

# Proposed Rules

Federal Register

Vol. 74, No. 107

Friday, June 5, 2009

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 1209

[Doc. No. AMS-FV-08-0047; FV-08-702-PR 2]

RIN 0581-AC82

#### Amendments to Mushroom Promotion, Research, and Consumer Information Order and Referendum Order

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

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This rule proposes to amend provisions of the Mushroom Promotion, Research, and Consumer Information Order (Order) to reapportion membership of the Mushroom Council (Council) to reflect shifts in United States mushroom production as well as to add language to the powers and duties section of the Order allowing the Council the power to develop and propose good agricultural and handling practices and related activities for mushrooms. Section 10104 of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) (Pub. L. No. 110-246) amended sections 1925(b)(2) and (c) of the Mushroom Promotion, Research, and Consumer Information Act of 1990 (Act) [7 U.S.C. 6101-6112]. Specifically, section 10104 changes the Act's requirements for geographic regions used to appoint producer members of the Council from four to three, and adjusts the pounds required by each region for Council membership, which will reallocate Council member representation in two of the three producer geographic regions (Regions 1 and 2). Section 10104 also added language to the powers and duties section of the Act that authorizes the Council to develop and propose good agricultural practices and related activities for mushrooms. This rule proposes changes to the Order based on these amendments to the Act. A

referendum will be conducted among eligible producers and importers of mushrooms to determine whether they favor the amendments to the Order.

**DATES:** To be eligible to vote, mushroom producers and importers must have produced or imported on average over 500,000 pounds of mushrooms annually from January 1, 2007, through December 31, 2008. The referendum will be conducted by mail ballot from July 6, 2009 through July 17, 2009. Ballots must be received by the referendum agents no later than the close of business, Eastern daylight-standard time, July 17, 2009, to be counted.

**ADDRESSES:** Copies of the Order may be obtained from: Referendum Agent, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632-S, Washington, DC 20250-0244; fax: (202) 205-2800; toll free (888) 720-9917 or at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Palmer, Marketing Specialist, Research and Promotion Branch (RPB), Fruit and Vegetable Programs (FVP), AMS, USDA, 1400 Independence Avenue, SW., Room 0632, Stop 0244, Washington, DC 20250-0244; telephone: (202) 720-9915 or (888) 720-9917 (toll free); or facsimile: (202) 205-2800; or e-mail: [Jeanette.Palmer@ams.usda.gov](mailto:Jeanette.Palmer@ams.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].

A proposed rule was published in the **Federal Register** on April 7, 2009 [74 FR 15677], with a thirty-day comment period which closed on May 7, 2009.

Pursuant to section 1209.300 of the Order, a referendum will be conducted among mushroom producers and importers to determine whether the reapportionment of membership on the Council reflecting shifts in United States mushroom production as well as to add language to the powers and duties section of the Order allowing the Council the power to develop and propose good agricultural and handling practices and related activities for mushrooms is favored by persons voting in the referendum.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1, 2007, through December 31, 2008. Section 1924(b)(3) of the Act requires that the Order be approved by a majority of producers and importers voting in the referendum which majority, on average, annually produces and imports into the United States more than 50 percent of mushrooms annually produced and imported by all those persons voting in the referendum. Only mushroom producers and importers who either produced or imported, on average, over 500,000 pounds of mushrooms annually during the representative period will be eligible to vote in the referendum. Mushroom producers and importers who have received an exemption from assessment for the entire representative period are ineligible to vote. The referendum shall be conducted by mail ballot from July 6, 2009 through July 17, 2009. Ballots must be received by the referendum agents no later than the close of business, Eastern daylight-standard time, July 17, 2009, to be counted.

#### Executive Order 12866

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

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have a retroactive effect and will not effect or preempt any State, Federal, or local laws, regulations, or policies authorizing promotion or research relating to an agricultural commodity, unless they represent an irreconcilable conflict with this rule.

Under section 1927 of the Act, a person subject to an Order may file a written petition with the Department stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not 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 Department will issue a ruling on the petition. The Act provides that the district court of the United States in any district in the petitioner resides or carries on 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 Department's final ruling.

