

PART 1225—OLIVE OIL PROMOTION, RESEARCH, AND INFORMATION ORDER

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

Definitions

§ 1225.1 Act.

§ 1225.2 Conflict of interest.

§ 1225.3 Cooperative for Olive Oil Promotion.

§ 1225.4 Crop Year.

§ 1225.5 Customs or CBP.

§ 1225.6 Department.

§ 1225.7 Domestic First Handler.

§ 1225.8 Domestic Olive Oil.

§ 1225.9 Fiscal Period.

§ 1225.10 Handle or Handler.

§ 1225.11 Import or Importer.

§ 1225.12 Information or Consumer Information or Industry Information.

§ 1225.13 Market or Marketing.

§ 1225.14 Olive oil.

§ 1225.15 Order.

§ 1225.16 Part and subpart.

§ 1225.17 Person.

§ 1225.18 Produce or Producer.

§ 1225.19 Programs, plans and projects.

§ 1225.20 Promotion.

§ 1225.21 Public member.

§ 1225.22 Purpose.

§ 1225.23 Research.

§ 1225.24 Secretary.

§ 1225.25 State.

§ 1225.26 Suspend.

§ 1225.27 Terminate.

§ 1225.28 United States.

The Cooperative for Olive Oil Promotion

§ 1225.40 Establishment and membership.

§ 1225.41 Nominations and appointments of industry members.

§ 1225.42 Nomination and appointment of public member.

§ 1225.43 Terms of office.

§ 1225.44 Vacancies.

§ 1225.45 Procedure.

§ 1225.46 Compensation and reimbursement.

§ 1225.47 Powers and duties.

§ 1225.48 Prohibited activities.

Expenses and Assessments

§ 1225.50 Budget and expenses.

§ 1225.51 Financial statements.

§ 1225.52 Assessments.

§ 1225.53 Exemptions.

§ 1223.54 Assessment Credit.

§ 1225.55 Refund escrow accounts.

Promotion, Research, and Information

§ 1225.60 Programs, plans, and projects.

§ 1225.61 Independent evaluation.

§ 1225.62 Patents, copyrights, trademarks, information, publications, and product formulations.

Reports, Books, and Records

§ 1225.70 Reports.

§ 1225.71 Books and records.

§ 1225.72 Confidential treatment.

Miscellaneous

§ 1225.80 Right of the Secretary.

§ 1225.81 Referenda.

§ 1225.82 Suspension and termination.

§ 1225.83 Proceedings after termination.

§ 1225.84 Effect of termination or amendment.

§ 1225.85 Personal liability.

§ 1225.86 Separability.

§ 1225.87 Amendments.

§ 1225.88 OMB control numbers.

Subpart B—Referendum Procedures

§ 1225.90 General.

§ 1225.91 Definitions.

§ 1225.92 Voting.

§ 1225.93 Instructions.

§ 1225.94 Subagents.

§ 1225.95 Ballots.

§ 1225.96 Referendum report.

§ 1225.97 Confidential information.

§ 1225.98 OMB Control Numbers.

Subpart C—Administrative Provisions

§ 1225.100 Late payment and interest charges for past due assessments.

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

Definitions

§ 1225.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411-7425), and any amendments thereto.

§ 1225.2 Conflict of interest.

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

§ 1225.3 Cooperative for Olive Oil Promotion or Cooperative.

Cooperative for Olive Oil Promotion or Cooperative means the administrative body established pursuant to § 1225.40.

§ 1225.4 Crop Year.

Crop Year means the twelve months from September 1 of one calendar year to August 31 of the next.

§ 1225.5 Customs or CBP.

Customs or *CBP* means United States Customs and Border Protection, an agency of the United States Department of Homeland Security.

§ 1225.6 Department or USDA.

Department or *USDA* means the U.S. Department of Agriculture, or any 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.

§ 1225.7 Domestic First Handler.

Domestic First Handler means a handler who is the first to handle Domestic Olive Oil. The term Domestic First Handler includes a Producer who handles or markets olive oil of the Producer's own production but excludes common or contract carriers.

§ 1225.8 Domestic Olive Oil.

Domestic Olive Oil means olive oil that is produced in the United States.

§ 1225.9 Fiscal Period.

Fiscal Period means the 12-month period beginning January 1 ending December 31, or such other 12-month period as shall be recommended by the Cooperative and approved by the Secretary.

§ 1225.10 Handle or Handler.

Handler means a person who engages in the operation of marketing Domestic Olive Oil that he or she has produced, or purchased or acquired from a Producer, or that he or she is marketing on behalf of a Producer, whether as owner, agent, employee, broker, or otherwise. A person who produces olive oil solely for his or her home use is not a handler for the purposes of the Order.

§ 1225.11 Import or Importer.

Importer means any person who imports olive oil from outside the United States for sale in the United States as a principal or as an agent, broker, or consignee of any person.

§ 1225.12 Information or Consumer Information or Industry Information.

Information means information and programs that are designed to employ information through education and other means to achieve the Purpose of the Order, including:

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

(b) *Industry information*, which means any action taken to provide information to and broaden the awareness, understanding and appreciation of industry stakeholders including Producers, Domestic First Handlers, Importers, those operating in foodservice and retailer channels of commerce and all others within the olive oil supply chains in the United States regarding the consumption, use, nutritional and culinary attributes, sustainability and care of olive oil.

