

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 1217****[FV-99-703-PR1]****Proposed Olive Oil Promotion, Research, and Information Order****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed rule.

SUMMARY: The U.S. Department of Agriculture (the Department or USDA) is seeking comments regarding the establishment of an industry-funded promotion, research, and information program for olive oil. A proposed program—the Olive Oil Promotion, Research, and Information Order (Order)—was submitted to USDA by the North American Olive Oil Association. Under the Order, olive oil first handlers and importers would pay an assessment of \$0.01 per pound. First handlers would remit the assessment on domestic olive oil to the proposed Olive Oil Council (Council). The assessment on imported olive oil would be collected by the U.S. Customs Service and remitted to the Council. First handlers of less than 6,000 pounds of olive oil annually and importers of less than 6,000 pounds of olive oil annually would be exempt from assessment. The proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act).

DATES: Comments must be received by October 25, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 2535 South Building, 1400 Independence Avenue, SW, Washington, DC 20250-0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm. Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology,

or any other aspect of this collection of information to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Oliver L. Flake, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250-0244; telephone (202) 720-9915 or fax (202) 205-2800.

SUPPLEMENTARY INFORMATION: This proposed Order is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7401-7425; Pub. L. 104-127, enacted April 4, 1996, hereinafter referred to as the Act.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established 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 Secretary of Agriculture (Secretary) will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts 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 Secretary's final ruling.

Executive Order 12866

This proposed 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).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

This program is intended to develop and finance an effective and coordinated program of promotion, research, and consumer information to maintain and expand the markets for olive oil. A proposal was submitted by the North American Olive Oil Association (proponent). The proponent has proposed that olive oil first handlers and importers approve the program in a referendum in advance of its implementation. Handlers, importers, and at-large members would serve on the 14-member Council that would administer the program under USDA's oversight. In addition, any person subject to the program may file with the Secretary a petition stating that the Order or any provision is not in accordance with law and requesting a modification of the Order or an exemption from the Order. Further, first handlers of less than 6,000 pounds of olive oil annually and importers of less than 6,000 pounds of olive oil annually would be exempt from assessment.

The proponent states that, of a total of 43 domestic first handlers, 13 would be covered by the program. Thirty first handlers would be exempt from paying assessments under the proposed Order because they handle less than 6,000 pounds of olive oil annually. Therefore, the only burden on first handlers of less than 6,000 pounds would be the filing of a request for an exemption and recordkeeping to document their exempt status. The required information would be the minimum necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such records shall be kept for at least two years. The exemption form can be

completed with readily available information, and first handlers already keep records as a normal business practice. The added burden to the majority of first handlers for an olive oil promotion, research, and information program is therefore expected to be minimal.

In addition, there is a minimal burden on importers. The import assessments would be collected by the U.S. Customs Service (Customs) at time of entry into the United States. Importers would be required to keep records and to provide information to the Council or the Secretary when requested. However, it is not anticipated that importers would be required to submit forms to the Council. Importers who seek nomination to serve on the Council would be required to complete one form which would be submitted to the Secretary.

There would be an additional, minimal burden on the first handlers and importers who seek nomination to serve on the Council and who choose to vote in referenda.

The estimated annual cost of providing the information to the Council by an estimated 408 respondents (43 first handlers, 360 importers, and 5 at-large representatives) would be \$3,920 or \$600 for all first handlers or \$13.95 per first handler, 3,270 for all importers or \$9.08 per importer, and \$50 for all at-large representatives or \$5.00 per at-large representative.

The Department would oversee program operations and, if the program is implemented, would conduct a referendum (1) not later than seven years after assessments began to determine whether olive oil first handlers and importers support continuation of the program, (2) at the request of the Council established under the Order, or (3) at the request of 10 percent or more of the number of persons eligible to vote in referenda. Additionally, the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by those eligible to vote in referenda.

There are approximately 13 first handlers and 320 importers of olive oil who would be subject to the program. Most of the first handlers and importers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.601). The SBA defines small agricultural handlers and importers as those whose annual receipts are less than \$5 million.

The United States produces very little olive oil compared to the amount it imports. Assuming a yield of 18 percent from the olives USDA reports as utilized for oil, production was 738 tons in 1998, compared to 648 tons in 1997. Imports, however, were 181,850 tons in 1998 and 180,186 tons in 1997. Italy accounted for 73 percent of imports in 1998, followed by Spain at 11 percent, Turkey at 8 percent, and Greece at 3 percent. A number of countries provided the remaining 5 percent. The total value of imports in 1998 was about \$347 million, compared to \$432 million in 1997. Exports of oil are significant, but are much smaller than imports. In 1998, the quantity reported was 8,934 tons, worth \$6 million. This compares to 10,323 tons exported in 1997, worth \$7 million. Exports exceed production because some imports are further processed or repackaged in the United States and then exported.

According to 1996 importer records, over 300 companies import olive oil into the United States; however, most of these companies import a very small quantity of oil with each importing less than 1 percent of the total amount.

Domestic first handlers of olive oil are located primarily in the states of Texas and California. We understand that approximately 70 percent of these first handlers are small companies, handling less than 6,000 pounds of olive oil per year and would fall within the exemption from assessment provided in the proposed Order.

Additionally, according to Nielsen Retail Sales data, the retail sector accounts for 45 percent of the sales of olive oil, the food service sector accounts for approximately 50 percent, and the commercial ingredient sector accounts for about 5 percent of olive oil consumption.

The proposed Order would authorize an initial assessment rate of \$0.01 per pound paid by first handlers and importers of 6,000 pounds or more of olive oil annually. The proposed Order authorizes the assessment rate to be raised to a maximum of \$0.02 per pound as long as the increase in any one year does not exceed \$0.002 per pound.