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

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], the Agricultural Marketing Service (AMS) has examined the economic impact of this rule on small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or 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 (importers) as having receipts of no more than \$7,000,000. There are approximately 107 producers and 18 importers subject to the Order, and thus, eligible to serve on the Council. The majority of these producers and importers would not be considered small entities as defined by the Small Business Administration. Producers and importers of 500,000 pounds or less on average of mushrooms for the fresh market are exempt from the Order.

The current Order provides for the establishment of a Council consisting of at least four members and not more than nine members. For the purpose of nominating and appointing producers to the Council, the United States is divided into four geographic regions (Regions 1, 2, 3, and 4) with Council member representation allocated for each region based on the geographic distribution of mushroom production. Currently, for importers (referred to as Region 5), one Council member seat is allocated when imports, on average, exceeds 35,000,000 pounds of mushrooms annually. The Order also specifies that the Council will review—at least every five years and not more than every three years—the geographic distribution of United States mushroom production volume and import volume, and recommend changes accordingly.

Section 10104 of the 2008 Farm Bill amended sections 1925(b)(2) and (c) of the Mushroom Promotion, Research,

and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]. Specifically, section 10104 reappointed the Act's requirements for geographic regions that represent the geographic distribution of mushroom production in order to appoint producer members of the Council from four to three, and adjusted the pounds required by each region (including importers) for Council membership. This proposal would change the current five geographic regions to four as follows: Region 1—all other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California; Region 2—the State of Pennsylvania; Region 3—the State of California; and Region 4—importers. Finally, section 10104 added language to the powers and duties section of the Act that authorizes the Council to develop and propose good agricultural and handling practices, and related activities for mushrooms.

In 1990, there were 466 mushroom farms in 26 states, as reported by the National Agricultural Statistics Service (NASS). Mushroom farms, like many other agricultural sectors, have experienced significant consolidation. In 2007, NASS reported 279 mushroom farms in 18 states. Pennsylvania, the largest mushroom producing state, produced 332.5 million pounds in 1990. Last year, NASS reported that Pennsylvania produced 496.6 million pounds accounting for 61 percent of the total volume of sales in the United States. According to the Council, changing economic conditions over the past 18 years, coupled with innovations in production methods, advancements in cold chain management and long-range transportation options have all contributed to mushroom farming operations becoming larger, but fewer in number. Currently, there are 107 entities in 11 states which are subject to the Act, and therefore eligible for nomination to the Council. Several of these entities are owned by companies which have multiple operations in different states. The Act states that no more than one member may be appointed to the Council from nominations submitted by any one producer or importer.

According to NASS, at present 73 percent of all domestic producers subject to the Act are located in the state of Pennsylvania. The value of sales for mushrooms shipped from Pennsylvania grew 16 percent from July 1, 2004 to June 30, 2008. Of the remaining 29 producers subject to the Act, not located in Pennsylvania, 59 percent reside in the state of California, with the remaining 12 producers scattered among 9 states. The value of sales for

mushrooms shipped from California increased 8 percent from July 1, 2004 to June 30, 2008, while the value of sales for mushrooms shipped from the rest of the United States (excluding Pennsylvania) declined 3 percent. Pennsylvania and California alone account for 77 percent of all domestic producers subject to the Act and are growing in terms of fresh pounds produced and shipped, and thus are likely to remain viable regions for the foreseeable future. Pennsylvania's designation as one of the three regions in the United States ensures that it receives representation relative to its production. With nearly 60 percent of the remaining producers subject to the Act and growing, California would also benefit from a regional designation. In reviewing the geographical regions, the Department also reviewed the importer seats to ensure that importers are adequately represented based on annual production numbers. Importers have a four year average annual production from January 1, 2004, through December 31, 2007, of 68 million pounds. Therefore, according to the changes made to the Act and the proposed changes to the Order, importer representation on the Council will remain the same.

Section 1925(b)(2) of the Act, Appointments, states that in making appointments of members to the Council, the Secretary shall take into account, to the extent practicable, the geographical distribution of mushroom production throughout the United States, and the comparative volume of mushrooms imported into the United States.

According to the Council, the reduction in the number of regions from four to three for domestic production and the increase in pounds required for seats in each region will more accurately reflect the current status of mushroom production in the United States.

This rule proposes to change the five current geographic regions as follows: Region 1—all other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California; Region 2—the State of Pennsylvania; Region 3—the State of California; and Region 4—importers.