With respect to both consumer information and industry information, in the absence of a mandatory U.S. national standard of identity for olive oils, whenever providing information on the definitions of olive oil grades and labeling conventions, the Cooperative shall rely on the most current version of the United States Standards for Grades of Olive Oil and Olive-Pomace Oil published by the U.S. Department of Agriculture, 75 FR 22363 (April 28, 2010), or any superseding promulgated nationally mandatory regulations.

§ 1225.13 Market or Marketing.

(a) *To market* means to sell or otherwise dispose of olive oil in interstate, foreign, or intrastate commerce.

(b) *Marketing* means the sale or other disposition of olive oil in any channel of commerce.

§ 1225.14 Olive oil.

Olive oil means the oil extracted solely by mechanical means and without the use of solvents from the fruit of the olive tree (*Olea europaea sativa* Hoffm. Et Link). As used herein, in the absence of a mandatory national standard of identity, the term "olive oil" shall include unless otherwise expressly limited the grades of olive oil defined as Virgin, Extra Virgin, Refined, and Olive Oil (consisting of a blend of virgin and refined olive oils) as defined in the most the current version of the United States Standards for Grades of Olive Oil and Olive-Pomace Oil published by the U.S. Department of Agriculture, 75 FR 22363 (April 28, 2010), or any superseding promulgated national mandatory regulations. The term "olive oil" excludes olive-pomace oils.

§ 1225.15 Order.

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

§ 1225.16 Part and subpart.

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

§ 1225.17 Person.

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

§ 1225.18 Produce or Producer.

(a) *Produce* means to extract olive oil from the fruit of the olive tree.

(b) *Producer* means any person who engages, either directly or indirectly, in the production and sale of olive oil in the United States and who owns, or shares the ownership and risk of loss of, the olive oil.

§ 1225.19 Programs, plans and projects.

Programs, plans and projects mean those research, promotion and information programs, plans, studies, or projects established pursuant to this Order.

§ 1225.20 Promotion.

Promotion means any action, including but not limited to paid advertising, public relations, and other dissemination of information for the purpose of improving the competitive position of olive oil in the marketplace and stimulating sales in the retail, food service, and industrial markets.

§ 1225.21 Public member.

Public member means a member of the Cooperative that shall be appointed in accordance with § 1225.42 who shall have no direct financial interest in the commercial production or marketing of olive oil and shall not be a director, stockholder, officer, or employee of any firm so engaged.

§ 1225.22 Purpose of the Order.

Purpose of the Order means to promote and conduct research about olive oil to increase consumption, to develop new markets and marketing strategies, to increase market efficiency, and to enhance the image of olive oil in the United States.

§ 1225.23 Research.

Research means any type of test, study, or analysis designed to generate information to advance the image, desirability, use, and/or marketability of olive oil, including without limitation research relating to product development, shelf life, merchandizing and marketing, and the nutritional value, health benefits, culinary versatility, and sustainability of olive oil.

§ 1225.24 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any 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.

§ 1225.25 State.

State means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1225.26 Suspend.

Suspend means to issue a rule under 5 U.S.C. § 553 to temporarily prevent the operation of an order or part thereof during the particular time period specified in the rule.

§ 1225.27 Terminate.

Terminate means to issue a rule under 5 U.S.C. § 553 to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1225.28 United States.

United States or "U.S." means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

The Cooperative for Olive Oil Promotion

§ 1225.40 Establishment and membership.

(a) *Establishment of the Cooperative.* There is hereby established the Cooperative for Olive Oil Promotion, herein called the Cooperative, comprised of thirteen (13) members, with twelve (12) industry members and one (1) public member, all appointed by the Secretary from nominations received pursuant to §§ 1225.41 and 1225.42:

(1) Three (3) industry members to represent Domestic First Handlers from California, at least two (2) of whom each cumulatively handled 5,000 gallons or more of olive oil in the most recent Crop Year as certified by the Domestic First Handler and otherwise meets the qualifications outlined in § 1225.41.

(2) One (1) industry member to represent Domestic First Handlers from U.S States other than California that cumulatively handled 2,000 gallons or more of olive oil in the most recent Crop Year as certified by the Domestic First Handler and otherwise meets the qualifications outlined in § 1225.41. Should there not be two nominees that meet the qualification for the seat, the Secretary may appoint a member who represents an additional Domestic First Handler from California from among any other nominees from that State who meets the qualifications outlined in § 1225.41.

(3) Eight (8) industry members to represent Importers that each cumulatively imported 5,000 gallons or more of olive oil

during the last completed Fiscal Period as certified by the Importer, that otherwise meet the qualifications outlined in § 1225.41, and that are actively engaged in the marketing of olive oil through one or more channels of trade in the United States.

(4) One (1) Public member.

(b) Representatives from a company that qualifies as both a Domestic First Handler and an Importer may serve as a Cooperative member in either capacity, but not both, and no two Cooperative members shall be employed by a single corporation, company, partnership, or any other legal entity, and any subsidiaries or affiliates thereof.