Section 516(a)(1) of the Act provides authority to the Secretary to exempt from the Order any de minimis quantity of an agricultural commodity otherwise covered by the Order. As stated above, the proponent recommends that first handlers and importers of less than 6,000 pounds of olive oil annually be exempt from assessment.

At the initial proposed rate of assessment of \$0.01 per pound of olive oil, the Council would collect between \$3 million and \$4 million annually.

USDA will keep all individuals informed throughout the referendum process to ensure that they are aware of and are able to participate in the referendum. USDA will publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

In addition, the olive oil industry would nominate first handlers, importers, and at-large representatives of the olive oil market to serve as members on the Council. The Council would nominate the public member of the Council. The Council would recommend the assessment rate, programs and projects, a budget, and any rules and regulations that might be necessary for the administration of the program. USDA would ensure that the nominees represent the olive oil industry in accordance with the Act and the proposed Order.

Proposed recordkeeping and reporting requirements for the olive oil promotion, research, and information program would be designed to minimize the burden on first handlers and importers. The olive oil promotion program would be designed to strengthen the position of olive oil in the marketplace, maintain and expand existing markets, and develop new uses and markets for olive oil.

The estimated annual cost of providing the information to the Council by an estimated 408 respondents (43 first handlers, 360 importers, and 5 at-large representatives) would be \$3,920 or \$600 for all first handlers or \$13.95 per first handler, \$3,270 for all importers or \$9.08 per importer, and \$50 for all at-large representatives or \$5.00 per at-large representative.

With regard to alternatives to this proposed rule, the Act itself provides for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an order in section 516 of the Act, and other sections provide for alternatives. For example, section 514 of the Act provides for orders applicable to (1) producers, (2) first handlers and other persons in the marketing chain as appropriate, and (3) importers (if imports are subject to assessment). Section 516 authorizes an order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; types of research, promotion, and information activities in both domestic and foreign markets; reserve funds; credits for generic and branded activities; and the assessment of imports.

In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. An order also may provide for its approval in a referendum to be based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the Act provides for establishment of a board from among producers, first handlers, others in the marketing chain as appropriate, and importers, if importers are subject to assessment.

This proposal includes provisions for market expansion and improvement; reserve funds; and an initial referendum to be conducted prior to the Order going into effect. Approval will be based upon a majority of the eligible persons voting in the referendum.

While we have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed Order on small entities, in order to obtain all the data necessary for a comprehensive analysis, we invite comments concerning the potential effects of the proposed Order. In particular, we are interested in obtaining more information on the number and kind of small and large entities that may incur benefits or costs from implementation of the proposed Order and information on the expected benefits or costs.

Paperwork Reduction Act

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), the information collection and recordkeeping requirements that may be imposed by this Order have been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number for background form (number 1 below): 0505-0001.

Expiration Date of Approval: July 31, 2001.

OMB Number for other information collections: New Collection.

Expiration Date of Approval: 3 Years from date of approval.

Type of Request: Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act.

In addition, there will be an additional burden on first handlers and importers who vote in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Under the proposed program, first handlers would be required to submit assessments and reports to the Council. Assessments on imports would be collected by Customs at the time of entry into the United States. Therefore, it is not anticipated that importers who are subject to assessments would be required to file any forms with the Council.

Handlers and importers of less than 6,000 pounds of olive oil annually would be required to file an application in order to receive an exemption from assessments.

In addition, the proposed Order would impose certain recordkeeping requirements on first handlers and importers. However, the information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability.

The estimated annual cost of providing the information to the Council by an estimated 408 respondents (43 first handlers, 360 importers, and 5 at-large representatives) would be \$3,920 or \$600 for all first handlers or \$13.95 per first handler, \$3,270 for all importers or \$9.08 per importer, and \$50 for all at-large representatives or \$5.00 per at-large representative.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Order. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Council. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

The information required has been designed to coincide with normal industry business practices to minimize the burden on the industry. The required information is not available from other sources because such information relates specifically to individuals who are covered by the Order. Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) *A background information form to be completed by candidates nominated for appointment to the Council.*

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each respondent.

Respondents: First handlers, importers, and at-large representatives.

Estimated Number of Respondents: 13 (average of 28 for the initial nominations to the Council and approximately 10 respondents annually thereafter for each 3-year period).

Estimated Number of Responses per Respondent: 1 every 3 years.

Estimated Total Annual Burden on Respondents: 14 hours for the initial nominations to the Council and 5 hours annually thereafter.

(2) *An annual report by each first handler of olive oil.* *Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per each handler reporting on olive oil handled.

Respondents: Handlers.

Estimated Number of Respondents: 43.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 21.5 hours.

(3) *An exemption application for first handlers and importers of less than 6,000 pounds of olive oil annually.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .50 hours per response for each exempt first handler and importer.

Respondents: Exempt first handlers and importers.

Estimated Number of Respondents: 70.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 35 hours.

(4) *Importer application for reimbursement of assessment.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per importer requesting a reimbursement.

Respondents: Importers.

Estimated Number of Respondents: 40.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 120 hours.

(5) *A requirement to maintain records sufficient to verify reports submitted under the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Recordkeepers: First handlers and importers.

Estimated number of Recordkeepers: 403.

Estimated Total Recordkeeping Hours: 201.5 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Act provides for the submission of proposals for a promotion, research, and information order by industry organizations or any other interested person affected by an order.