In accordance with amendments to the Act, this proposed rule would also increase the threshold for regional representation on the Council from a production average of at least 35 million pounds to at least 50 million pounds annually. Each region that produces on average, at least 50 million pounds of

mushrooms annually shall be entitled to one representative on the Council.

This proposed rule would also change the way additional members are appointed to the Council. Pursuant to the amendments to the Acts made by the 2008 Farm Bill, and subject to the 9-member limit of members on the Council, the Secretary shall appoint additional members to the council from a region that attains additional pounds of production as follows:

(i) 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 shall be represented by 1 additional member.

(ii) 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 shall be represented by 2 additional members.

(iii) If the annual production of a region is greater than 260,000,000 pounds, the region shall be represented by 3 additional members.

Should, in the aggregate, regions be entitled to levels of representation that would exceed the nine-member limit on the Council under the Act, the seat or seats assigned would 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.

With regard to alternatives, this proposed rule reflects the provisions of the Act as amended.

Section 1925(c) of the Act was also amended by the 2008 Farm Bill to include language that authorizes the Council to develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms. Therefore, this proposed rule recommends an amendment to Section 1209.38 of the Order to include the following language: "to develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms".

The overall impact of the amendments will be favorable for producers and importers because the producers and importers would have more equitable representation on the Council based on United States mushroom production volume and import volume.

Section 1924(b)(3) of the Act provides for referenda to be conducted to ascertain approval of changes to the Order prior to going into effect. Such amendments to the Order become effective, if the Secretary determines that the Order has been approved by a majority of the producers and importers of mushrooms voting in the referendum,

which majority, on average, annually produces and imports into the United States more than 50 percent of mushrooms annually produced and imported by all those voting in the referendum. Accordingly, before these changes are made to the Order, a referendum will be conducted among eligible producers and importers of mushrooms.

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], there are no new information collection requirements contained in this rule because the number of producer members will remain unchanged at nine producer members. The information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB control number 0581-0093.

There are no 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. We did not receive any comments on the Regulatory Flexibility Analysis.

#### Background

The Order is authorized under the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101-6112], and is administered by the Council. 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 \$0.005 cents per pound on any person who produces or imports over 500,000 pounds of mushrooms for the fresh market annually. Under the Order, handlers collect and remit producer assessments to the Council, and assessments paid by importers are collected and remitted by the United States Customs and Border Protection.

The Order provides for the establishment of a Council consisting of at least four members and not more than nine members. For the purpose of nominating and appointing producers to the Council, the United States is divided into four geographic regions (Regions 1, 2, 3, and 4) with Council member representation allocated for each region based on the geographic distribution of mushroom production. For importers

(referred to as Region 5), one Council member seat is allocated when imports, on average, exceeds 35 million pounds of mushrooms annually.

Section 1209.30(d) of the Order provides that at least every five years, and not more than every three years, the Council shall 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 is required to recommend reapportionment of the regions or modification of the number of members from such regions, or both, to reflect shifts in the geographic distribution of mushroom production volume and importer representation.

Under section 1209.230 of the regulations, current regions and Council member representation for each region are as follows: Region 1: Colorado, Oklahoma, Wyoming, Washington, Oregon, Florida, Illinois, Tennessee, Texas and Utah—3 producer members; Region 2: the State of Pennsylvania—3 producer members; Region 3: the State of California—2 producer members; Region 4: all other States including the District of Columbia and the Commonwealth of Puerto Rico—0 producer members; and Region 5: importers—1 member. Based on data from the Council, from the period beginning January 1, 2004, through December 31, 2007, there is approximately 746 million pounds of mushrooms assessed on average annually under the Order. Currently, the Order's Regions 1, 2, 3, 4, and 5 represent 172 million pounds, 363 million pounds, 110 million pounds, 15 million pounds, and 68 million pounds, respectively, based on a four year average from January 1, 2004, through December 31, 2007. Since Region 4 represents 15 million pounds of mushroom production, the region no longer qualifies for member representation because production within the region falls below the 35 million pounds Order requirement.

Based on the amendments to the Act made by section 10104 of the Farm Bill, and a review of United States mushroom production volume and import volume, this proposal would change the current five geographic regions to four as follows: Region 1—all other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California; Region 2—the State of Pennsylvania; Region 3—the State of California; and Region 4—importers.