(c) *Adjustment of membership.* At least once every five years, the Cooperative will review the geographical distribution of United States production of olive oil and the quantity of imports. If warranted, the Cooperative will recommend to the Secretary that the membership on the Cooperative be altered to reflect any changes in the domestic olive oil production and the quantity of imports, including altering the allocation of seats among Domestic First Handlers or Importers and adding or reducing seats to the Cooperative.

§ 1225.41 Nominations and appointments of industry members.

(a) *Nominations for the Initial Cooperative.* The initial Cooperative shall be created as soon as practical after the Order's

establishment. The publication of the final rule establishing the Order shall solicit nominations for the twelve industry Cooperative seats (those seats described in § 1225.40 except for the public member) from Importers, Domestic First Handlers, and organizations representing Importers and Domestic First Handlers. The notice shall include: a list of the vacancies for which nominations may be submitted and qualifications for the seat, and the date by which the nominations should be received by the Secretary along with an optional background statement outlining the nominee's qualifications. Qualifications of nominees for the initial Cooperative seats shall include that such person represents a company that, for Domestic First Handlers handled olive oil during the last completed Crop Year, and for Importers, imported olive oil during the last completed Fiscal Period in volumes sufficient to meet the threshold requirements for the specific industry seats outlined in 1225.40(a), which company is willing to commit to paying assessments under the Order during each year of the term for the seat to which they are appointed even if the volume of olive oil the company handles or imports should fall below threshold levels in any Crop Year or Fiscal Period year as the case may be. The Secretary will make the nominations it has received for the initial Cooperative available to industry associations which represent a substantial number of either Importers or Domestic First Handlers that would be responsible for paying assessments, and such associations may provide to the

Secretary recommendations concerning the nominees which the Secretary may consider in making appointments.

(b) *Nominations for Subsequent Cooperatives.* After establishment of the initial Cooperative, in any subsequent year in which an appointment to the Cooperative is to be made, the Cooperative shall conduct outreach to Domestic First Handlers and Importers and organizations representing Importers and Domestic First Handlers, soliciting nominations to be received by the Cooperative at least nine months prior to the expiration of the terms for any seats for which an appointment is to be made. The outreach shall include at a minimum the following information: a list of the vacancies for which nominations may be submitted and qualifications for the seat and the date by which the nominations should be received along with an optional background statement outlining the nominee's qualifications. Qualifications for appointment to subsequent Cooperatives shall include that such person represents a company that for Domestic First Handlers handled olive oil during the last completed Crop Year, and for Importers imported olive oil in the last completed Fiscal Period, in volumes sufficient to meet the threshold requirements for the specific industry seats outlined in 1225.40(a), that they paid assessments to the Cooperative during the most recently completed Fiscal Period, and that the company they represent is willing to commit to paying assessments under the Order for each year of the term of the seat to

which they are appointed even if the volume of olive oil the company handles or imports should fall below threshold levels in any Crop Year or Fiscal Period as the case may be. The Cooperative will evaluate all eligible nominees and at least six months prior to the expiration of the terms for any seats for which an appointment is to be made, recommend to the Secretary the name of one nominee and at least one additional nominee for each open seat. Other qualified nominees interested in serving in the open seats but not recommended by the Cooperative will be designated by the Cooperative as additional nominees and will also be provided to the Secretary for consideration. The Cooperative will provide to the Secretary any background statements it has received with respect to the nominees or additional nominees. When making recommendations for appointments, in addition to considering whether a nominee's qualifications indicate necessary knowledge, skills, abilities and commitment to the purpose of the Order, the Cooperative should consider the objective of fairly and equitably serving persons responsible for paying assessments in an industry that is diverse in terms of size of the operations, methods of production and distribution, and other distinguishing factors.

(c) Appointments by the Secretary to Initial and Subsequent Cooperatives. From the nominations received, the Secretary shall appoint the industry members to the initial and subsequent Cooperatives, considering the nominees' knowledge, skills, and

professional experience and the extent to which they may have demonstrated a commitment to the industry and to achieving the purpose of the Order.

(d) If there is an insufficient number of nominees for any expiring seat on the Cooperative, additional nominees shall be obtained in a manner prescribed by the Secretary. Should the Cooperative fail to nominate individuals for appointment, the Secretary may appoint members as appropriate.

(e) The Cooperative may recommend to the Secretary modifications to its nomination procedures as it deems appropriate. Any such modifications shall be implemented through rulemaking by the Secretary.

§ 1225.42 Nominations and appointments of public member.

The public member shall be nominated by the industry members of the Cooperative. The Cooperative shall nominate two (2) individuals for the public member position by holding an election. Voting for public member nominees shall be conducted by a quorum of the Cooperative and shall be on the basis of one vote per Cooperative member. Election of nominees shall be based on a simple majority of those present and voting.

(a) For the initial Cooperative, the election of public member nominees shall be held within thirty (30) days of the appointment of

the twelve (12) industry members.

(b) For subsequent appointments, the election of public member nominees shall take place and nominations submitted to the Secretary prior to September 1 during the last year of the current public member's term.

(c) The Cooperative may prescribe such additional qualifications, administrative rules and procedures for selection and voting for public member nominees as it deems necessary, and the Secretary approves.

