

biotechnology (e.g., increasing use of genetically engineered plants to produce pharmaceutical and industrial compounds) and changes in the scope of the Agency's authority under the Plant Protection Act (7 U.S.C. 7701 *et seq.*). The proposed revisions would be based in part upon environmental and pest risk criteria identified and analyzed in the EIS.

APHIS will reexamine the current regulations for the purpose of updating those regulations with due regard for the types of products being tested, and that may be tested in the future; the potential risks involved; and the quality of the human environment. Issues regarding possible regulatory changes with the potential to affect the quality of the human environment include the following:

1. APHIS is considering broadening its regulatory scope beyond genetically engineered organisms that may pose a plant pest risk to include genetically engineered plants that may pose a noxious weed risk and genetically engineered organisms that may be used as biological control agents. Do regulatory requirements for these organisms need to be established? What environmental considerations should influence this change in regulatory scope?

2. APHIS is considering revisions to the regulations that would define specific risk-based categories for field testing, including (a) product types shown to pose low pest and environmental risks; (b) product types considered to pose a noxious weed risk, of unknown plant pest or noxious weed risk, containing sequences of unknown phenotypic function, and involving new plant-incorporated protectants that have not completed applicable review at EPA; and (c) pharmaceutical or industrial crops not intended for food or feed. What environmental factors should be considered in further delineating such requirements? What criteria should be used to establish the risk-based categories? Should certain low-risk categories be considered for exemption from permitting requirements? If so, what criteria should apply?

3. APHIS is considering ways to provide regulatory flexibility for future decisions by allowing for commercialization of certain genetically engineered organisms while continuing, in some cases, to regulate the organisms based on minor unresolved risks. Other regulated articles could be treated as they have been under the current system, in which all regulatory restrictions are removed. What environmental factors should be

considered in distinguishing between these kinds of decisions?

4. Are there changes that should be considered relative to environmental review of, and permit conditions for, genetically engineered plants that produce pharmaceutical and industrial compounds? Should the review process, permit conditions, and other requirements for non-food crops used for production of pharmaceutical and industrial compounds differ from those for food crops? How should results of a food safety evaluation affect the review, permit conditions, and other requirements for these types of plants? How should the lack of a completed food safety review affect the requirements for these types of plants?

5. *Noxious weed*, as defined in the Plant Protection Act, includes not only plants, but also plant products. Based on that authority, APHIS is considering the regulation of nonviable plant material. Is the regulation of nonviable material appropriate and, if so, in what cases should we regulate?

6. APHIS is considering establishing a new mechanism involving APHIS, the States, and the producer for commercial production of plants not intended for food or feed in cases where the producer would prefer to develop and extract pharmaceutical and industrial compounds under confinement conditions with governmental oversight, rather than use the approval process for unconfined releases. What should be the characteristics of this mechanism? To what extent should this mechanism be employed for commercial production of plants not intended for food or feed? What environmental considerations should influence the development of this mechanism?

7. The current regulations have no provision for adventitious presence—intermittent and low-level presence in commercial crops, food, feed, or seed of genetically engineered plant material that has not completed the required regulatory processes. Should APHIS establish a separate component within a revised regulatory system to address adventitious presence? Should the low-level occurrence be exempt from APHIS regulation? If so, what are the conditions under which the low level occurrence should be allowed? What environmental considerations would apply to establishment of such allowances?

8. Should APHIS provide for expedited review or exemption from review of certain low-risk genetically engineered commodities intended for importation that have received all necessary regulatory approvals in their country of origin and are not intended

for propagation in the United States? What environmental considerations should be applied to determination of any such allowances?

9. Currently, genetically engineered *Arabidopsis* spp. are exempt from interstate movement restrictions under part 340 because they are well understood and extensively used in research. Should the regulation of other similar genetically engineered plants be consistent with the regulation of genetically engineered *Arabidopsis* spp.? Should the exemption from interstate movement restrictions apply only to those products that meet specific risk-based criteria? What should these criteria be? What species and/or traits should be considered for this exemption? What environmental factors should be considered?

10. What are other areas where APHIS might consider relieving regulatory requirements based on the low level of risk?

11. What environmental considerations should be evaluated if APHIS were to move from prescriptive container requirements for shipment of genetically engineered organisms to performance-based container requirements, supplemented with guidance on ways to meet the performance standards?