Comments concerning the information collection requirements contained in this action should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments addressing the nomination background information form should reference OMB No. 0505-0001. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames listed above. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of

having its full effect if OMB receives it within 30 days of publication.

Background

The Act authorizes the Secretary, under a generic authority, to establish agricultural commodity research and promotion orders. The Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the Act provides permissive terms for orders, and other sections provide for alternatives. For example, section 514 of the Act provides for orders applicable to (1) producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if importers are subject to assessment). Section 516 authorizes an order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; types of research, promotion, and information activities in both domestic and foreign markets; reserve funds; credits for generic and branded activities; and the assessment of imports. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. The order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

This proposed Order includes provisions for market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the Order going into effect. Approval will be based upon a majority of the eligible first handlers and importers voting in the referendum.

The proponent has requested the establishment of a national promotion, research, and information order for olive oil pursuant to the Act. The Act authorizes the establishment and operation of generic promotion programs which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. This proposal would provide for the development and financing of an effective and coordinated program of research, promotion, and information for olive oil. The purpose of the program would

be to strengthen the position of olive oil in the marketplace and to develop, maintain, and expand markets for olive oil.

The program would not become effective until approved by first handlers and importers in a referendum to be conducted by USDA. Section 518 of the Act provides for the Department (1) to conduct an initial referendum, preceding a proposed order's effective date, among persons who would pay assessments under the program or (2) to implement a proposed order, pending the conduct of a referendum, among persons subject to assessments, within three years after assessments first begin.

In accordance with section 518(e) of the Act, the results of the referendum must be determined one of three ways: (1) Approval by a majority of those persons voting; (2) approval by persons voting who represent a majority of the volume of the commodity covered by the program; or (3) approval by a majority of the persons voting who also represent a majority of the volume of the commodity produced, handled, or imported by the persons voting.

The proponent proposes that the Department conduct an initial referendum preceding the proposed Order's effective date and that approval of the Order be determined by a simple majority of the eligible first handlers and importers voting in the referendum.

In accordance with the Act, the Department would oversee the program's operations. In addition, the Act requires the Secretary to conduct subsequent referenda: (1) Not later than seven years after assessments first begin under the Order; or (2) at the request of the Council established under the Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. The proponent group has requested that a referendum be conducted not later than seven years after assessments first begin under the proposed Order to determine if first handlers and importers want the program to continue.

In addition to these criteria, the Act provides that the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by persons eligible to vote.

According to the proponent, the largest obstacle to successful marketing of olive oil is the widespread lack of awareness of its characteristics and uses. Most consumers are aware that it costs three times as much as other food oils, but do not understand the differences between olive oils (a tree crop product) and vegetable or seed oils

that are an annual crop and are basically a secondary product to the high value oilseed meal that is used for animal feed.

Currently, only 22 percent of U.S. households purchase olive oil. Preliminary research by the proponent indicates that more than 50 percent of those who do not use olive oil say that they do not know how to use it. This indicates the magnitude of the task for the olive oil industry.

Similarly, there is also a need for educating the trade audience, such as chefs and others involved in the food service industry. Such sectors need more accurate information about the characteristics of olive oil and the types of foods and recipes that can be enhanced with olive oil.

Only in recent years has there emerged an awareness of the nutritional benefits of olive oil. A strong marketing program is needed to inform consumers about the nutritional benefits of olive oil and how it can be used within a nutritious diet.

Unlike other oils that are relatively uniform in characteristics, all extra virgin olive oils, virgin olive oils, and pure olive oils have different flavor characteristics. Different varieties and growing regions have a considerable influence on the flavor of oils. An effective promotion program is needed to educate the public and trade sectors on the types of olive oils and their uses in various food preparations.

Currently, no organization in the industry has sufficient resources to mount an effective information and publicity program for olive oil, to educate chefs on the uses of olive oil, and to develop the information that consumers and chefs require.

Most of the companies that market olive oil to the retail sector, food service sector, and commercial ingredient sector do not have the resources to promote the product. They look to the industry to develop the information that consumers and chefs require.

The olive oil industry has attempted to create marketing programs to no avail. These programs lacked adequate funding to reach the domestic audience and impact the marketplace for olive oil. For example, the proponent began a public relations program in 1991 with a budget of \$100,000, but the maximum funds it has been able to raise for promotion by voluntary contributions has leveled off at \$250,000. The total budget for the proponent is only \$325,000. The budget of the California Olive Oil Council is less than \$25,000. The Texas Olive Oil Council does not have a fixed budget.

Through the promulgation of a research and promotion order, the industry intends to effectively promote the consumption of olive oil through publicity on its nutritional and health benefits, its unique taste characteristics, and its versatility.

In addition, the Order would provide the necessary structure and budget to support scientific and other forms of research that would benefit the olive oil industry. For example, a wide variety of research projects are needed to further study the health and other potential benefits of olive oil as well as to address issues such as adulteration and botulism.

Members of the industry have already begun discussions regarding the types of programs and projects that should be launched nationally to achieve these objectives. A partial listing of these potential programs and projects include: Developing a publicity program to reach consumers, chefs, food writers, cook book authors, and others; providing representation of the olive oil industry at major food and nutrition shows; conducting food service and retail recipe contests; preparing collateral materials for industry; conducting in-store food demonstrations featuring olive oil; conducting news conferences and issuing news releases; researching the medical benefits of olive oil; and researching how olive oil works with different food applications in the commercial ingredient sector.

Industry support was assessed at a meeting of the Olive Oil Task Force held in December 1997. This task force is a coalition representing members of the North American Olive Oil Council, the California Olive Oil Council, and the Texas Olive Oil Council, as well as companies in the olive oil business. Members of the retail, food service, and commercial ingredient sectors were represented on the task force. These task force members as well as all known companies in the olive oil industry were invited to the meeting to discuss the benefits and usefulness of a research and promotion order for olive oil.