(d) Each person nominated for the position of public member of the Cooperative shall qualify by filing a written acceptance with the Secretary within fourteen (14) calendar days of completion of the Cooperative meeting at which public member nominees were selected.

(e) The Secretary will appoint one of the qualified nominees as the public member.

§ 1225.43 Terms of office.

(a) *Industry members.*

(1) Each term of office for industry members shall begin on January 1 (or such later date on which the member's appointment is made) of the first year of the member's term and end on December 31 of the last year of the term. No industry member may serve more

than two consecutive terms, excluding any term of office less than three years.

(2) The industry members appointed to the initial Cooperative will be designated randomly by the Secretary to serve in one of three groups A, B or C, each of which will consist of four members including at least two Importers and one Domestic First Handler. The term of the industry members of the initial Cooperative will depend on the group to which they are appointed: Group A members will serve three years, Group B members will serve two years and Group C members will serve one year, except that in each case, the first year of the applicable term will be a partial year if the appointment is made after January 1.

(3) The industry members appointed after the initial Cooperative appointments shall each serve three-year terms except that the first year of the applicable term will be a partial year if the appointment is made after January 1.

(b) *Public member.* A public member shall serve terms of up to 1 to 3 years, as designated by the Cooperative when electing nominees, commencing on January 1 (or such later date on which the member's appointment is made) of the first year of the member's term and end on December 31 of the last year of the designated term. The first year of the applicable term will be a partial year if the appointment is made after January 1.

§ 1225.44 Vacancies.

(a) In the event that any industry member of the Cooperative ceases to be affiliated with the company for which the member was affiliated at the time the member was appointed, that member's term shall automatically terminate and the seat in which the member served shall become vacant.

(b) If a member of the Cooperative consistently refuses to perform the duties of a member of the Cooperative, engages in acts of dishonesty or willful misconduct or that are potentially detrimental to the achievement of the purposes of the Order or the Act, the Cooperative may recommend to the Secretary that such a member be removed. If the Secretary finds the recommendation of the Cooperative shows adequate cause, the Secretary shall remove such member from the office.

(c) Without recommendation of the Cooperative, a member may be removed by the Secretary upon showing of adequate cause, including the continued failure by a member to submit reports or remit assessments required under this part, or if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Order or the Act.

(d) Should the position of a member become vacant, successors for the unexpired terms of such member shall be appointed in the manner specified in §§ 1225.41 and 1225.42,

except that the timing of the process may be accelerated to fill the vacancy if appropriate under the circumstances. Nomination and replacement shall not be required if the unexpired terms are less than six months.

§ 1225.45 Procedure.

The organization of the Cooperative and the procedures for the conducting of meetings of the Cooperative shall be in accordance with its bylaws, which shall be established by the Cooperative and approved by the Secretary. The bylaws shall be consistent with the following:

(a) Cooperative meetings and committee meetings may be held in person or, when practical and necessary to facilitate attendance by members or USDA, especially when matters will be subject to a vote, by any means of communication available, electronic, digital, or otherwise, that effectively assembles members and facilitates open communication and voting. At a Cooperative meeting, a quorum will exist when a majority of members are present.

(b) The Cooperative shall manage the establishment or re-establishment of committees, including appointing or removing committee members or committee officers, and/or disbanding committees. Committee members shall be appointed by the Chairperson and approved by the Cooperative. Committees may consist of individuals other than Cooperative members and such individuals may vote in committee

meetings. As a committee meeting, a quorum will exist when a majority of those assigned to the committee are present.

All Cooperative and committee members will receive at least ten (10) days' advance notice of all Cooperative and committee meetings unless the chairperson declares an emergency meeting.

(d) Each member of the Cooperative or committee will be entitled to one vote on any matter put to the Cooperative, and the motion will be carried if supported by a majority of those present and voting. The Chairperson shall be a voting member. There shall be no voting by proxy.

§ 1225.46 Compensation and reimbursement.

The members of the Cooperative and any committees shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Cooperative, incurred by them in the performance of their duties.

§ 1225.47 Powers and duties.

The Cooperative shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Cooperative, and such rules as may be necessary to administer the

Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Cooperative a chairperson, other officers, committees, and subcommittees at the first meeting of each Fiscal Period, as the Cooperative determines to be appropriate;

(d) To employ persons, other than the Cooperative members, or to enter into contracts, other than with Cooperative members, as the Cooperative considers necessary to assist the Cooperative in carrying out its duties, and to determine the compensation and specify the duties of such persons, or to determine the contractual terms of such parties;

(e) To develop programs, plans, and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of such programs, plans, or projects, of promotion, research, or information, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Cooperative shall develop and submit to the Cooperative a proposed activity; keep accurate records of all its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Cooperative of activities conducted under the contract or

agreement; and make such other reports available as the Cooperative or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Cooperative 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 Cooperative of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Cooperative may require;

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

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

(f) To prepare and submit for approval of the Secretary Fiscal Period budgets in accordance with § 1225.50;

(g) To invest assessments collected under this part in accordance with § 1225.50;

(h) To maintain such records and books and prepare and submit

such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Cooperative;

(i) To cause its books to be audited by a competent auditor at the end of each Fiscal Period and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(j) To give the Secretary the same notice of meetings of the Cooperative as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Cooperative to the Secretary;

(k) To act as intermediary between the Secretary and any Domestic First Handler or Importer;

(l) To furnish to the Secretary any information or records that the Secretary may request;

(m) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(n) To recommend to the Secretary such amendments to the Order as the Cooperative considers appropriate; and

(o) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer 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.