Comments that identify other issues or alternatives that should be examined in the EIS would be especially helpful. All comments will be considered fully in developing a final scope of study. When the draft EIS is completed, a notice announcing its availability and an invitation to comment on it will be published in the **Federal Register**.

Done in Washington, DC, this 16th day of January, 2004.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket No. FV04-985-1 PR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2004-2005 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2004–2005 marketing year, which begins on June 1, 2004. This rule invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 766,880 pounds and 40 percent, respectively, and for Class 3 (Native) spearmint oil of 773,474 pounds and 36 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

**DATES:** Comments must be received by February 23, 2004.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Hiller, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No.

985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the “order.” This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, which may be purchased from or handled for producers by handlers during the 2004–2005 marketing year, which begins on June 1, 2004. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the Committee, with all of its eight members present, met on October 8, 2003, and recommended salable quantities and allotment percentages for both classes of oil for the 2004–2005 marketing year. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 766,880 pounds and 40 percent, respectively. For Native spearmint oil, with six members in favor, one opposed, and one abstention, the Committee

recommended the establishment of a salable quantity and allotment percentage of 773,474 pounds and 36 percent, respectively.

This rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2004–2005 marketing year, which begins on June 1, 2004. Salable quantities and allotment percentages have been placed into effect each season since the order’s inception in 1980.

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, and Oregon and a portion of Nevada and Utah. Scotch spearmint oil is also produced in the Midwest states of Indiana, Michigan, and Wisconsin, as well as in the states of Montana, South Dakota, North Dakota, and Minnesota. The production area covered by the marketing order currently accounts for approximately 65 percent of the annual U.S. sales of Scotch spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world’s supply of Scotch spearmint oil, of which approximately 72 percent was sales from the regulated production area in the Far West. During the period from 1981 to 1990 the Far West sales declined to an average of 67 percent of the world’s Scotch spearmint oil. Sales from the Far West continued to decline during the period from 1991 to 2000 to an average of 44 percent of the world’s Scotch spearmint oil. It is estimated for 2003 that the Far West will decline to 30 percent of the world’s Scotch spearmint oil sales.

The steady decline in world sales for the Far West region is directly attributed to the increase in global production. Other factors that have played a significant role include the overall quality of the imported oil and technological advances that allow for more blending of lower quality oils. Such factors have provided the Committee with challenges in accurately predicting trade demand for Scotch oil. This, in turn, has made it difficult to balance available supplies with needs and to achieve the Committee’s overall goal of stabilizing producer and market prices.

The marketing order has continued to contribute to price and general market stabilization for Far West producers. The Committee, as well as spearmint oil producers and handlers attending the October 8, 2003, meeting estimated that the 2003 producer price of Scotch oil would average \$9.50 per pound, which represents the fourth price increase since 1999. However, this producer price is below the cost of production for

most producers as indicated in a study from the Washington State University Cooperative Extension Service (WSU), which estimates production costs to be between \$13.50 and \$15.00 per pound.

This low level of producer returns has caused a reduction in acreage. The Committee estimates that the acreage of Scotch spearmint has declined from about 10,000 acres in 1998 to about 4,372 acres currently. Based on the reduced Scotch spearmint acreage, the Committee estimates that production for the current season (the 2003–2004 marketing season) will be about 565,261 pounds.

The Committee recommended the 2004–2005 Scotch spearmint oil salable quantity (766,880 pounds) and allotment percentage (40 percent) utilizing sales estimates for 2004–2005 Scotch oil as provided by several of the industry's handlers, as well as historical and current Scotch oil sales levels. Between June 1, 2003, and September 30, 2003, 143,124 pounds of Scotch oil were sold, a level dramatically below the most recent five-year average for this four-month period of 448,084 pounds. Handlers are estimating that sales for the 2003–2004 marketing year may range from a low of 600,000 pounds to a high of 750,000 pounds. With 354,053 pounds carried in to the current marketing year and an estimated 565,261 pounds being produced, the total available supply for 2003–2004, including the 650,000 pounds already sold, is 919,314 pounds.