At this meeting and through subsequent discussions, participants agreed that current regional marketing programs will not be successful in boosting the domestic market for olive oil. In addition, participants reached a broad-based and almost unanimous agreement that the olive oil business would substantially benefit from a national research and promotion order.

All of these factors led the olive oil industry to seek a national promotion program to find ways to further increase the consumption of olive oil.

Section 516(f) of the Act allows an order to authorize the levying of assessments on imports of the commodity covered by the program or on products containing that commodity, at a rate comparable to the rate determined for the domestic agricultural commodity covered by the order. The proponent has proposed that imports be assessed.

The assessment levied on domestically produced and imported olive oil would be used to pay for promotion, research, and consumer and industry information as well as administration, maintenance, and functioning of the Council. Expenses incurred by the Secretary in implementing and administering the Order, including referenda costs, also would be paid from assessments.

Sections 516(e)(1) and (2) of the Act state that an Order may provide credits of assessments for generic and branded activities. The proponent has elected not to propose credits for generic or branded activities. Therefore, the terms "generic activities" and "branded activities" are not defined in the Order, and credits for assessments would not be made.

First handlers would be required to pay assessments and submit reports to the Council. Importers would be required to pay assessments, which would be collected by Customs at the time of entry into the United States. Both first handlers and importers would be required to keep records under the proposed program. First handlers and importers of less than 6,000 pounds of olive oil annually would be exempt from assessments. However, they would be required to file an exemption request in order to be exempt from assessments and reporting under the Order. First handlers and importers seeking nomination to serve on the Council would be required to complete a confidential questionnaire to determine their eligibility to serve.

All information obtained from persons subject to this Order as a result of recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of the Department and of the Council. However, this information may be disclosed only if the Secretary considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports

or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person or the publication, by direction of the Secretary of the name of any person violating the Order and a statement of the particular provisions of the Order violated by the person.

The proposed Order provides for the Department to conduct an initial referendum preceding the proposed Order's effective date. Therefore, the proposed Order must be approved by a majority of the eligible first handlers and importers voting in the referendum. The proposed Order also provides for subsequent referenda to be conducted (1) no later than seven years after assessments first begin under the Order, (2) at the request of the Council established under the Order, or (3) when requested by 10 percent or more of first handlers and importers covered by the Order. In addition, the Secretary may conduct a referendum at any time.

The Act requires that such a proposed order provide for the establishment of a board to administer the program under USDA supervision. The proponent's proposal provides for a 14-member Olive Oil Council, as stated earlier.

To ensure fair and equitable representation of the olive oil industry on the Council, the Act requires membership on the Council to reflect the geographical distribution of the production of olive oil and the quantity or value of imports. To that end, this proposal provides that three members of the Council would be importers and marketers of consumer brands; one member would be an importer and marketer or packer of a private label; one member would be an importer of bulk olive oil; two members would be importers and marketers to the food service trade; two members would be first handlers of domestic olive oil; and five at-large members would represent one or more of the following segments of the olive oil market: The health community; professional chefs; food service operators; and food media/consultants.

Upon implementation of the Order and pursuant to the Act, the Council would at least once in each five-year period, but not more frequently than once in each three-year period, review the geographical distribution of olive oil production in the United States and the quantity of imports and make a recommendation to the Secretary after considering the results of its review and other information it deems relevant regarding the reapportionment of Council membership.

Members would serve for three-year terms, except that the members appointed to the initial Council would serve proportionately for two-, three-, and four-year terms. No member would serve more than two consecutive terms.

The proposed Order submitted by the proponent is summarized as follows:

Sections 1217.01 through 1217.22 of the proposed Order define certain terms, such as olive oil, first handler, importer, information, promotion, and research, which are used in the proposed Order.

Sections 1217.30 through 1217.37 include provisions relating to the Council: Establishment and membership, nominations, term of office, vacancies, procedure for conducting meetings, compensation and reimbursements for Council members, the Council's powers and duties, and prohibited activities.

Sections 1217.40 through 1217.41 establish the authority for the Council to develop research, promotion, and information projects and requirements for contracts, subject to oversight of the Secretary.

Sections 1217.50 through 1217.54 cover budget review and approval; financial statements; the collection of assessments; exemption from assessments; the use of assessments, including reimbursement of necessary expenses incurred by the Council for the performance of its duties, which includes expenses incurred for the Department's oversight responsibilities; a late-payment charge on past-due assessments; and an operating reserve.

The proponent recommends an initial assessment rate of \$0.01 per pound on domestic and imported olive oil to be paid by handlers of domestic olive oil and importers.

The Council may raise the rate of assessment by no more than \$0.002 per pound in any year, up to a maximum rate of \$0.02, with approval of the Secretary.

The federal debt collection procedures referenced in § 1217.52(g) include those set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by USDA (60 FR 12533, March 7, 1995).

Sections 1217.55 through 1217.56 require that the Council perform an independent evaluation of its programs at least once every five years and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

Sections 1217.60 through 1217.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of

information from such books, records, or reports.

Sections 1217.70 through 1217.78 describe the rights of the Secretary; require an initial referendum before the program is implemented; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after suspension or termination; specify effects of termination or amendment; and address personal liability, separability, and amendments.

The Department has modified the proponent's proposal to make it consistent with the Act and other similar national research and promotion programs for consistency throughout the text and for clarity.

