

Agricultural Marketing Service, USDA

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shall be paid from funds received by the Council.

(c) The Council shall not use funds collected or received under this subpart to reimburse, defray, or make payment of expenditures incurred in developing, drafting, studying, lobbying on or promoting the legislation authorizing this subpart. Such prohibition includes reimbursement, defrayment, or payment to mushroom industry associations or organizations, producers or importers, lawyers, law firms, or consultants.

(d) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Council shall retain complete control of their use. The donor may recommend that the whole or a portion of the contribution be applied to an ongoing program, plan, or project.

(e) The Council shall reimburse the Secretary, from funds received by the Council, for administrative costs incurred by the Secretary in implementing and administering this subpart, except for the salaries of Department employees incurred in conducting referenda.

(f) The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established, except that the funds in the reserve shall not exceed approximately one fiscal year's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

(g) With the approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council.

§ 1209.51 Assessments.

(a) Any first handler initially purchasing, or otherwise placing into the current of commerce, mushrooms produced in the United States shall, in the manner as prescribed by the Council and approved by the Secretary, collect an assessment based upon the number of pounds of mushrooms marketed in the United States for the account of

the producer, and remit the assessment to the Council.

(b) The rate of assessment effective during any fiscal year shall be the rate specified in the budget for such fiscal year approved by the Secretary, except that:

(1) The rate of assessment during the first year this subpart is in effect shall be one-quarter of one cent per pound of mushrooms marketed, or the equivalent thereof.

(2) The rate of assessment during the second year this subpart is in effect shall not exceed one-third of one cent per pound of mushrooms marketed, or the equivalent thereof.

(3) The rate of assessment during the third year this subpart is in effect shall not exceed one-half of one cent per pound of mushrooms marketed, or the equivalent thereof.

(4) The rate of assessment during each of the fourth and following years this subpart is in effect shall not exceed one cent per pound of mushrooms marketed, or the equivalent thereof.

(5) The Council may change the rate of assessment for a fiscal year at any time with the approval of the Secretary as necessary to reflect changed circumstances, except that any such changed rate may not exceed the level of assessment specified in paragraphs (b)(1), (2), (3), or (4), whichever is applicable.

(c) Any person marketing mushrooms of that person's own production to consumers in the United States, either directly or through retail or wholesale outlets, shall be considered a first handler and shall remit to the Council an assessment on such mushrooms at the rate per-pound then in effect, and in such form and manner prescribed by the Council.

(d) Only one assessment shall be paid on each unit of mushrooms marketed.

(e)(1) Each importer of mushrooms shall pay an assessment to the Council on mushrooms imported for marketing in the United States, through the U.S. Customs Service or in such other manner as may be established by rules and regulations approved by the Secretary.

(2) The per-pound assessment rate for imported mushrooms shall be the same as the rate provided for mushrooms produced in the United States.

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(3) The import assessment shall be uniformly applied to imported mushrooms that are identified by the number, 0709.51.0000, in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh mushrooms.

(4) The assessments due on imported mushrooms shall be paid when the mushrooms are entered or withdrawn for consumption in the United States, or at such other time as may be established by rules and regulations prescribed by the Council and approved by the Secretary and under such procedures as are provided in such rules and regulations.

(5) Only one assessment shall be paid on each unit of mushrooms imported.

(f) The collection of assessments under this section shall commence on all mushrooms marketed in or imported into the United States on or after the date established by the Secretary, and shall continue until terminated by the Secretary. If the Council is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Council and may hold such assessments until the Council is constituted, then remit such assessments to the Council.

(g)(1) Each person responsible for remitting assessments under paragraphs (a), (c), or (e) shall remit the amounts due from assessments to the Council on a monthly basis no later than the fifteenth day of the month following the month in which the mushrooms were marketed, in such manner as prescribed by the Council.

(2)(i) A late payment charge shall be imposed on any person that fails to remit to the Council the total amount for which the person is liable on or before the payment due date established under this section. The amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(ii) An additional charge shall be imposed on any person subject to a late payment charge, in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in rules and regulations as approved by the Secretary.

(3) Any assessment that is determined to be owing at a date later than the payment due established under this section, due to a person's failure to submit a report to the Council by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (g)(2)(i) and (g)(2)(ii) of this section shall be applicable.

(h) The Council, with the approval of the Secretary, may enter into agreements authorizing other organizations to collect assessments in its behalf. Any such organization shall be required to maintain the confidentiality of such information as is required by the Council for collection purposes. Any reimbursement by the Council for such services shall be based on reasonable charges for services rendered.

(i) The Council is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Council shall not be obligated to pay interest on any advance payment.

§ 1209.52 Exemption from assessment.

(a) Persons that produce or import, on average, 500,000 pounds or less of mushrooms annually shall be exempted from assessment.

(b) To claim such exemption, such persons shall apply to the Council, in the form and manner prescribed in the rules and regulations.

(c) Mushrooms produced in the United States that are exported are exempt from assessment and are subject to such safeguards as prescribed in rules and regulations to prevent improper use of this exemption.

(d) Domestic and imported mushrooms used for processing are exempt from assessment and are subject to such safeguards as prescribed in rules and regulations to prevent improper use of this exemption.

§ 1209.53 Influencing governmental action.

No funds received by the Council under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or