§ 1225.48 Prohibited activities.

The Cooperative may not engage in, and shall prohibit the employees and agents of the Cooperative from engaging in:

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

(b) Any use of funds collected by the Cooperative under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order; and

(c) Any program, plan, or project including advertising that is false or misleading or disparaging to any type, grade, origin or brand of olive oil or any other agricultural commodity.

Expenses and Assessments

§ 1225.50 Budget and expenses.

(a) At least sixty (60) days prior to the beginning of each Fiscal Period, and as may be necessary thereafter, the Cooperative shall prepare and submit to the Secretary a budget for the Fiscal

Period covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

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

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

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

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

(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 including shifting funds from one program, plan, or project to another must be approved by the Secretary.

(d) The Cooperative 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 Cooperative 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 Cooperative.

(e) With approval of the Secretary, the Cooperative may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Cooperative. Any funds borrowed by the Cooperative shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Cooperative.

(f) The Cooperative 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 be consistent with the purpose of the Order, and the Cooperative shall retain complete control of their use.

(g) The Cooperative may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, for authorized activities.

(h) The Cooperative 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.

(i) For Fiscal Periods beginning three (3) or more years after the date of the establishment of the Cooperative, the Cooperative may not expend for administration, maintenance, and functioning of the

Cooperative in any Fiscal Period an amount that exceeds fifteen (15) percent of the assessments and other income received by the Cooperative for that Fiscal Period, except with the approval of the Secretary in the case the first Fiscal Period. Reimbursements to the Secretary required under paragraph (h) are excluded from this limitation on spending.

(j) The Cooperative may establish an operating monetary reserve and may carry over to subsequent Fiscal Periods excess funds in any reserve so established, *provided, however,* that the funds in the reserve do not exceed the approximate aggregate of two Fiscal Periods' budgets of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

(k) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Cooperative may invest assessments and all other revenues collected under this part in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve

System;

(4) Obligations fully guaranteed as to principal interest by the United States; or

(5) Other investments as authorized by the Secretary.

§ 1225.51 Financial statements.

(a) The Cooperative shall prepare and submit financial statements to the Secretary monthly or at any other time interval requested by the Secretary. Each such financial statement shall include a balance sheet, income statement, and expense budget. The expense budget shall show the expenditures during the period covered by the report, the year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within seventy-five (75) days after the end of the period to which it applies.

(c) The Cooperative shall submit annually to the Secretary an annual financial statement within one hundred twenty (120) days after the end of the Fiscal Period to which it applies.

§ 1225.52 Assessments.

(a) The funds to cover the Cooperative's expenses shall be paid from assessments collected from Domestic First Handlers and Importers and other funds available to the Cooperative.

(b) The assessment rate shall be eight cents (\$0.08) per gallon of olive oil handled or imported. The rate of assessment may be increased or decreased as recommended by the Cooperative and approved by the Secretary. Such an increase or decrease may occur not more than once annually. Any change in this assessment rate shall be announced by the Cooperative at least thirty (30) days prior to going into effect.

(c) Assessments on Domestic Olive Oil.

(1) The payment of assessments on Domestic Olive Oil will be the responsibility of Domestic First Handlers. The Domestic First Handler shall maintain a separate record of each Producer whose Domestic Olive Oil is handled, including the Domestic Olive Oil owned by the Domestic First Handler and Domestic Olive Oil that is exported. Such records shall be retained for at least two (2) years.

(2) The payment of assessments on Domestic Olive Oil is to be received by the Cooperative along with the assessment report required by § 1225.70 by the first day of March of the Crop Year unless the Cooperative determines that assessments due from a Domestic First Handler shall be paid to the Cooperative at a different time and manner, with approval of the Secretary. Should a Domestic First Handler need to correct or adjust an assessment report already submitted, a revised assessment report must be submitted to the Cooperative as soon as possible thereafter along

with payment of any additional assessments that need to be remitted because of such adjustments.

(d) *Assessments on Imported Olive Oil.*

(1) Each Importer of olive oil shall pay assessments to the Cooperative through Customs on olive oil imported into the United States.

(2) Because imported olive oil entered into the U.S. will have a quantity associated with it in kilograms, the factor that shall be used to convert one gallon to kilograms is .289687. Therefore, the assessment rate for imported olive oil will be \$0.0232 per kilogram.

(3) The import assessment shall be uniformly applied to imported olive oil identified by heading 1509 in the Harmonized Tariff Schedule (HTS) of the United States, or any other numbers used to identify olive oil.

(4) The assessments due on imported olive oil shall be paid when they are released from custody by Customs and introduced into the stream of commerce in the United States.

(5) The collection of assessment shall commence on or after a date established by the Secretary and shall continue until terminated by the Secretary. If the Cooperative is not constituted on the date the first assessments are to be remitted, the Secretary shall have the authority to receive assessments on behalf of the Cooperative and may hold such assessments in an interest-bearing account until the Cooperative is constituted and the funds are

transferred to the Cooperative.

