

## Agricultural Marketing Service, USDA

## § 1209.34

more than one region or is also an importer, such individual shall participate within the region that such individual so elects in writing to the Council and such election shall remain controlling until revoked in writing to the Council.

(e) After the regional caucuses for the initial Council, the Council may conduct the selection of nominees by mail ballot in lieu of a regional caucus.

(f) When producers or importers are voting for nominees to the Council, whether through a regional caucus or a mail ballot, the following conditions shall apply:

(1) Voting for any open position shall be on the basis of:

(i) One vote per eligible voter; and

(ii) Volume of on-average production or imports of the eligible voter within that region.

(2) Whenever the producers or importers in a region are choosing nominees for one open position on the Council, the proposed nominee with the highest number of votes cast and the proposed nominee with the highest volume of production or importers voted shall be the nominees submitted to the Secretary. If a proposed nominee receives both the highest number of votes cast and the highest volume of production or imports voted, then the proposed nominee with the second highest number of votes cast shall be a nominee submitted to the Secretary along with such proposed nominee receiving both the highest number of votes cast and the highest volume of production or imports voted.

(3) Whenever the producers or importers in a region are choosing nominees for more than one open position on the Council at the same time, the number of the nominations submitted to the Secretary shall equal twice the number of such open positions, and for each open position shall consist of the proposed nominee with the highest number of votes cast and the proposed nominee with the highest volume of production or imports voted with respect to that position, subject to the rule set out in paragraph (f)(2). An individual shall only be nominated for one such open position.

(4) Voters shall certify on their ballots as to their on-average production

or import volume within the region involved. Such certification may be subject to verification.

(g)(1) The Secretary may reject any nominee submitted. If there are insufficient nominees from which to appoint members to the Council as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary under the procedures set out in this section.

(2) Whenever producers or importers in a region cannot agree on nominees for an open position on the Council under the preceding provisions of this section, or whenever they fail to nominate individuals for appointment to the Council, the Secretary may appoint members in such manner as the Secretary, by regulation, determines appropriate.

### § 1209.32 Acceptance.

Each individual nominated for membership on the Council shall qualify by filing a written acceptance with the Secretary at the time of nomination.

### § 1209.33 Appointment.

From the nominations made pursuant to §1209.31, the Secretary shall appoint the members of the Council on the basis of representation provided for in §1209.30, except that no more than one member may be appointed to the Council from nominations submitted by any one producer or importer.

### § 1209.34 Term of office.

(a) The members of the Council shall serve for terms of three years, except that the members appointed to the initial Council shall serve, proportionately, for terms of one, two, and three years.

(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

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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, 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