

## Agricultural Marketing Service, USDA

## § 1209.36

(b) Members of the initial Council shall be designated for, and shall serve, terms as follows: One producer member each from regions 1, 2 and 3 shall be appointed for an initial term of one year; one producer member each from regions 1, 2, and 3 shall be appointed for an initial term of two years; and one producer member each from regions 2, 3, and 4 shall be appointed for an initial term of three years. Because current imports of fresh mushrooms are less than 35,000,000 pounds, the minimum established for representation on the Council, importers will not initially have a member appointed to the Council.

(c)(1) Except with respect to terms of office of the initial Council, the term of office for each member of the Council shall begin on January 1 or such other date that may be approved by the Secretary.

(2) The term of office for the initial Council shall begin immediately following appointment by the Secretary, except that time in the interim period from appointment until the following January 1, or such other date that is the generally applicable beginning date for terms under paragraph (c)(1) approved by the Secretary, shall not count toward the initial term of office.

(d) Council members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified.

(e)(1) No member shall serve more than two successive three-year terms, except as provided in paragraph (e)(2)(ii).

(2)(i) Those members serving initial terms of two or three years may serve one successive three-year term.

(ii) Those members serving initial terms of one year may serve two successive three-year terms.

### § 1209.35 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Council, the Secretary may appoint a successor from the most recent nominations submitted for open positions on the Council assigned to the region that the vacant position represents, or the Secretary may obtain nominees to

fill such vacancy in such manner as the Secretary, by regulation, deems appropriate. Each such successor appointment shall be for the remainder of the term vacated. A vacancy will not be required to be filled if the unexpired term is less than six months.

(b)(1) No successor appointed to a vacated term of office shall serve more than two successive three-year terms on the Council, except as provided in paragraph (b)(2)(ii).

(2)(i) Any successor serving longer than one year may serve one successive three-year term.

(ii) Any successor serving one year or less may serve two successive three-year terms.

(c) If a member of the Council consistently refuses to perform the duties of a member of the Council, or if a member of the Council is known to be engaged in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Council shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Council, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

### § 1209.36 Procedure.

(a) At a properly convened meeting of the Council, a majority of the members shall constitute a quorum.

(b) Each member of the Council will be entitled to one vote on any matter put to the Council, and the motion will carry if supported by a simple majority of those voting. At assembled meetings of the Council, all votes will be cast in person.

(c) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Council such action is considered necessary, the Council may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph, or any other means of communication,

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but any such action shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Council. All votes shall be recorded in Council minutes.

(d) Meetings of the Council may be conducted by electronic communications, provided that each member is given prior notice of the meeting and has an opportunity to be present either physically or by electronic connection.

(e) The organization of the Council and the procedures for conducting meetings of the Council shall be in accordance with its bylaws, which shall be established by the Council and approved by the Secretary.

**§ 1209.37 Compensation and reimbursement.**

The members of the Council shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, including a reasonable per diem allowance, as approved by the Council and the Secretary, incurred by such members in the performance of their responsibilities under this subpart.

**§ 1209.38 Powers.**

The Council shall have the following powers:

(a) To receive and evaluate or, on its own initiative, develop and budget for proposed programs, plans, or projects to promote the use of mushrooms, as well as proposed programs, plans, or projects for research, consumer information, or industry information, and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of such individuals;

(d) To make rules and regulations to effectuate the terms and provisions of this subpart;

(e) To receive, investigate, and report to the Secretary for action complaints

of violations of the provisions of this subpart;

(f) To disseminate information to producers, importers, first handlers, or industry organizations through programs or by direct contact using the public postal system or other systems;

(g) To select committees and subcommittees of Council members, including an executive committee whose powers and membership shall be determined by the Council, subject to the approval of the Secretary, and to adopt such bylaws and other rules for the conduct of its business as it may deem advisable;

(h) To establish committees which may include individuals other than Council members, and pay the necessary and reasonable expenses and fees for the members of such committees;

(i) To recommend to the Secretary amendments to this subpart;

(j) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State mushroom producer organizations, or other organizations or entities, for the development and conduct of programs, plans, or projects authorized under § 1209.40 and with such producer organizations for other services necessary for the implementation of this subpart, and for the payment of the cost thereof with funds collected and received pursuant to this subpart. The Council shall not contract with any producer or importer for the purpose of mushroom promotion or research. The Council may lease physical facilities from a producer or importer for such promotion or research, if such an arrangement is determined to be cost effective by the Council and approved by the Secretary. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Council a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) Any such program, plan, or project shall become effective upon approval of the Secretary;

(3) The contracting or agreeing party shall keep accurate records of all of its transactions and make periodic reports