The recommendation for the 2004–2005 Scotch spearmint oil volume regulation is consistent with the Committee's stated intent of keeping adequate supplies available at all times, while attempting to stabilize prices at a level adequate to sustain the producers. Furthermore, the recommendation takes into consideration the industry's desire to compete with less expensive oil produced outside the regulated area.

Although Native spearmint oil producers are facing market conditions similar to those affecting the Scotch spearmint oil market, unlike Scotch, over 90 percent of the U.S. production of Native spearmint is produced within the Far West production area. Also, unlike Scotch, most of the world's supply of Native spearmint is produced in the U.S.

The current, flat market contributed to the Committee's recommendation for a salable quantity of 773,474 pounds and an allotment percentage of 36 percent for Native spearmint oil for the 2004–2005 marketing year. The supply and demand characteristics of the current Native spearmint oil market are keeping the price relatively steady at about \$9.50

per pound—a level the Committee considers too low for the majority of producers to maintain viability. The WSU study referenced earlier indicates that the cost of producing Native spearmint oil ranges from \$10.26 to \$10.92 per pound.

The Committee estimates that 853,820 pounds of Native oil is expected to be produced this year. With current sales approximating the five-year average of about 1,021,702 pounds, the current season's salable quantity of 808,993 pounds coupled with the June 1, 2003, carry-in of 163,617 pounds will likely produce a surplus of oil, adding to the nearly 1.4 million pounds already in reserve. The Committee is estimating that about 865,000 pounds of Native spearmint oil, on average, may be sold during the 2004–2005 marketing year. This estimate, combined with the information available regarding current supply and price, helped lead the Committee to its recommendation for a 2004–2005 salable quantity of 773,474 pounds. When considered in conjunction with the estimated carry-in of 130,610 pounds of oil on June 1, 2004, the recommended salable quantity results in a total available supply of Native spearmint oil next year of about 904,084 pounds.

The Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand. The Committee's stated intent is to make adequate supplies available to meet market needs and improve producer prices.

The Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. According to the National Agricultural Statistics Service, for example, the average price paid for both classes of spearmint oil ranged from \$4.00 per pound to \$11.10 per pound during the period between 1968 and 1980. Prices since the order's inception have generally stabilized at about \$9.88 per pound for Native spearmint oil and at about \$13.04 per pound for Scotch spearmint oil. However, the current prices for both classes of oil are below the average due to several factors, including the general uncertainty being experienced through the U.S. economy and the continuing overall weak farm situation, as well as an abundant global supply of spearmint oil. As noted earlier—although lower than what producers believe to be viable—prices

currently appear to be stable at about \$9.50 for both classes of oil.

The Committee based its recommendation for the proposed salable quantity and allotment percentage for each class of spearmint oil for the 2004–2005 marketing year on the information discussed above, as well as the data outlined below.

#### (1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 2004—269,314 pounds. This figure is the difference between the estimated 2003–2004 marketing year trade demand of 650,000 pounds and the 2003–2004 marketing year total available supply of 919,314 pounds.

(B) Estimated trade demand for the 2004–2005 marketing year—650,000 pounds. This figure represents the Committee's estimate based on the average of the estimates provided by producers at six Scotch spearmint oil production area meetings held in September 2003, as well as estimates provided by handlers and others at the October 8, 2003, meeting. Handler trade demand estimates for the 2004–2005 marketing year ranged from 600,000 to 750,000 pounds. The average of sales over the last five years was 827,522 pounds.

(C) Salable quantity required from the 2004–2005 marketing year production—380,686 pounds. This figure is the difference between the estimated 2004–2005 marketing year trade demand (650,000 pounds) and the estimated carry-in on June 1, 2004 (269,314 pounds).

(D) Total estimated allotment base for the 2004–2005 marketing year—1,917,200 pounds. This figure represents a one-percent increase over the revised 2003–2004 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—19.9 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—40 percent. This recommendation is based on the Committee's determination that a decrease from the current season's allotment percentage of 45 percent to the computed 19.9 percent would not adequately supply the potential 2004–2005 market.