The current Order also provides that each producer region that produces, on average, at least 35 million pounds of mushrooms annually is entitled to one member. The current Order also states that importers shall be represented by a single, separate region, and are also entitled to one representative, if on average, at least 35 million pounds of mushrooms are imported annually. Further, the current Order states that each region shall be entitled to representation by an additional Council member for each 50 million pounds of annual production or imports, on average, in excess of the initial 35 million pounds required to qualify the region for representation, until the nine seats on the Council are filled. Section 1209.12 of the Order provides that "on average" means a rolling average of production or imports during the last two fiscal years, or such other period as may be determined by the Secretary. For purposes of this rule, and as provided under the Order, "on average" reflects a rolling average of production or imports during the last four fiscal years.

Section 1209.30(e)(4)(iii) of the current Order, provides that should regions be entitled to levels of representation that would exceed the nine-member limit on the Council under the Act, the regions shall be entitled to representation on the Council as follows: Each region with 50 million pounds of annual production or imports, on average, in excess of the initial 35 million pounds required to qualify the region for representation shall be assigned one additional representative on the Council, except that if under such assignments all five regions, counting importers as a region, if applicable, would be entitled to additional representatives, that region with the smallest on-average volume, in terms of production or imports, will not be assigned an additional representative. According to section 1209.30(f) of the current Order, in determining the volume of mushrooms produced in the United States or imported into the United States, the Council and the Secretary shall: (1) Only consider mushrooms produced or imported by producers and importers, respectively, as those terms are defined in sections 1209.8 and 1209.15; and (2) used the information received by the Council under section 1209.60, and data published by the Department.

In addition, the current Order provides that if after members are assigned to the regions, less than the entire nine seats on the Council have been assigned to regions, the remaining seats on the Council shall be assigned to each region for each 50 million pound

increment of annual production or import volume, on average, in excess of 85 million pounds until all the seats are filled. If for any such 50 million pound increment, more regions are eligible for seats than there are seats available, the seat or seats assigned for such increment 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.

Pursuant to the amendments made to the Act made by the 2008 Farm Bill, this proposed rule would increase the threshold for regional representation on the Council from a production average of at least 35 million pounds to at least 50 million pounds annually. Each region that produces on average, at least 50 million pounds of mushrooms annually shall be entitled to one representative on the Council.

In addition, this proposed rule would also change language in the Order regarding how additional members are added to the Council. Additional members from each region that attains additional pounds of production would now be appointed to the Council as follows:

(i) 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 shall be represented by 1 additional member.

(ii) 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 shall be represented by 2 additional members.

(iii) If the annual production of a region is greater than 260,000,000 pounds, the region shall be represented by 3 additional members.

This proposed amendment to the Order would change the number of regions and Council member representatives as follows: Region 1—all other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California; Region 2—the State of Pennsylvania; Region 3—the State of California; and Region 4—importers.

Should, in the aggregate, regions be entitled to levels of representation that would exceed the nine-member limit on the Council under the Act, 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.

Section 1925(c) of the Act was also amended by the 2008 Farm Bill to insert language allowing the Council to develop and propose to the Secretary programs for good agricultural and good

handling practices and related activities for mushrooms. Therefore, this proposed rule recommends an amendment to section 1209.38 of the Order to include the following line: "to develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms."

For changes to the Order to become effective, the proposed amendments to the Order must be approved by a majority of the producers and importers of mushrooms voting in a referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of mushrooms annually produced and imported by all those voting in the referendum. Accordingly, a referendum will be conducted among eligible producers and importers of mushrooms. The referendum will be conducted by mail ballot from July 6, 2009 through July 17, 2009. The representative period to be eligible to vote in the referendum is January 1, 2007, through December 31, 2008.

Ballots must be received by the referendum agents no later than the close of business, Eastern daylight-standard time, July 17, 2009, to be counted.

Finally, any final rule published as a result of this action would terminate section 1209.230 of the regulations concerning reallocation of Council members.

A thirty-day comment period was provided to allow interested persons to respond to this proposal which was published in the **Federal Register** on April 7, 2009 [74 FR 15677]. Copies of the rule were made available through the Internet by the Department and the Office of the Federal Register. That rule provided a thirty-day comment period which ended May 7, 2009. Three comments were received by the deadline.