In the definitions the following terms were added: "conflict of interest," "Department," "order," "suspend," and "terminate." Additionally, the term "first handler" was added to the definitions and replaced "handler" throughout the text.

The definition of "information" was rewritten to include activities designed to enhance olive oil's image, to add definitions of "consumer information" and "producer information," and to conform with the Act. The terms "marketing" and "research" were also changed to conform with the Act.

Section 1217.37 *Prohibited activities*, § 1217.41 *Contracts*, and § 1217.55 *Independent evaluation* were part of the original proposal but were subsections or cited in the proposal. The Department has expanded each of these for consistency with similar national research and promotion programs. In addition, the following sections and paragraphs were added to the proponent's proposal: § 1217.36 (r) and (s); § 1217.51 *Financial Statements*; § 1217.53(c) and (d); § 1217.70 *Right of the Secretary*; § 1217.71 *Referenda*; and § 1217.72(b) and (c).

Section 1217.16 was changed from *Plans and Projects to Programs, Plans, and Projects* and § 1217.35 was changed from *Expenses to Compensation and reimbursement* in order to more accurately reflect the subject covered in the section.

Section 1217.50(h) has been added in order to be consistent with the Act. Paragraph (e)(5) *Limitation on spending* of section 515 of the Act states that a board "may not expend for administration (except for reimbursements to the Secretary * * *) an amount that exceeds 15 percent of the board's income during any fiscal year. This provision has been added as the proposal submitted did not indicate a limitation for such spending. In this same section, in order to be more

consistent with similar national research and promotion programs, a list of subjects to be covered in the budget was included. In addition, paragraphs (c), (d), and (f), which discuss amendments to the approved budget, authorization to incur expenses for a reasonable reserve, and the acceptance and use of voluntary contributions were added for clarity and for consistency with other similar national research and promotion programs.

Other minor changes which do not materially affect the text were made as appropriate.

The Department has determined that this proposed Order is consistent with and would effectuate the purposes of the Act.

The proposal set forth below has not received the approval of the Secretary.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Consumer Information, Marketing agreements, Olive oil promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7 of Chapter XI of the Code of Federal Regulations be amended as follows:

1. Part 1217 is added to read as follows:

PART 1217—OLIVE OIL PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Olive Oil Promotion, Research, and Information Order

Definitions

Sec.

- 1217.1 Act.
- 1217.2 Conflict of interest.
- 1217.3 Council.
- 1217.4 Department.
- 1217.5 First handler.
- 1217.6 Fiscal period and marketing year.
- 1217.7 Handle.
- 1217.8 Importer.
- 1217.9 Information.
- 1217.10 Marketer.
- 1217.11 Marketing.
- 1217.12 Olive oil.
- 1217.13 Order.
- 1217.14 Part and subpart.
- 1217.15 Person.
- 1217.16 Programs, plans, and projects.
- 1217.17 Promotion.
- 1217.18 Research.
- 1217.19 Secretary.
- 1217.20 Suspend.
- 1217.21 Terminate.
- 1217.22 United States.

Olive Oil Council

- 1217.30 Establishment and membership.
- 1217.31 Nominations.
- 1217.32 Term of office.
- 1217.33 Vacancies.
- 1217.34 Procedure.

- 1217.35 Compensation and reimbursement.
- 1217.36 Powers and duties.
- 1217.37 Prohibited activities.

Research, Promotion, and Information

- 1217.40 Research, promotion, and information.
- 1217.41 Contracts.

Expenses and Assessments

- 1217.50 Budget and expenses.
- 1217.51 Financial statements.
- 1217.52 Assessments.
- 1217.53 Exemption from assessment.
- 1217.54 Operating reserve.
- 1217.55 Independent evaluation.
- 1217.56 Patents, copyrights, inventions, product formulations, and publications.

Reports, Books, and Records

- 1217.60 Reports.
- 1217.61 Books and records.
- 1217.62 Confidential treatment.

Miscellaneous

- 1217.70 Right of the Secretary.
- 1217.71 Referenda.
- 1217.72 Suspension or termination.
- 1217.73 Proceedings after termination.
- 1217.74 Effect of termination or amendment.
- 1217.75 Personal liability.
- 1217.76 Separability.
- 1217.77 Amendments.
- 1217.78 OMB control numbers.

Authority: 7 U.S.C. 7401–7425.

Subpart A—OLIVE OIL PROMOTION, RESEARCH, AND INFORMATION ORDER

Definitions

§ 1217.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401–7425; Pub. L. 104–127; 110 Stat. 1029, as amended), or any amendments thereto.

§ 1216.2 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Council has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Council for anything of economic value.

§ 1217.3 Council.

Council means the administrative body established pursuant to § 1217.30.

§ 1217.4 Department.

Department means the United States Department of Agriculture.

§ 1217.5 First handler.

First handler means the first person (excluding a common or contract carrier) who buys or takes possession of olive oil from a producer for marketing. If a producer markets olive oil directly to consumers, the producer shall be

considered to be a first handler with respect to the olive oil produced by the producer.

§ 1217.6 Fiscal period and marketing year.

Fiscal period and marketing year mean the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Council and approved by the Secretary.

§ 1217.7 Handle.

Handle means to process, package, sell, transport, purchase, or in any other way place olive oil, or cause it to be placed, in the current of commerce.

§ 1217.8 Importer.

Importer means any person who imports olive oil into the United States as principal or as an agent, broker, consignee, or representative of any person who produces or handles olive oil outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such olive oil.

§ 1217.9 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of olive oil on a national or international basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of olive oil; and

(b) *Industry information*, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the olive oil industry, and activities to enhance the image of olive oil.