(e) The Cooperative may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

§ 1225.53 Exemptions.

(a) *De minimis*. Domestic First Handlers and Importers who handle less than five thousand (5,000) gallons on an annual basis are exempt from the payment of assessments as provided in § 1225.52. Any Importer who paid assessments in the prior Fiscal Period may request a refund based on the *de minimis* exemption by providing such information in the Importer's assessment report to be filed pursuant to § 1225.60, including supporting documentation such as import data and proof of payment of assessments. If the Cooperative grants the exemption, it shall refund such assessments no later than thirty (30) days after an application is granted by the Cooperative. No interest will be paid on such assessment refunds.

(b) *Organic*. A Domestic First Handler or Importer who either handles or imports olive oil produced under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part for such olive oil, provided, that:

(1) only agricultural products certified as "organic" or "100 percent organic" (as defined in the NOP) are eligible for exemption;

(2) the exemption shall apply to all certified "organic" or "100 percent organic" (as defined in the NOP) products of a Producer regardless of whether the olive oil subject to the exemption is produced by a person that also produces conventional or nonorganic olive oil;

(3) the Domestic First Handler or Importer obtains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501-6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205) from a producer who maintains such valid certificate; and

(4) Domestic First Handlers and Importers that qualify for an exemption under this subsection shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for the exemption.

(c) *Application for Exemption by Domestic First Handlers.* To apply for exemption under subsection (b) of this section, an eligible Domestic First Handler shall submit a request to the Cooperative on an *Organic Exemption Request Form* (Form AMS-15) at the time it submits its assessment report pursuant to § 1225.70. A Domestic First Handler request for such exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid

certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant first handles organic products eligible to be labeled "organic" or "100 percent organic" under the NOP;

(4) A requirement that the applicant attach a copy of the certificate of organic operation issued by a USDA-accredited certifying agent to the Producer of the product that the applicant handled, if not produced by the applicant itself;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Cooperative, with the approval of the Secretary.

If a Domestic First Handler complies with the requirements of this section, the Domestic First Handler shall, in the assessment report, deduct the gallonage for which an exemption is requested. The Cooperative will have thirty (30) calendar days to review the exemption request. If the application is disapproved, the Cooperative will notify the applicant of the reason(s) for disapproval within the same timeframe, and request that the Domestic First Handler submit an adjusted assessment report along with any required additional payments. ☹

(d) *Application for Exemption by Importers.* An Importer who imports olive oil that is eligible to be labeled as "organic" or

"100 percent organic" under the NOP or certified as "organic" or "100 percent organic" under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments. Such Importer may submit documentation to the Cooperative and request an exemption from assessment on certified "organic" or "100 percent organic" olive oil on an *Organic Exemption Request Form* (Form AMS-15) at any time initially, and annually thereafter on or before the beginning of the Fiscal Period, provided the Importer continues to be eligible for the exemption. This documentation shall include the same information required of a Domestic First Handler in paragraph (b)(1) of this section. If the Importer complies with the requirements of this section, the Cooperative will grant the exemption and issue a certificate of exemption to the Importer within the applicable timeframe. The exemption will apply immediately following the issuance of the certificate of exemption. If Customs collects the assessment on exempt product that is identified as "organic" by a number in the Harmonized Tariff Schedule, upon request of the Importer who has a certificate of exemption the Cooperative must reimburse the Importer following receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the Importer may apply to the Cooperative for a reimbursement of assessments paid, and the Importer must submit satisfactory proof to the Cooperative that the Importer

paid the assessment on exempt organic product.

§ 1225.54 Assessment Credit.

(a) For any given Fiscal Period, the Cooperative may provide subject to the approval of the Secretary an assessment credit for Domestic First Handlers who contributed during the prior Fiscal Period to organizations established by local, regional, or State governments to engage in generic promotion, research, and information programs in the United States similar to those the Cooperative has the authority to conduct, which credit may be used as partial fulfillment of assessment due to the Cooperative under the Order. Assessment credit may be obtained only by following the procedures prescribed in this section and any regulations recommended by the Cooperative and prescribed by the Secretary.

(1) No credit shall be given for funds expended by such local, regional, or State organizations to the extent they were for administrative purposes or expenses. Credit may only be given for funds expended on promotion, research, and information program activities that were generic, e.g., did not pertain to specific brands or origins of olive oil, and would otherwise have been permissible for the Cooperative to engage in under the Order.

(2) The aggregate credit allowable in any Fiscal Period shall be limited to an amount determined by the Cooperative subject to the approval of the Secretary and shall be equal to not more than the

determined percentage rate of the total assessments paid by any Domestic First Handler in a year to any State, regional, or local program.