Two commenters stated that they agreed with the proposed amendment to the Order since it will make representation on the Council more equitable and expand the powers and duties of the Council. However, both commenters disagreed that a referendum be conducted to implement the proposed amendments. One of these commenters stated that section 1924(b)(3) of the Act was misinterpreted as requiring a referendum. The commenters also stated that a referendum would be costly and time consuming and would delay implementation of the amendments.

The Department disagrees with the two commenters. Section 1924(b)(3) of the Act provides for referenda to be

conducted to ascertain approval of the Order prior to going into effect.

Section 1924(c)(2) of the Act states that provisions of this subtitle applicable to an order shall be applicable to amendments to the Order. In order to implement the Order, a referendum had to be conducted, accordingly, a referendum is necessary before making changes to the Order based on the amendment to the Act.

Such amendments to the Order become effective, if the Secretary determines that the Order has been approved by a majority of the producers and importers of mushrooms voting in the referendum, which a majority, on average, annually produces and imports in the United States more than 50 percent of mushrooms annually produced and imported by those voting in the referendum. In addition, the Department will make every effort to conduct the referendum in the most expedited and cost effective manner.

The third comment received opposed the program in general and therefore was not within the scope of this rule.

For the proposed amendments to the Order to become effective, it must be approved by a majority of the eligible producers and importers voting in the referendum.

#### Referendum Order

It is hereby directed that a referendum be conducted among eligible mushroom producers and importers to determine whether the favor to amend provisions of the Mushroom Promotion, Research, and Consumer Information Order (Order) to reapportion membership of the Mushroom Council (Council) to reflect shifts in United States mushroom production as well as to add language to the powers and duties section of the Order allowing the Council the power to develop and propose good agricultural and handling practices and related activities for mushrooms.

The referendum shall be conducted from July 6, 2009 through July 17, 2009. The referendum agents will mail the ballots to be cast in the referendum and voting instructions to all known mushroom producers and importers prior to the first day of the voting period. Only mushroom producers and importers who either produced or imported, on average, over 500,000 pounds of mushrooms annually during the representative period will be eligible to vote in the referendum. Mushroom producers and importers who received an exemption from assessments during the entire representative period are ineligible to vote. Any eligible mushroom producers and importers who do not receive a ballot should

contact the referendum agent no later than one week before the end of the voting period. Ballots must be received by the referendum agents no later than the close of business, Eastern daylight-standard time, July 17, 2009, to be counted.

Jeanette Palmer and Sonia Jimenez, RPB, FVP, AMS, USDA, Stop 0244, Room 0632-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244, are designated as the referendum agents of the Department to conduct this referendum. The referendum procedures 7 CFR 1209.300 through 1209.307, which were issued pursuant to the Act, shall be used to conduct the referendum.

#### 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, it is proposed that 7 CFR part 1209 of the Code of Federal Regulations be 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; 7 U.S.C. 7401.

2. In § 1209.30, paragraphs (a), (b), (c), (d), and (e) are revised to read as follows:

##### § 1209.30 Establishment and membership.

(a) There is hereby established a Mushroom Council of not less than four or more than nine members. The Council shall be composed of producers appointed by the Secretary under § 1209.33, except that, as provided in paragraph (c) of this section, importers shall be appointed by the Secretary to the Council under § 1209.33 once imports, on average, reach at least 50,000,000 pounds of mushrooms annually.

(b) For purposes of nominating and appointing producers to the Council, the United States shall be divided into three geographic regions and the number of Council members from each region shall be as follows:

(1) *Region 1:* All other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California—2 Members.

(2) *Region 2:* The State of Pennsylvania—4 Members.

(3) *Region 3:* The State of California—2 Members.

(c) Importers shall be represented by a single, separate region, referred to as Region 4, consisting of the United States when imports, on average, equal or exceed 50,000,000 pounds of mushrooms annually.

(d) At least every five years, and not more than every three years, the Council shall 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, and, based on such review, shall recommend to the Secretary reapportionment of the regions established in paragraph (b) of this section, or modification of the number of members from such regions, as determined under the rules established in paragraph (e), of this section or both, as necessary to best reflect the geographic distribution of mushroom production volume in the United States and representation of imports, if applicable.