(G) The Committee's recommended salable quantity—766,880 pounds. This figure is the product of the

recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2004–2005 marketing year—1,036,194 pounds. This figure is the sum of the 2004–2005 recommended salable quantity (766,880 pounds) and the estimated carry-in on June 1, 2004 (269,314 pounds).

## (2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 2004—130,610 pounds. This figure is the difference between the estimated 2003–2004 marketing year trade demand of 842,000 pounds and the revised 2003–2004 marketing year total available supply of 972,610 pounds.

(B) Estimated trade demand for the 2004–2005 marketing year—865,000 pounds. This figure is based on input from producers at the five Native spearmint oil production area meetings held in September 2003, from handlers, and from Committee members and other meeting participants at the October 8, 2003, meeting. The average estimated trade demand provided at the five production area meetings was 875,400 pounds, whereas the average handler estimate was 885,000 pounds. The Committee discussed several estimates below these figures to take into consideration a general lack of 2004 contract offers to date.

(C) Salable quantity required from the 2004–2005 marketing year production—734,390 pounds. This figure is the difference between the estimated 2004–2005 marketing year trade demand (865,000 pounds) and the estimated carry-in on June 1, 2004 (130,610 pounds).

(D) Total estimated allotment base for the 2004–2005 marketing year—2,148,539 pounds. This figure represents a one percent increase over the revised 2003–2004 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—34.2 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—36 percent. This is the Committee's recommendation based on the computed allotment percentage, the average of the computed allotment percentage figures from the five production area meetings (36.5 percent), and input from producers and handlers at the October 8, 2003, meeting.

(G) The Committee's recommended salable quantity—773,474 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2004–2005 marketing year—904,084 pounds. This figure is the sum of the 2004–2005 recommended salable quantity (773,474 pounds) and the estimated carry-in on June 1, 2004 (130,610 pounds).

The salable quantity is the total quantity of each class of spearmint oil, which handlers may purchase from, or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 766,880 pounds and 40 percent and 773,474 and 36 percent, respectively, are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices and the anticipated supply and trade demand during the 2004–2005 marketing year. The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil, which may develop during the marketing year, can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 2004–2005 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This proposed regulation, if adopted, would be similar to regulations issued in prior seasons. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this proposed rule, USDA has reviewed the Committee's marketing policy statement for the 2004–2005 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of § 985.50 of the order. During its discussion of potential 2004–2005 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective

production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for next season in order to meet anticipated market demand.

## Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 8 spearmint oil handlers subject to regulation under the order, and approximately 84 producers of Class 1 (Scotch) spearmint oil and approximately 97 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the

international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 16 of the 84 Scotch spearmint oil producers and 15 of the 97 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2004–2005 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows producers to plan their mint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual

expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

Instability in the spearmint oil subsector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by buyers. Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products at retail such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of large production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability is illustrated by the fact that the coefficient of variation (a standard measure of variability; “CV”) of northwest spearmint oil production from 1980 through 2002 was about 0.24. The CV for spearmint oil prices was about 0.13, well below the CV for production. This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 49 percent of the 23-year average (1,870,783 pounds from 1980 through 2002) and the largest crop was approximately 165 percent of the 23-year average. A key consequence is that in years of oversupply and low prices, the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service).

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the marketing order, can create liquidity problems for some producers. The marketing order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the decline in prices of many of the alternative crops they grow. As noted earlier, almost all spearmint oil producers diversify by growing other crops.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil for the applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless the Secretary approves a Committee recommendation to make a portion of the pool available. However, limited quantities of reserve oil are typically sold to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies.

In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve

pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks grow in large production years and are drawn down in short marketing years.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next marketing year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the available supply during the 2004–2005 marketing year for both classes of oil at 1,940,278 pounds, and that the expected carry-in will be 399,924 pounds. Therefore, with volume control, sales by producers for the 2004–2005 marketing year would be limited to 1,540,354 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended salable percentages, upon which 2004–2005 producer allotments are based, are 40 percent for Scotch and 36 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a \$1.71 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The Far West producer price for both classes of spearmint oil was \$9.20 for 2002, which is below the average of \$10.97 for the period from 1980 through 2002, based on National Agricultural Statistics Service data. The surplus situation for the spearmint oil market that would exist without volume controls in 2004–2005 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative

consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for Scotch spearmint oil because of the severe price-depressing effects that would occur without volume control.

