



Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS-SC-22-0070]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2023-2024 Marketing Year

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to establish salable quantities and allotment percentages for Class 1 (Scotch) and Class 3 (Native) spearmint oil produced in Washington, Idaho, Oregon, and designated parts of Nevada and Utah (the Far West) for the 2023-2024 marketing year.

DATES: Comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be submitted by mail to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938 or electronically by Email: MarketingOrderComment@usda.gov or Internet: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and can be viewed at: <https://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised

that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Joshua R. Wilde, Marketing Specialist, or Gary D. Olson, Regional Director, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, or E-mail: Joshua.R.Wilde@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or E-mail: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. Part 985, (referred to as "the 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 Committee locally administers the Order and comprises spearmint oil producers operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting

flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

Under the 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 salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2023-2024 marketing year, which begins on June 1, 2023.

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 the Department of Agriculture (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 no later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements in § 985.50 of the Order, the Committee meets each year to consider supply and demand of spearmint oil and to adopt a marketing policy for the ensuing marketing year. In determining such marketing policy, the Committee considers several factors, including, but not limited to, the current and projected supply of oil, estimated future demand, production costs, and producer prices for both classes of spearmint oil. Input from spearmint oil handlers and producers are considered as well.

Pursuant to the provisions in § 985.51, when the Committee's marketing policy considerations indicate a need to establish or to maintain stable market conditions through volume regulation, the Committee subsequently recommends to AMS the establishment of a salable quantity and allotment percentage for such class or classes of oil for the upcoming marketing year. Recommendations for volume control are intended to ensure market requirements for Far West spearmint oil are satisfied and orderly marketing conditions are maintained.

Salable quantity represents the total quantity of each class of oil (Scotch or Native) which handlers may purchase from, or handle on behalf of, producers during a given marketing year. The allotment percentage for each class of spearmint oil is the salable quantity for that class oil divided by the total of all producers' allotment base for the same class of oil. A producer's allotment base is their calculated share of the spearmint oil market based on a statistical representation of past spearmint production and sales. In order to account for changes in production and demand over time, the Committee periodically reviews and adjusts each producer's allotment base in accordance with a formula prescribed by the Committee and approved by AMS. Each producer's annual allotment of the salable quantity is calculated by multiplying their respective allotment base for each class of spearmint oil by the allotment percentage for that class of spearmint oil. The total allotment base is revised each year on June 1 to account for producer allotment base being lost as a result of the "bona fide effort" production

provision of § 985.53(e) and additional base made available pursuant to the provisions of § 985.153.

Salable quantities and allotment percentages are established at levels intended to maintain orderly marketing conditions while also ensuring that markets are adequately supplied. Further, Committee recommendations for volume control are made in advance of the upcoming marketing year in which the regulations are to be effective, thereby allowing producers ample time to adjust their production decisions accordingly.

The Committee met on October 12, 2022, to consider its marketing policy for the 2023-2024 marketing year. At that meeting, the Committee determined that, based on the current market and supply conditions, volume regulation for both classes of oil would be necessary. The Committee recommended, with a vote of six in favor and one opposed, a salable quantity and allotment percentage for Scotch spearmint oil of 772,704 pounds and 34 percent, respectively. The member voting in opposition to the recommendation supported volume regulation but favored a salable quantity and allotment percent lower than what was recommended. In addition, the Committee unanimously recommended a salable quantity and allotment percentage for Native spearmint oil of 1,034,492 pounds and 40 percent, respectively.

This proposed action would establish the amount of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2023-2024 marketing year, which begins on June 1, 2023. Salable quantities and allotment percentages have been in effect each season since the Order's inception in 1980.

Scotch Spearmint Oil

The Committee recommended a Scotch spearmint oil salable quantity of 772,704 pounds and an allotment percentage of 34 percent for the 2023-2024 marketing year. The proposed salable quantity of 772,704 pounds is 59,876 pounds less than the salable quantity of 832,580 pounds established for the 2022-2023 marketing year. The

recommended 34 percent allotment percentage for the 2023-2024 marketing year is three percent less than the percentage in effect the previous marketing year.

The total allotment base for the coming marketing year is estimated to be 2,272,660 pounds. This figure represents a one-percent increase over the revised 2022-2023 marketing year total allotment base of 2,250,124 pounds. The proposed salable quantity (772,704 pounds) is the product of total allotment base (2,272,660 pounds) times the proposed allotment percentage (34 percent).