(e) Subject to the nine-member maximum limitation, the following procedure will be used to determine the number of members for each region to serve on the Council under paragraph (d) of this section:

(1) Each region that produces, on average, at least 50,000,000 pounds of mushrooms annually shall be entitled to one representative on the Council.

(2) As provided in paragraph (c) of this section, importers shall be represented by a single, separate region, which shall be entitled to one representative, if such region imports, on average, at least 50,000,000 pounds of mushrooms annually.

(3) 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 shall be represented by 1 additional member.

(4) 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 shall be represented by 2 additional members.

(5) If the annual production of a region is greater than 260,000,000 pounds, the region shall be represented by 3 additional members.

(6) Should, in the aggregate, regions be entitled to levels of representation under paragraphs (e)(1), (2), (3), (4) and (5) of this section that would exceed the nine-member limit on the Council under the Act, 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.

\* \* \* \* \*

3. In § 1209.38, paragraphs (l) and (m) are redesignated as paragraphs (m) and (n) respectively and new paragraph (l) is added to read as follows:

**§ 1209.38 Powers.**

\* \* \* \* \*

(l) To develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms.

\* \* \* \* \*

**§ 1209.230 [Removed and Reserved]**

4. Section 1209.230 is removed and reserved.

Dated: June 2, 2009.

**David R. Shipman,**

*Acting Administrator.*

[FR Doc. E9-13152 Filed 6-4-09; 8:45 am]

BILLING CODE 3410-02-P

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Part 1230**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of Federal Housing Enterprise Oversight**

**12 CFR Part 1770**

**RIN 2590-AA12**

**Executive Compensation**

**AGENCIES:** Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is proposing to issue an Executive Compensation regulation. The proposed regulation sets forth requirements and processes with respect to compensation provided to executive officers by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks, and the Office of Finance, consistent with the safety and soundness responsibilities of FHFA under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008.

**DATES:** Comments on the Notice of Proposed Rulemaking must be received on or before August 4, 2009. For

additional information, see **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** You may submit your comments on the proposed regulation, identified by regulatory identifier number (RIN) 2590-AA12 by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA12, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA12, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail at [RegComments@FHFA.gov](mailto:RegComments@FHFA.gov). Please include "RIN 2590-AA12" in the subject line of the message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure timely receipt by the agency. Include the following information in the subject line of your submission: Executive Compensation Proposed Rule, RIN 2590-AA12.

**FOR FURTHER INFORMATION CONTACT:**

Daniel E. Coates, Associate Director Risk Analysis and Research, Office of Federal Home Loan Bank Regulation, (202) 408-2959, Patrick Lawler, Associate Director, Office of Policy Analysis and Research, Chief Economist, (202) 414-3746, or Tina Dion, Associate General Counsel, (202) 414-3838 (not toll free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Comments**

FHFA invites comments on all aspects of the proposed regulation and will take all comments into consideration before issuing the final regulation. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Internet Web site at <http://www.fhfa.gov>.

In addition, copies of all comments received will be available for

examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-3751.

**II. Background**

The Federal Housing Finance Agency (FHFA) was created on July 30, 2008, when the President signed into law the Housing and Economic Recovery Act of 2008 (HERA).<sup>1</sup> HERA created a regulator with all of the authorities necessary to oversee vital components of our country's secondary mortgage markets—the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (Banks). In addition, this law combined the staffs of the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB), and the GSE mission office at the Department of Housing and Urban Development (HUD). By pooling the expertise of the staffs of OFHEO, FHFB, and HUD, Congress strengthened the regulatory and supervisory oversight of the 14 housing-related Government-Sponsored Enterprises (GSEs). Such regulation of the GSEs will promote a stronger, safer U.S. housing finance system.

More specifically, HERA amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act or Act) to establish FHFA as an independent agency of the Federal Government.<sup>2</sup> FHFA was established to oversee the prudential operations of Fannie Mae, Freddie Mac (collectively, Enterprises), and the Banks (collectively, regulated entities) and to ensure that they operate in a safe and sound manner including being capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Act and rules, regulation, guidelines and orders issued under the Act, and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Act and their authorizing statutes; and that the activities and operations of the regulated entities are consistent with the public interest.

<sup>1</sup> Public Law 110-289, 122 Stat. 2654.

<sup>2</sup> See Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, Section 1101 of HERA.