§ 1217.10 Marketer.

Marketer means any person engaged in the sale or other disposition of olive oil in any channel of commerce.

§ 1217.11 Marketing.

Marketing means the sale or other disposition of olive oil in any channel of commerce.

§ 1217.12 Olive oil.

Olive oil is the oil obtained solely from the fruit of the olive tree (*Olea europaea sativa Hoffm. Et Link*) and, for purposes of this Order, includes olive pomace oil.

§ 1217.13 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1217.14 Part and subpart.

Part means the Olive Oil Research, Promotion, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the Order shall be a subpart of such part.

§ 1217.15 Person.

Person means any individual, group of individuals, partnership, corporation, cooperative, or any other legal entity.

§ 1217.16 Programs, plans, and projects.

Programs, plans, and projects means those research, promotion, and information plans, studies, or projects established pursuant to § 1217.30.

§ 1217.17 Promotion.

Promotion means any action, including paid advertising and the dissemination of culinary and nutritional information and public relations, to present a favorable image of olive oil to the public for the purpose of improving the competitive position of olive oil in the marketplace and to stimulate sales in the retail, food service, and industrial markets.

§ 1217.18 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of olive oil.

§ 1217.19 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1217.20 Suspend.

Suspend means to issue a rule under section 553 of title 5, United States Code, or part thereof, to temporarily prevent the operation of an order during a particular period of time specified in the rule.

§ 1217.21 Terminate.

Terminate means to issue a rule under section 553 of title 5, United States Code, or part thereof, to cancel permanently the operation of an order beginning on a date certain specified in the rule.

§ 1217.22 United States.

United States means collectively the 50 states of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Olive Oil Council**§ 1217.30 Establishment and membership.**

(a) The Olive Oil Council is hereby established to administer the terms and provisions of the Order. The Council shall consist of 14 members as follows:

(1) Three members shall be importers and marketers of name brands;

(2) One member shall be an importer and marketer or packer of a private label;

(3) One member shall be an importer of bulk olive oil;

(4) Two members shall be importers and marketers to the food service trade;

(5) Two members shall represent the first handlers of domestic olive oil; and

(6) Five members shall be at-large representatives of one or more of the following segments of the olive oil market: the health community; professional chefs; food service operators; retailers; and food media/consultants.

(b) In accordance with regulations approved by the Secretary, at least every five years and not more than every three years, the Council shall review the geographical distribution of first handlers of domestic olive oil throughout the United States and the volume of imported olive oil and, if warranted, recommend to the Secretary the reapportionment of Council membership or the addition of members to reflect changes in the geographical distribution of the handling of olive oil and the volume of imported olive oil.

§ 1217.31 Nominations.

(a) The Secretary shall solicit nominations for the initial Council from importers, handlers, and other professionals associated with the olive oil industry.

(b) Procedure for subsequent nominations.

(1) The Council shall announce at least 180 days in advance of the expiration of members' terms that such terms are expiring and shall solicit nominations for such positions. The announcement shall include, at a minimum, the following information:

(i) A list of the vacancies for which nominees may be submitted and qualifications for nomination; and

(ii) The date by which the names of nominees shall be submitted to the Secretary for consideration in

accordance with paragraph (b)(3) of this section.

(2) Importer members shall be nominated by importers, and handler members shall be nominated by handlers. The at-large members may be nominated by other professionals associated with the olive oil industry.

(3) Nominations should be submitted to the Secretary not less than 90 days prior to the expiration of members' terms.

(4) Two nominees must be submitted to the Secretary for each vacancy.

(c) The Secretary shall appoint the members of the Council from nominations made in accordance with paragraph (b) of this section.

(1) The Secretary may reject any nominee submitted. If there is an insufficient number of nominees from whom to appoint members to the Council as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary in a manner prescribed by the Secretary.

(2) Whenever the industry fails to nominate individuals for appointment to the Council, the Secretary may appoint members in such a manner as the Secretary determines appropriate.

§ 1217.32 Term of office.

The members of the Council shall serve for terms of three years, except the members of the initial Council shall be designated for and shall serve terms as follows: Five members shall serve for two-year terms; five shall serve for three-year terms; and four shall serve for four-year terms. No member shall serve more than two consecutive terms.

§ 1217.33 Vacancies.

(a) In the event any member of the Council ceases to be a member of the category of members from which the member was appointed to the Council, such position shall automatically become vacant.

(b) 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 engages 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.

(c) Should any member position become vacant, the Secretary shall solicit nominations in the manner set forth in § 1217.32, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

§ 1217.34 Procedure.

(a) At a properly convened meeting of the Council, eight members shall constitute a quorum. Any action of the Council shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In matters of an emergency nature when there is not enough time to call an assembled meeting of the Council, the Council may act upon the concurring votes of a majority of its members by mail, telephone, facsimile, or by other means of communication: *Provided*, that each proposition is explained accurately, fully, and substantially identically to each member. All telephone votes shall be promptly confirmed in writing and recorded in the Council minutes.

§ 1217.35 Compensation and Reimbursement.

Members of the Council, when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Council, incurred by them in the performance of their duties as Council members.

§ 1217.36 Powers and duties.

The Council shall have the following powers and duties:

(a) To administer this subpart in accordance with its terms and provisions of the Act;

(b) With the approval of the Secretary, to invest funds, pending disbursement pursuant to a plan or project, only in: obligations of the United States or any agency thereof; in general obligations of any State or any political subdivision thereof; in any interest-bearing account or certificate of deposit of a bank which is a member of the Federal Reserve System; or in obligations fully guaranteed as to principal and interest by the United States;

(c) To appoint from its members an executive committee and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Council and within the policies determined by the Council;

(d) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(e) To recommend to the Secretary amendments to this part.

