

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 354

[Docket No. APHIS-2009-0048]

RIN 0579-AC99

#### User Fees for Agricultural Quarantine and Inspection Services

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule; delay of effective date.

**SUMMARY:** On September 28, 2009, we published an interim rule in the **Federal Register** to adjust the fees charged for certain agricultural quarantine and inspection (AQI) services that are provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. That interim rule was scheduled to become effective on October 1, 2009. We are delaying the effective date of the interim rule until November 1, 2009. This delay will provide entities affected by the changes in AQI user fees additional time to make the necessary preparations to comply with the new fees.

**DATES:** The effective date for the interim rule amending 7 CFR part 354 published at 74 FR 49311-49315 on September 28, 2009, is delayed until November 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** For information concerning program operations, contact Mr. William E. Thomas, Director, Quarantine Policy, Analysis, and Support, PPQ, APHIS, 4700 River Road, Unit 131, Riverdale, MD 20737; (301) 734-5214. For information concerning rate

development, contact Mrs. Kris Caraher, User Fee Section, Financial Services Branch, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737-1232; (301) 734-0882.

#### SUPPLEMENTARY INFORMATION:

##### Background

In an interim rule published in the **Federal Register** on September 28, 2009 (74 FR 49311-49315, Docket No. APHIS-2009-0048), we amended the user fee regulations in 7 CFR part 354 by adjusting the fees charged for certain agricultural quarantine and inspection (AQI) services that are provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. In the interim rule, we explained that the recent downturn in the U.S. economy has negatively impacted travel volumes, and, as a result, our user fee collections, which fund these services, have diminished. Although the volume of international travel and trade has decreased, inspection and related support services continue to be provided at their existing levels, so expenses have not decreased. As a result, our user fee collections have not been sufficient to enable us to provide those services and maintain a reasonable reserve balance. We therefore found it necessary to increase our AQI user fees in order to provide adequate funds for these purposes.

The interim rule was scheduled to become effective on October 1, 2009. We are delaying the effective date of the interim rule until November 1, 2009. This delay will provide entities affected by the changes in AQI user fees additional time to make the necessary preparations to comply with the new fees.

Accordingly, the effective date for the interim rule amending 7 CFR part 354 published at 74 FR 49311-49315 on September 28, 2009, is delayed until November 1, 2009.

**Authority:** 7 U.S.C. 7701-7772, 7781-7786, and 8301-8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 30th day of September 2009.

**Kevin Shea,**

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

[FR Doc. E9-23930 Filed 9-30-09; 4:15 pm]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1209

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

RIN 0581-AC82

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends 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) amended sections 1925(b)(2) and (c) of the Mushroom Promotion, Research, and Consumer Information Act of 1990 (Act). Specifically, section 10104 changed the Act's requirements for geographic regions used to appoint producer members of the Council from four to three, and adjusted the pounds required by each region for Council membership, which reallocated 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. A referendum was held among eligible mushroom producers and importers and they voted in favor of the amendments. Therefore, this rule amends changes to the Order based on the amendments to the Act.

**DATES:** October 5, 2009.

**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. Three comments were received by the May 7, 2009, deadline. These comments were discussed in a second proposed rule and referendum order that was published in the **Federal Register** on June 5, 2009, [74 FR 26984].

Pursuant to section 1209.300 of the Order, a referendum was conducted among mushroom producers and importers to determine whether the reapportion 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 was favored by persons voting in the referendum.

The representative period for establishing voter eligibility for the referendum was 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 were eligible to vote in the referendum. Mushroom producers and importers who have received an exemption from assessment for the entire representative period were ineligible to vote. The referendum was conducted by mail ballot from July 6, 2009, through July 17, 2009. Eighty-seven percent of those

voting in the referendum, representing 94 percent of the volume who voted in the referendum, approved the amendments to the Order.

**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. Section 1930 of the Act provides that nothing in the Act may 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.

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 which 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.

**Final 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 was 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 was allocated when imports, on average, exceed 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 reapportioned 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 rule changes 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 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 changes 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 rule increases 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 rule also changes 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 nine-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.

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 rule amends 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.

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.

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

## 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 was 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 was 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.

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 rule changes the current five 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 rule increases 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 rule changes 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 amendment to the Order changes 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 rule amends 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.”

Finally, this rule terminates section 1209.230 of the regulations concerning reallocation of Council members.

The Department published the proposal for public comment in the April 7, 2009, **Federal Register** [74 FR 15677]. Three comments were received by the May 7, 2009, deadline. These comments were discussed in the June 5, 2009, proposed rule published in the **Federal Register** [74 FR 26984] which included a Referendum Order.

### General Findings

The Department conducted a referendum among eligible producers and importers of mushrooms from July 6, 2009 through July 17, 2009, to determine whether they favor to amend provisions of the Mushroom Promotion,

Research, and Consumer Information Order to reapportion membership of the Mushroom 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 representative period for establishing voter eligibility was from January 1, 2007, through December 31, 2008. Mushroom producers and importers who either produced or imported, on average, over 500,000 pounds of mushrooms annually during the representative period were eligible to vote in the referendum. Eighty-seven percent of those voting, representing 94 percent of the volume voted in the referendum favored the amendments to the Order.

It is determined that a majority of those who voted favored the implementation of the Order and that those voters favoring implementation represented a majority of the mushrooms produced and imported by all voters in the referendum. To become effective the Order had to be approved by a majority of producers and importers voting in the referendum, which majority, on average, annually produced and imported into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum.

After consideration of all relevant matters presented including the comments received, and referendum results, it is hereby found that this rule is consistent with the provisions of the Mushroom Promotion, Research, and Consumer Information Act of 1990 as amended and therefore should be adopted as a final rule.

#### Additional Findings

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until one day after publication in the **Federal Register** because the Council's term of office would begin January 1, 2010, and end December 31, 2012; and this rule will allow the upcoming nominations and appointments to be conducted in a timely manner for the new members to be appointed to the Council so they can begin during the next term of office.

#### 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, 7 CFR part 1209 of the Code of Federal Regulations 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; 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: September 28, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9-23777 Filed 10-1-09; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 95

[Docket No. 30689; Amdt. No. 483]

#### IFR Altitudes; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of

the navigable airspace under instrument conditions in the affected areas.

**DATES:** *Effective Date:* 0901 UTC, October 22, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Harry Hodges, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

#### The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and

safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

#### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on September 25, 2009.

**John M. Allen,**

*Director, Flight Standards Service.*

#### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, October 22, 2009.

■ 1. The authority citation for part 95 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

### REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 483 effective date, October 22, 2009]

From	To	MEA	MAA
<b>§ 95.4000 High Altitude RNAV Routes</b> <b>§ 95.4265 RNAV Route T265 Is Added To Read</b>			
Kelsi, IL FIX ..... * 2300—MOCA	Bullz, IL FIX .....	* 4000	
Bullz, IL FIX ..... * 2600—MOCA	Veena, WI FIX .....	* 4000	