The Committee considered several factors in making its recommendation, including the current and projected future supply, estimated future demand, production costs, and producer prices. The Committee's recommendation also accounts for the established acreage of Scotch spearmint, consumer demand, existing carry-in, reserve pool volume, and increased production in competing markets.

According to the Committee, as costs of production have increased and spearmint oil prices have decreased, many producers have forgone new plantings of Scotch spearmint. This has resulted in a significant decline in production of Scotch spearmint oil in recent years. Production has decreased from 1,113,346 pounds produced in 2016 to an estimated 576,692 pounds of Scotch spearmint production in 2021.

Industry reports indicate that trade demand for Far West Scotch spearmint oil, which has been declining since the 2014-2015 marketing year, has begun to stabilize. Sales of Far West Scotch spearmint oil declined from 1,060,232 pounds during the 2014-2015 marketing year to 488,484 pounds in the 2020-2021 marketing year, before notably rebounding to 667,793 pounds in the 2021-2022 marketing year, the last full year of available data. The Committee indicates that the downward pressure on trade demand for Scotch spearmint oil from the Far West has lessened as production of Scotch spearmint

oil in competing markets, most notably by Canadian producers, has leveled off in recent years.

Given the anticipated market conditions for the coming year, the Committee estimates that Scotch spearmint oil trade demand for the 2023-2024 marketing year will be 635,000 pounds, which is 15,000 pounds lower than the prior year estimate and slightly higher than the 5-year moving sales average of 618,834 pounds. Should the proposed volume regulation levels prove insufficient to adequately supply the market, the Committee has the authority to recommend intra-seasonal increases of the salable quantity and allotment percentage, as it has in previous marketing years.

The Committee calculated the minimum salable quantity of Scotch spearmint oil that would be required during the 2023-2024 marketing year (368,471 pounds) by subtracting the estimated salable carry-in on June 1, 2023, (266,529 pounds) from the estimated trade demand (635,000 pounds). This minimum salable quantity represents the estimated minimum amount of Scotch spearmint oil that would be needed to satisfy estimated trade demand for the coming year. To ensure that the market would be fully supplied, the Committee recommended a 2023-2024 marketing year salable quantity of 772,704 pounds. The recommended salable quantity, combined with an estimated 266,529 pounds of salable carry-in from the previous year, would yield a total available supply of 1,039,233 pounds of Scotch spearmint oil for the 2023-2024 marketing year. With the recommended salable quantity and current market environment, the Committee estimates that as much as 404,233 pounds of salable Scotch spearmint oil could be carried into the 2023-2024 marketing year.

Salable carry-in is the primary measure of excess spearmint oil supply under the Order, as it represents overproduction in prior years that is currently available to the market without restriction. Under volume regulation, spearmint oil that is designated as salable continues to be available to the market until it is sold and may be marketed at any

time at the discretion of the owner.

The Committee estimates that there will be 266,529 pounds of salable carry-in of Scotch spearmint oil on June 1, 2023. If current market conditions are maintained and the Committee's projections are correct, salable carry-in would increase to 404,233 pounds at the beginning of the 2024-2025 marketing year. This level would be above the quantity that the Committee generally considers favorable (150,000 pounds). However, the Committee believes that, given the current economic conditions in the Scotch spearmint oil industry, some Scotch spearmint oil producers may not produce their annual allotment for the 2023-2024 marketing year. Further, the Committee estimates that as much as 287,480 pounds of the 2022-2023 marketing year annual allotment may not be filled by producers. While the Committee has not projected unused base allotment for the upcoming 2023-2024 marketing year, it anticipates that the actual quantity of Scotch spearmint oil carried into the 2024-2025 marketing year will be much less than the quantity calculated above (404,233 pounds).

Spearmint oil held in reserve is oil that has been produced in excess of a producer's annual allotment, either in the current marketing year or in prior years, and is restricted from freely entering the market. After December 1 of each marketing year, reserve pool oil is not available to the market in the current marketing year without an increase in the salable quantity and allotment percentage. The Order does include provision for reserve oil to be released for limited market development projects, with approval of the Secretary, but this provision is rarely utilized.

Oil held in the reserve pool is another indicator of excess supply. Scotch spearmint oil held in reserve was 23,667 pounds as of May 31, 2022, down from 72,361 pounds as of May 31, 2021. This quantity of reserve pool oil should be an adequate buffer to supply the market, if necessary, should the industry experience an unexpected

increase in demand.

