

§ 1209.252

due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 15 days after the end of the month such assessments are due.

(f) In addition to the late payment charge, interest shall be charged at a rate of one and one-half percent per month on the outstanding balance, including the late payment charge and any accrued interest, of any account that remains delinquent beyond the last day of the second month following the month the mushrooms involved were marketed. However, first handlers paying their assessments, in accordance with paragraph (h)(2) of this section, will not be subject to the one and one-half percent per month interest under this paragraph until the last day of the second month after such assessments are due under paragraph (h)(2) of this section. In the case of imports, such a rate of interest will be charged to any account that remains delinquent on any assessments not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Such a rate of interest will continue to be charged monthly until the outstanding balance is paid to the Council.

(g) Any assessment determined by the Council at a date later than prescribed by this section, because of a person's failure to submit a report to the Council when due, shall be considered to have been payable by the date it would have been due if the report had been filed on time. A late payment charge and monthly interest charges on the outstanding balance shall be applicable to such unpaid assessment in accordance with paragraphs (e) and (f) of this section.

(h) In lieu of the monthly assessment payment and reporting requirements of §1209.260 of this subpart and §1209.60 of this part, the Council may permit a first handler to make advance payment of the total estimated assessment amount due to the Council for the ensuing fiscal year, or portion thereof, prior to the actual determination of assessable mushrooms.

(1) Each person shall provide an initial report estimating assessable mush-

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rooms. The Council may request additional information on such estimate.

(2) Each person shall provide a final report of actual marketings during the period involved and remit any unpaid assessments not later than the fifteenth day of the month following the end of the period covered.

(3) Any person whose prepayment exceeds the amount paid shall be reimbursed for the amount of overpayment. The Council shall not, in any case, be obligated to pay interest on any advance payment.

§ 1209.252 Exemption procedures.

(a) *Types of exemptions and requirements.* (1) Any person who produces or imports, on average, 500,000 pounds or less of mushrooms annually and who desires to claim an exemption from assessments during a fiscal year shall apply to the Council, on a form provided by the Council, for a Certificate of Exemption. The producer or importer shall certify that the person's production or importation of mushrooms shall not exceed 500,000 pounds, on average, for the fiscal year for which the exemption is claimed. An average shall be calculated by averaging a person's estimated production or importation for the fiscal year for which an exemption is claimed with the person's production or importation in the preceding fiscal year.

(2) To apply for an exemption for organic mushrooms:

(i) An eligible mushroom producer shall submit a request for exemption to the Council—on a form provided by the Council—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(ii) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Council and with the approval of the Secretary.

(iii) If the producer complies with the requirements of §1209.52 (a)(2), the Council will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Council will have 60 days to approve the exemption request; after August 15, 2005, the Council will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(iv) An eligible importer may submit documentation to the Council and request an exemption from assessment on 100 percent organic mushrooms—on a form provided by the Council—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer. The Council will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic mushrooms bearing this HTS classification assigned by the Council will not be subject to assessments.

(v) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(vi) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs,

and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

(b) On receipt of an application, the Council shall determine whether an exemption may be granted. The Council then will issue, if deemed appropriate, a certificate of exemption to each person that is eligible to receive one. Each person who is exempt from assessment must provide an exemption number to the first handler in order not to be subject to collection of an assessment on mushrooms. First handlers and importers, except as otherwise authorized by the Council, shall maintain records showing the exemptee's name and address along with the exemption number assigned by the Council. Importers who are exempt from assessment shall be eligible for reimbursement of assessments collected by the U.S. Customs Service and shall apply to the Council for reimbursement of such assessments paid.

(c) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Council, on a form provided by the Council, for a certificate of exemption.

(d) The Council may require persons receiving an exemption from assessments to provide to the Council reports on the disposition of exempt mushrooms.

[58 FR 3449, Jan. 8, 1993, as amended at 70 FR 2756, Jan. 14, 2005]

REPORTS

§ 1209.260 Reports.

Each first handler shall be required to report monthly to the Council such information as may be required under §1209.60(a) of this part. In addition, each first handler shall be required to provide the tax identification number or social security number of each producer the first handler has dealt with during the time period covered by the report.

[58 FR 8197, Feb. 11, 1993, as amended at 60 FR 13614, Mar. 14, 1995]

MISCELLANEOUS

§ 1209.280 OMB control numbers.

The control number assigned to the information collection requirements by