(3) A Domestic First Handler who owes or will owe assessments for a given Fiscal Period shall make a written request to the Cooperative by January 15 of that Fiscal Period for any credit it is claiming for payments made to local, regional, or State programs in the prior Fiscal Period. Such written request shall include:

(A) The Domestic First Handler's name and address;

(B) The name and address of the person who collected the assessment in the prior Fiscal Period for which credit is requested;

(C) The total amount of credit requested;

(D) The date or dates during the prior Fiscal Period on which the assessments were paid along with evidence of payment;

(E) A description of the generic activities that were conducted or are being conducted by the local, regional, or State organization with funds paid in the prior Fiscal Period, along with activity and financial reports from such organization that support the claim and demonstrate the percentage of assessments collected that were spent on administrative expenses of the organization; and

(F) The individual's signature or properly witnessed mark.

(4) Credit requests under this subsection will be considered granted

unless rejected or challenged by the Cooperative within 30 calendar days of receipt of the completed request.

(5) A Domestic First Handler that has been granted credit shall include this information in the assessment report required by the Cooperative pursuant to § 1225.60, adjusting the assessment amount that would otherwise be payable.

§ 1225.55 Refund escrow accounts.

(a) The Cooperative shall establish an interest-bearing escrow account with a financial institution that is a member of the Federal Reserve System and will deposit into such account an amount equal to ten percent (10%) of the assessments collected during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum.

(b) If the Order is not approved by the required referendum, the Cooperative shall promptly pay refunds of assessments to all Domestic First Handlers and Importers that have paid assessments during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum in the manner specified in Subpart B of this section.

(c) If the amount deposited in the escrow account is less than the amount of all refunds that Domestic First Handlers and

Importers subject to the Order have a right to receive, the Cooperative shall prorate the amount deposited in such account among all Domestic First Handlers and Importers who desire a refund of assessments paid no later than 120 days after the Final Rule terminating the Assessments is published.

(d) Any Domestic First Handler or Importer requesting a refund shall submit an application on the prescribed form to the Cooperative within sixty (60) days from the date the results of the required referendum conducted under § 1225.81 are announced by the Secretary. The Domestic First Handler and Importer shall also submit documentation to substantiate that assessments were paid. Any such demand shall be made by the Domestic First Handler or Importer in accordance with the provisions of this subpart and in a manner consistent with regulations recommended by the Cooperative and prescribed by the Secretary.

(e) If the Order is approved by the required referendum conducted under § 1225.81 then:

- (1) The escrow account shall be closed; and
- (2) The funds shall be available to the Cooperative for disbursement under § 1225.50.

Promotion, Research, and Information

§ 1225.60 Programs, plans, and projects.

(a) The Cooperative shall receive and evaluate, or on its own

initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including consumer information and industry information, with respect to olive oil; and

(2) The establishment and conduct of research and education with respect to the use, nutritional value, sustainability, sale, distribution, and marketing (including menu development) of olive oil, and the creation of new products thereof, to the end that the marketing and use of olive oil may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of olive oil.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is approved, the Cooperative 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 Cooperative to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Cooperative that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the

Cooperative shall terminate such program, plan, or project.

§ 1225.61 Independent evaluation.

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

§ 1225.62 Patents, copyrights, trademarks, information, publications, and product formulations.

(a) Except as provided in paragraph (b) of this section, any patents, copyrights, inventions, trademarks, information, publications, or product formulations developed through the use of funds collected by the Cooperative under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Cooperative, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, inventions, trademarks, information, publications, or product formulations, inure

to the benefit of the Cooperative; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Cooperative; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1225.83 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions, trademarks, information, publications, or product formulations be developed through the use of funds collected by the Cooperative under this subpart and funds contributed by another organization or person, the ownership and related rights to such patents, copyrights, inventions, trademarks, information, publications, or product formulations shall be determined by an agreement between the Cooperative and the party contributing funds towards the development of such patents, copyrights, inventions, trademarks, information, publications, or product formulations in a manner consistent with paragraph (a) of this section.

Reports, Books, and Records

§ 1225.70 Reports.

(a) *Domestic First Handlers.* Each Domestic First Handler subject to this subpart shall be required to provide an assessment report by March 1 of each year with such information relating to the then current Crop Year as required by the Cooperative, with the approval of the Secretary, which must include but not be limited to the name, address, email address, and EIN number of the person submitting the report (as well as that of persons from whom they purchased olives or olive oil) and the contact information of the person completing the report on his or her behalf, the number of gallons handled, whether and when any assessments relating to that handled olive oil is owed or was paid, whether any gallons handled are subject to exemption or credit, and whether the Domestic First Handler wishes to voluntarily pay assessments that are not otherwise required, and if so, in what amount.

(b) *Importers.* Each Importer subject to this subpart shall be required to provide an assessment report by March 1 of each year with such information relating to the prior Fiscal Period as required by the Cooperative, with the approval of the Secretary, which must include but not be limited to the name, address, email address, and EIN number of the person submitting the report and the contact information of the person completing the report on his or her behalf, the number of gallons imported, whether and when

any assessments relating to that imported olive oil is owed or was paid, whether any gallons imported are subject to exemption, and whether the Importer wishes to voluntarily pay assessments that are not otherwise required, and if so, in what amount.

(c) Payment of any accrued but unpaid assessments is required by March 1 of each year and should accompany the reports required in this section.

§ 1225.71 Books and records.

Each Domestic First Handler and Importer subject to this subpart shall maintain and make available for inspection by employees of the Cooperative or 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 reports required. Such records shall be retained for at least two (2) years beyond the Fiscal Period of their applicability.

