This proposed rule invites comments on reallocating the membership of the Council under the Order. The Order is administered by the Council with oversight by USDA. This action was recommended by the Council after a review of the geographic distribution of the volume of mushroom production throughout the United States and the volume of imports. The number of Council members would be revised in two of the four regions under the Order. This action is necessary to ensure equitable representation of producers and importers on the Council. Authority for this action is provided in section 1209.30(d) of the Order and section 1925 of the Act (7 U.S.C. 6104).

Regarding the economic impact of this proposed rule on affected entities, revising the number of members in Regions 1 and 3 would impose no additional costs on industry members. Eligible producers and importers interested in serving on the Council would have to complete a background questionnaire. Those requirements are addressed below. The changes are necessary to provide for the equitable representation of producers and importers on the Council.

Regarding alternatives, one option to the proposed action would be to maintain the status quo and not revise the number of Council members representing Regions 1 and 3. However, the Council's analysis of the assessment, NASS, and GATS data support the proposed changes. USDA concludes that the changes are necessary and appropriate.

Regarding outreach efforts, this proposed action was discussed by the Council at its meeting held on February 11, 2025, where the Council unanimously made its recommendation. All of the Council's meetings are open to the public and interested persons are invited to participate and express their views.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements imposed by the Order were approved under OMB control number 0581-0093. No changes to those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

As with all Federal research and promotion programs, reports and forms are periodically reviewed to reduce the burden of information requirements, and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

After consideration of all relevant material presented, including the information and recommendations submitted by the Council and other available information, AMS has determined that this proposed rule is consistent with and will effectuate the purposes of the Act.

USDA has determined this proposed rule, if finalized is consistent with and would

effectuate the purpose of the Act. A 30-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Consumer protection, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1209 is proposed to be amended as follows:

PART 1209- MUSHROOM PROMOTION, RESEARCH AND CONSUMER INFORMATION ORDER

1. The authority citation for part 1209 continues to read as follows:

Authority: 7 U.S.C. 6101-6112 and 7 U.S.C. 7401.

2. Revise § 1209.230 to read as follows:

§ 1209.230 Reallocation of Council members.

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

(a) Region 1: The States of Alabama, Alaska, Arkansas, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, the District of Columbia and the Commonwealth of Puerto Rico – 2 members.

(b) Region 2: The State of Pennsylvania – 4 members.

(c) Region 3: The States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming – 2 members.

(d) Region 4: Importers – 1 member.

Erin Morris,
Administrator,
Agricultural Marketing Service.

[FR Doc. 2026-17296 Filed: 8/24/2026 8:45 am; Publication Date: 8/25/2026]