The Committee also considered various alternative levels of volume control for Scotch spearmint oil, including leaving the percentage the same as the current season, increasing the percentage to a less restrictive level, or decreasing the percentage. After considerable discussion the Committee unanimously supported decreasing the percentage to 40 percent.

The Committee discussed and rejected the idea of recommending that there not be any volume regulation for Native spearmint oil. The immediate result would be to put an excessive amount of Native reserve pool oil on the market, causing depressed prices at the producer level. With the current price for Native spearmint oil lower than the 10-year average, and sales at the lowest level since 1987, the Committee, after considerable discussion, determined that 773,474 pounds and 36 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2004–2005 marketing year. The dissenting Committee member felt that the recommended allotment percentage should have been lower, since the recommended salable quantity will likely be too high for market conditions, since demand has been flat.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to

producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended would achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2004–2005 would decline substantially below current levels.

As stated earlier, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year-to-year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from \$4.00 per pound to \$11.10 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980, with an average price of \$13.04 per pound for Scotch spearmint oil (1918–2002) and \$9.88 per pound for Native spearmint oil.

During the period of 1999 through 2002, however, large production and carry-in inventories have contributed to prices below the 23-year average, despite the Committee's efforts to balance available supplies with demand. Prices have ranged from \$8.00 to \$10.00 per pound for Scotch spearmint oil and between \$9.10 to \$9.20 per pound for Native spearmint oil.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0065. Accordingly, this rule would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 8, 2003 meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. This comment period is deemed appropriate so that a final determination can be made prior to June 1, 2004, the beginning of the 2004–2005 marketing year. All written comments received within the comment period will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

#### **PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST**

1. The authority citation for 7 CFR part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 985.223 is added to read as follows:

[**Note:** This section will not appear in the Code of Federal Regulations.]

#### **§ 985.223 Salable quantities and allotment percentages—2004–2005 marketing year.**

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2004, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 766,880 pounds and an allotment percentage of 40 percent.

(b) Class 3 (Native) oil—a salable quantity of 773,474 pounds and an allotment percentage of 36 percent.

Dated: January 16, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–1404 Filed 1–22–04; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Parts 1005, 1007, and 1094**

[**Docket No. AO–388–A15 and AO–366–A44; DA–03–11**]

#### **Milk in the Appalachian and Southeast Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule; Notice of public hearing on proposed rulemaking.

**SUMMARY:** A public hearing is being held in response to industry requests to consider proposals to amend the Appalachian and Southeast Federal milk marketing orders. A proposal by Southern Marketing Agency, Inc. (SMA), would merge the Appalachian and Southeast milk marketing areas into a single milk marketing area. A separate SMA proposal and a proposal by The Kroger Company would expand the proposed merged order to include certain currently unregulated counties and cities in the State of Virginia. Also, a proposal submitted by Prairie Farms and Dean Foods Company would create a “Mississippi Valley” milk marketing area by breaking the Southeast order into two orders. Additional proposals that seek to amend certain other terms and provisions of the orders also will be considered at the hearing.

**DATES:** The hearing will convene at 1 p.m. on Monday, February 23, 2004.

**ADDRESSES:** The hearing will be held at the Westin Atlanta Airport Hotel, 4736 Best Road, Atlanta, GA 30337; (404) 762–7676.

#### **FOR FURTHER INFORMATION CONTACT:**

Antoinette M. Carter, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Room 2971–Stop 0231, 1400 Independence Avenue, SW, Washington, DC 20250–0231, (202) 690–3465, e-mail address: [Antoinette.Carter@usda.gov](mailto:Antoinette.Carter@usda.gov).

Persons requiring a sign language interpreter or other special

accommodations should contact Sue L. Mosley, Market Administrator, at (770) 682–2501; e-mail [smosley@fmmatlanta.com](mailto:smosley@fmmatlanta.com) before the hearing begins.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Westin Atlanta Airport Hotel, 4736 Best Road, Atlanta, GA 30337, (404) 762–7676, beginning at 1 p.m., on Monday, February 23, 2004, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Appalachian and Southeast milk marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions that relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a “small business” if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a “small business” if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they