(f) To meet and organize and to select from among its members a chairperson, other officers, and committees and subcommittees, as the Council determines to be appropriate;

(g) To develop and recommend to the Secretary for approval such bylaws as

may be necessary for the functioning of the Council and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(h) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each;

(i) To prepare and submit to the Secretary for the Secretary's approval, a budget on a fiscal period basis of its anticipated expenses in the administration of this part including the probable costs of all programs or projects and to recommend a rate of assessment with respect thereto;

(j) To receive and review or on its own develop programs and projects and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs or projects of promotion, and information;

(k) To maintain minutes, books, and records which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of funds entrusted to it;

(l) To periodically prepare and make public reports of its activities carried out, and, at least once each fiscal period, to make public an accounting of funds received and expended;

(m) To cause its books to be audited by a certified public accountant at the end of each fiscal period and to submit a copy of each audit to the Secretary;

(n) To give to the Secretary the same notice of meetings of the Council and subcommittees (including those conducted by telephone) as is given to members in order that representatives of the Secretary may attend such meetings;

(o) To submit to the Secretary such information pertaining to this subpart as the Secretary may request;

(p) To notify olive oil importers and first handlers of all Council meetings through news releases or other means;

(q) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans, projects, or activities to effectuate the declared purpose of the Act.

(r) To act as intermediary between the Secretary and any producer, first handler, or importer.

(s) To work to achieve an effective, continuous, and coordinated program of promotion, research, information, evaluation, and industry information designed to strengthen the olive oil industry's position in the marketplace;

maintain and expand existing markets and uses for olive oil; and to carry out programs, plans, and projects designed to provide maximum benefits to the olive oil industry.

§ 1217.37 Prohibited activities.

(a) The Council may not engage in and shall prohibit the employees and agents of the Council from engaging in:

(1) Any action that would be a conflict of interest; or

(2) Using funds collected by the Council under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, including local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order.

(b) No Council program, plan, or project shall make any false or misleading claims on behalf of olive oil or false, misleading, or disparaging statements with respect to the attributes or use of another agricultural commodity.

Research, Promotion, and Information**§ 1217.40 Research, promotion, and information.**

(a) The Council shall develop and submit to the Secretary for approval any plans or projects authorized in this section. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans or projects for research, promotion, and information designed to strengthen the position of olive oil in the marketplace, to maintain, develop, and expand markets for olive oil, and to encourage further development of the domestic industry; and

(2) The establishment and conduct of marketing research and development projects to the end that the acquisition of knowledge pertaining to olive oil or its consumption and use may be encouraged or expanded or to the end that the marketing and utilization of olive oil may be encouraged, expanded, improved, or made more efficient.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Council shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Council to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Council that any such program, plan, or project does not contribute to an effective program of promotion,

research, or information, then the Council shall terminate such program, plan, or project.

§ 1217.41 Contracts.

(a) The Council may enter into contracts or make agreements for the development and carrying out of research, promotion, and information, and pay for the costs of such contracts or agreements, after approval from the Secretary.

(b) Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Council a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Council of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Council may require;

(3) The Secretary may audit the records of any contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Council contractor and who receives or otherwise uses funds allocated by the Council shall be subject to the same provisions as the contractor.

Expenses and Assessments

§ 1217.50 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Council shall prepare and submit to the Secretary a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of the Order and probable costs of research, promotion, and information. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved

budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Council's approved budget and which are consistent with governing bylaws, approved by the Secretary, need not have prior approval from the Secretary.

(d) The Council is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Council.

(e) With 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. Any funds borrowed by the Council shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Council.

(f) 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.

(g) The Council shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Council may not expend for administration, maintenance, and functioning of the Council in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Council for that fiscal year. Reimbursements to the Secretary required under paragraph (g) of this section are excluded from this limitation on spending.

§ 1217.51 Financial statements.

(a) As requested by the Secretary, the Council shall prepare and submit financial statements to the Secretary on a regular basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30

days after the end of the time period to which it applies.

(c) The Council shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

§ 1217.52 Assessments.

(a) Each importer and first handler shall pay to the Council, upon demand, the assessment as may be approved by the Secretary. Such assessment shall be the amount established by the Secretary pursuant to paragraph (b) of this section.

(b) Except as otherwise provided, the rate of assessment shall be \$0.01 per pound of olive oil imported or produced and handled in the United States. The rate of assessment may be raised to a maximum of \$0.02 per pound as recommended by the Council and approved by the Secretary, but it shall not be raised more than \$0.002 per year in any fiscal year.

(c) Importers of olive oil shall pay the assessment to the Council through the U.S. Customs Service at the time of entry. The U.S. Customs Service shall remit the assessment to the Council.

(d) The import assessment shall be uniformly applied to imported olive oil identified by the numbers 1509.10.20, 1509.10.40, 1509.90.20, 1509.90.40, 1510.00.40, and 1510.00.60 in the Harmonized Tariff Schedule of the United States.

(e) Assessments due from a first handler shall be paid to the Council at such time and in such manner as the Council, with the Secretary's approval, directs pursuant to regulations issued hereunder. Such regulations may provide for different importer or first handler payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(f) The Council shall impose a late payment charge on any person who 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 late payment charge will be 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 regulations issued by the Secretary.

(g) Persons failing to remit total assessments due in a timely manner may also be subject to actions by the Secretary under federal debt collection procedures.

§ 1217.53 Exemption from assessment.