§ 1225.72 Confidential treatment.

All information obtained from books, records, or reports pursuant the Act, this subpart and §§ 1225.70 and 1225.71 and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Cooperative, all officers and employees and former officers and

employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Cooperative members, or other Importers or Domestic First Handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only 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 United States is a party and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) the issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements will not identify the information furnished by any person; and

(b) the publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1225.80 Right of the Secretary.

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

§ 1225.81 Referenda.

(a) *Required referendum.* Not later than 3 years after assessments first begin under the Order, the Secretary shall conduct a referendum among the Domestic First Handlers and Importers eligible to vote as provided in § 1225.91 and § 1225.92 to determine whether such persons favor the continuation, suspension, amendment, or termination of this Order.

(b) *Subsequent referenda.* The Secretary shall conduct subsequent referenda among the Domestic First Handlers and Importers eligible to vote as provided in § 1225.91 and § 1225.92 to ascertain whether such persons favor the continuation, suspension, amendment, or termination of this Order:

(1) every seven years;

(2) at the request of the Cooperative established in this Order;

(3) at the request of 10 percent or more of the number of persons eligible to vote in a referendum as set forth under the Order; or

(4) At any time as determined by the Secretary.

(c) *Results of referenda.* The referenda conducted under this section shall be considered approved if the Domestic First Handlers and Importers eligible to vote as provided in § 1225.91 and § 1225.92 voting for approval represent a majority of the volume of the olive oil for which assessments were paid during a representative period determined by the Secretary.

§ 1225.82 Suspension, termination and modification.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds 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 this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to § 1225.81 of the Order.

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

(1) Not later than one hundred eighty (180) days after making the determination, suspend or terminate collection of assessments

under this subpart; and

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

(c) Any person paying assessments under the Order may file with the Secretary a petition stating that the Order or any provision thereof is not in accordance with law and requesting a modification of the Order or an exemption from the Order.

§ 1225.83 Proceedings after termination.

(a) Upon the termination of this subpart, the Cooperative shall recommend not more than three (3) of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Cooperative. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property then in the possession or under control of the Cooperative, 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 Cooperative under any contracts or agreements entered into 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 Cooperative and the trustees, to such person or persons as the Secretary may direct; and

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

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Cooperative and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, proportionately to trade associations representing the interests of either Domestic First Handlers and Importers in the interest of continuing olive oil promotion, research, and information programs.

§ 1225.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the

termination of this subpart or of any regulation issued pursuant thereto, 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 regulation issued thereunder;

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

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

§ 1225.85 Personal liability.

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

§ 1225.86 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances 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.

§ 1225.87 Amendments.

Amendments to this subpart may be proposed by the Cooperative or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1225.88 OMB control numbers.

The control number assigned to the information collection requirements for this subpart pursuant by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 is OMB control number [____], except for the Cooperative nominee background statement, which is assigned OMB control number [].

Subpart B—Referendum Procedures

§ 1225.90 General.

Referenda to determine whether eligible Domestic First Handlers and Importers favor the issuance, continuance, amendment, suspension, or termination of the Order shall be conducted in accordance with this subpart.

§ 1225.91 Definitions.

For this subpart's purposes, the definitions of subpart A are incorporated by reference.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to delegate, 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) *Eligible Domestic First Handler* means any Domestic First Handler that paid assessments therefore during the representative period.

(c) *Eligible Importer* means any Importer person who imported five thousand (5,000) gallons or more of olive oil into the United States and paid assessments therefore during the representative period.

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

(e) *Representative period* means the period designated by the Department.

§ 1225.92 Voting.

(a) Each Eligible Domestic First Handler and Eligible Importer 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 Domestic First Handler or Eligible Importer, or an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity. Anyone voting in a referendum shall certify that they are an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and have the authority to take such action.

Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) A single entity who qualifies both as an Eligible Domestic First Handler and Eligible Importer may cast one vote in the referendum.

(d) All ballots are to be cast by mail or other means, as instructed by the Department.

§ 1225.93 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, consistent with the provisions of this subpart, 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 using 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 domestic manufacturers 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 to monitor the referendum process;

(f) Prepare a report on the referendum; and

(g) Announce the results to the public.

§ 1225.94 Subagents.

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

§ 1225.95 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1225.96 Referendum report.

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

§ 1225.97 Confidential information.

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

§ 1225.98 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 4 U.S.C. is OMB control number [].

Subpart C—Administrative Provisions

§ 1225.100 Late Payment and Interest Charges

(a) A late payment charge shall be imposed on any Domestic First Handler or Importer who fails to make timely remittance to the Cooperative of the total assessments for which they are liable. The late payment will be imposed on any assessments not received within 30 calendar days of the date they are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued.

(b) In addition to the late payment charge, one point five percent (1.5%) per month interest on the outstanding balance, including any late payment and accrued interest, will be added to any accounts for which payment has not been received by the Cooperative within sixty (60) calendar days after the day assessments are due. Interest will continue to accrue monthly until the outstanding balance is paid to the Cooperative.

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

Exhibit 2

National Attitude and Usage Report, Rose Partners, LLC, March 2018