

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.

[FR Doc. 99-22107 Filed 8-25-99; 8:45 am]

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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

copy of this rule may be found at: www.ams.usda.gov/fv/rpocketlist.htm. Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through 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 or Karen T. Comfort, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 2535-S, 1400 Independence Avenue, SW, Washington, DC 20250-0244; telephone (202) 720-9915 or facsimile (202) 205-2800.

SUPPLEMENTARY INFORMATION: A referendum will be conducted to determine whether the issuance of the proposed Olive Oil Promotion, Research, and Information Order (Order) (7 CFR part 1217) is favored by a majority of eligible first handlers and importers voting in the referendum. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) (Pub. L. 104-427, 7 U.S.C. 7401-7425). A proposed Order is being published separately in the **Federal Register**.

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 of Agriculture (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. The Act provides that

the district court of the United States for any district in which the petitioner resides or conducts business shall 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 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.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (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 action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Secretary to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. 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 North American Olive Oil Association (proponent), has recommended that the Secretary conduct a referendum in which the Order must be approved by a majority of those voting in the referendum, and the voters would be non-exempt first handlers and importers of olive oil. The proponent also has recommended that a referendum be conducted prior to the proposed Order going into effect.

This proposed rule would establish the procedures under which first handlers and importers may vote on whether they want an olive oil promotion, research, and information program to be implemented. First handlers and importers of 6,000 pounds or more of olive oil annually would be

eligible to vote. The proposed Order provides for an exemption from assessment for first handlers and importers of less than 6,000 pounds of olive oil. This proposal would add a new subpart which establishes procedures to conduct an initial and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

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 an estimated 70 percent of these first handlers are small entities, 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.

This proposed rule provides the procedures under which olive oil first handlers and importers may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply.

Of the 43 first handlers, approximately 13 would be eligible to vote in the first referendum. Of the 360 importers, approximately 320 would be eligible to vote in the first referendum.

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.

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

Voting in the referendum is optional. However, if first handlers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on first handlers and importers. This rule provides for a ballot to be used by eligible first handlers and importers in voting in the referendum. The estimated annual cost of providing the information by an estimated 13 first handlers who would be eligible to vote would be \$6.50 or \$0.50 per first handler and, for the estimated 320 importers who would be eligible to vote, the annual cost would be \$160.00 or \$0.50 per importer.

The Secretary considered requiring eligible voters to vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal, current technology is not reliable enough to ensure that electronic ballots would be received in a readable format, and technology is insufficient at this time to provide sufficient safeguards of voters' confidentiality. Conducting the referendum from one central location by mail ballot would be more cost-effective and reliable. The Department would provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. However, in order to obtain all of the data necessary for a comprehensive analysis, we invite comments concerning the potential effects of this proposed rule. 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 the implementation of this proposed rule and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.
OMB Number: New collection.

Expiration Date of Approval:
November 28, 2001.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each first handler and importer.

Respondents: First handlers and importers.

Estimated Number of Respondents:
333.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 16.65 hours.

The estimated annual cost of providing the information by an estimated 13 first handlers would be \$6.50 or \$0.50 per first handler and for an estimated 320 importers would be \$160.00 or \$0.50 per importer.

The ballot will be added to the other information collections approved for use under a OMB Number yet to be determined.

Comments are invited on: (a) Whether the proposed collection of information is necessary and whether it 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.

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 should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. 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 generic authority, to establish agricultural commodity research and promotion orders. The North American Olive Oil Association (proponent) has requested the establishment of an Olive Oil Promotion, Research, and Information Order (Order) pursuant to the Act. The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and information for olive oil. The program would be funded by an assessment levied on first handlers and importers (to be collected by the U.S. Customs Service at time of entry into the United States) at a rate of \$0.01 per pound. In the proposed Order, olive oil is defined as the oil obtained solely from the fruit of the olive tree (*Olea europaea sativa Hoffm. Et Link*) and for the purposes of these referendum rules and the Order, includes olive pomace oil.

Assessments would be used to pay for promotion, research, and consumer information; administration, maintenance, and functioning of the Olive Oil Council; and expenses incurred by the Secretary in

implementing and administering the Order, including referendum costs.

Section 518 of the Act requires that a referendum be conducted among eligible olive oil first handlers and importers to determine whether they favor the Order. 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. According to a proposed rule that is published separately in this issue of the **Federal Register**, the Order would become effective if it is approved during the initial referendum, which will be held before the program is implemented. Approval will be based on a majority of the olive oil first handlers and importers voting in the referendum. First handlers and importers of 6,000 pounds or more of olive oil annually would be eligible to vote.

This proposed rule establishes the procedures under which first handlers and importers may vote on whether they want the olive oil promotion, research, and information program to be implemented. There are approximately 333 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda. The subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the olive oil industry.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Olive Oil, 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, Chapter XI of the Code of Federal Regulations be amended as follows:

PART 1217—OLIVE OIL PROMOTION, RESEARCH, AND INFORMATION ORDER—[PROPOSED]

1. The authority citation for proposed part 1217 published elsewhere in this **Federal Register** continues to read as follows:

Authority: 7 U.S.C. 7401–7425.

2. Subpart B is added to proposed part 1217 to read as follows:

Subpart B—Procedure for the Conduct of Referenda in Connection With the Olive Oil Promotion, Research, and Information Order

Sec.	
1217.100	General.
1217.101	Definitions.
1217.102	Voting.
1217.103	Instructions.
1217.104	Subagents.
1217.105	Ballots.
1217.106	Referendum report.
1217.107	Confidential information.

Subpart B—Procedure for the Conduct of Referenda in Connection With the Olive Oil Promotion, Research, and Information Order

§ 1217.100 General.

Referenda to determine whether eligible olive oil first handlers and importers favor the issuance, amendment, suspension, or termination of the Olive Oil Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1217.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Olive oil* means the oil obtained solely from the fruit of the olive tree (*Olea europaea sativa Hoffm. Et Link*) and for the purposes of these regulations, includes pomace oil.

(c) *Eligible importer* means any person who imported 6,000 pounds or more of olive oil, that is 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. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced olive oil immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or broker, to secure the release of olive oil from the U.S. Customs Service when such olive oil is entered or withdrawn for consumption in the United States.

(d) *Eligible first handler* means any person who buys or takes possession of 6,000 pounds or more of olive oil from a producer for marketing. If a producer markets the olive oil directly to

consumers, the producer shall be considered to be the first handler with respect to olive oil produced by the producer.

(e) *Order* means the Olive Oil Promotion, Research, and Information Order.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

(h) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(i) *Representative period* means the period designated by the Secretary.

(j) *United States* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1217.102 Voting.

(a) Each person who is an eligible first handler or an eligible importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate first handler or importer, or an administrator, executor, or trustee or an eligible entity, may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Secretary.

§ 1217.103 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible first handlers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized by the Administrator to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1217.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1217.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be questioned for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was questioned, by whom, the reasons therefore, the results of any investigations made with respect thereto, if any, and the disposition

thereof. Ballots invalid under this subpart shall not be counted.

§ 1217.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1218.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Dated: August 18, 1999.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99-22106 Filed 8-25-99; 8:45 am]

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