(a) A domestic first handler who handles less than 6,000 pounds of olive oil per year or an importer who imports less than 6,000 pounds of olive oil per

year shall be eligible for an exemption from the assessment.

(b) To claim such exemption, a first handler or importer shall submit an application to the Council stating the basis on which the person claims the exemption for such year.

(c) If, after a person claims an exemption from assessments for any year under this section, and such person no longer meets the requirements of this paragraph for an exemption, such person shall provide additional information to the Council in the form and manner prescribed by the Council, subject to approval by the Secretary, and pay an assessment on all the olive oil handled or imported by such person during the year for which the person claimed the exemption.

(d) Exempted individuals are subject to such safeguards as prescribed in this part to prevent improper use of this exemption.

§ 1217.54 Operating reserve.

The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided*, That the funds in the reserve shall not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

§ 1217.55 Independent evaluation.

The Council shall, not less often than every five years, authorize and fund, from funds otherwise available to the Council, an independent evaluation of the effectiveness of the Order and programs conducted by the Council pursuant to the Act. The Council shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1217.56 Patents, copyrights, inventions, product formulations, and publications.

(a) Any patents, copyrights, inventions, or publications developed through the use of funds collected by the Council under the provisions of this subpart shall be the property of the U.S. Government as represented by the Council, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Council, and shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, § 1217.73 shall apply to

determine disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds received by the Council under this subpart and funds contributed by another organization or person, the ownership and related rights to such patents, copyrights, inventions, or publications shall be determined by an agreement between the Council and the party contributing funds towards the development of such patent, copyright, invention or publication in a manner consistent with paragraph (a) of this section, subject to approval by the Secretary.

Reports, Books, and Records

§ 1217.60 Reports.

Each first handler and importer shall be required to report to the administrative staff of the Council, at such times and in such manner as it may prescribe, such information as may be necessary for the Council to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For first handlers, the total quantity of olive oil handled during the reporting period; and a record of assessments paid, including a statement from the handler that the assessment has been paid on all olive oil handled during the reporting period.

(b) For importers, the total quantity of olive oil imported during the reporting period and a record of each importation of olive oil during such period, giving quantity, date, and port of entry.

(c) For persons who have an exemption from assessments under § 1217.53, such information as deemed necessary by the Council, and approved by the Secretary, concerning the exemption including disposition of exempted olive oil.

(d) Information reported to the administrative staff of the Council regarding total quantity, assessments, and other specific information must be kept confidential in accordance with § 1217.62.

§ 1217.61 Books and records.

First handlers and importers shall maintain, and during normal business hours make available for inspection by employees of the Council or the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the first period of their applicability.

§ 1217.62 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained shall be kept confidential by all persons, including employees of the Council and all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information, and shall not be made available to Council members, first handlers, or importers. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart, except that nothing in this subpart shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of first handlers or importers subject to any order, if such statements do not either expressly or tacitly identify the information furnished by any person;

(b) The publication by direction of the Secretary, of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of the Order violated by such person.

(c) Any disclosure of any confidential information by any employee of the Council shall be considered willful misconduct.

Miscellaneous

§ 1218.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Council shall be submitted to the Secretary for approval.

§ 1217.71 Referenda.

(a) *Implementation.* For the purpose of ascertaining whether the persons to be covered by the Order favor the Order going into effect, the Secretary shall conduct an initial referendum among persons to be subject to the assessment under § 1217.52 who, during a representative period determined by the Secretary, engaged in the handling or importation of olive oil. The Order must be approved by a simple majority of those voting.

(b) *Subsequent referenda.* The Secretary shall hold subsequent referenda: Not later than seven years after assessments first begin under the Order; at the request of the Council; or when petitioned by 10 percent or more of the olive oil first handlers and importers eligible to vote to determine if they favor termination or suspension

of this subpart. In addition, the Secretary may hold a referendum at any time.

§ 1217.72 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof at the end of the marketing year whenever the Secretary determines that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that its suspension or termination is approved or favored in a referendum by a simple majority of the persons voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the handling or importation of olive oil.

(b) If, as a result of a referendum, the Secretary determines that this subpart is not approved, the Secretary shall:

(1) No later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1217.73 Proceedings after termination.

(a) Upon the termination of this subpart, the Council shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Council. Such persons, upon designation by the Secretary, shall become trustees of all funds and property owned, in possession of, or under control of the Council, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Council under any contracts or agreements entered into by it pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Council and of the trustees, to such person as the Secretary may direct; and

(4) Upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Council or the trustees pursuant to the Order.

(c) Any person to whom funds, property, or claims have been

transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the Council and the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or, if not practicable, shall be turned over to the Secretary to be utilized, to the extent practicable, in the interest of continuing one or more of the olive oil research or information programs authorized under the Order.

§ 1217.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any such rule or regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of any rule or regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or of any person, with respect to any such violation.

§ 1217.75 Personal liability.

No member or employee of the Council shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1217.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1217.77 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Council or by any interested persons affected by the provisions of the Act, including the Secretary.

§ 1217.78 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is yet

to be determined. The Council nominee background statement form is assigned OMB control number 0505-0001.

Dated: August 18, 1999.

Kathleen A. Merrigan,
Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[FV-99-704-PR]

Olive Oil Promotion, Research, and Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Olive Oil Promotion, Research, and Information Order (Order) is favored by the olive oil industry. Approval will be based on a majority of olive oil first handlers and importers voting in the referendum. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposed Order is being published in a separate document. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act).

DATES: Comments must be received by October 25, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535 South Building, 1400 Independence Avenue, SW, Washington, DC 20250-0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A