The Committee recommended an allotment percentage of 34 percent for the 2023-2024 marketing year for Scotch spearmint oil. During its October 12, 2022, meeting, the Committee calculated an initial allotment percentage by dividing the minimum required salable quantity (368,471 pounds) by the total estimated allotment base (2,272,660 pounds), resulting in 16.2 percent. However, producers and handlers at the meeting indicated that the computed percentage (16.2 percent) might not adequately satisfy potential 2023-2024 marketing year Scotch spearmint oil market demand and may also result in a less than desirable carry-in for the subsequent marketing year. After deliberation, the Committee recommended an allotment percentage of 34 percent. The total estimated allotment base (2,272,660 pounds) for the 2023-2024 marketing year, multiplied by the recommended allotment percentage (34 percent), yields 772,704 pounds, which is the recommended salable quantity for the 2023-2024 marketing year.

The 2023-2024 marketing year computational data for the Committee's recommendations is detailed below.

(A) Estimated carry-in of Scotch spearmint oil on June 1, 2023: 266,529 pounds.

This figure is the difference between the 2022-2023 marketing year total available supply of 901,529 pounds and the revised 2022-2023 marketing year estimated trade demand of 635,000 pounds.

(B) Estimated trade demand of Scotch spearmint oil for the 2023-2024 marketing year: 635,000 pounds. This figure was established at the Committee meeting held on October 12, 2022.

(C) Minimum salable quantity of Scotch spearmint oil required from the 2023-2024 marketing year production: 368,471 pounds. This figure is the difference between the estimated 2023-2024 marketing year trade demand (635,000 pounds) and the

estimated carry-in on June 1, 2022 (266,529 pounds). This salable quantity represents the minimum amount of Scotch spearmint oil that would be needed to satisfy estimated demand for the coming year.

(D) Total estimated Scotch spearmint oil allotment base of for the 2023-2024 marketing year: 2,272,660 pounds. This figure represents a one-percent increase over the 2022-2023 marketing year total actual allotment base of 2,250,158 pounds, as prescribed by § 985.53(d). The one-percent increase equals 22,502 pounds. This total estimated allotment base is revised each year on June 1 in accordance with § 985.53(e).

(E) Computed Scotch spearmint oil allotment percentage for the 2023-2024 marketing year: 16.2 percent. This percentage is computed by dividing the minimum required salable quantity (368,471) by the total estimated allotment base (2,272,660 pounds).

(F) Recommended Scotch spearmint oil allotment percentage for the 2023-2024 marketing year: 34 percent. This is the Committee's recommendation and is based on the computed allotment percentage (16.2 percent) and input from producers and handlers at the October 12, 2022, meeting. The recommended 34 percent allotment percentage reflects the Committee's belief that the computed percentage (16.2 percent) may not adequately supply the anticipated 2023-2024 marketing year Scotch spearmint oil market demand.

(G) Recommended Scotch spearmint oil salable quantity for the 2023-2024 marketing year: 772,704 pounds. This figure is the product of the recommended salable allotment percentage (34 percent) and the total estimated allotment base (2,272,660 pounds) for the 2023-2024 marketing year.

(H) Estimated total available supply of Scotch spearmint oil for the 2023-2024 marketing year: 1,039,233 pounds. This figure is the sum of the 2023-2024 marketing

year recommended salable quantity (772,704 pounds) and the estimated carry-in on June 1, 2023 (266,529 pounds).

For the reasons stated above, the Committee believes that the recommended salable quantity and allotment percentage would adequately satisfy trade demand, would result in a reasonable carry-in for the following year, and would contribute to the orderly marketing of Scotch spearmint oil.

Native Spearmint Oil

The Committee recommended a Native spearmint oil salable quantity of 1,034,492 pounds and an allotment percentage of 40 percent for the 2023-2024 marketing year. These figures are, respectively, 66,777 pounds and 3 percentage points lower than the levels established for the 2022-2023 marketing year. The Committee utilized handlers' estimated trade demand of Native spearmint oil for the coming year, historical and current Native spearmint oil production, inventory statistics, and international market data obtained from consultants for the spearmint oil industry to arrive at these recommendations.

The Committee anticipates that 2022 Native spearmint oil production will total 941,026 pounds, down slightly from the previous year's production of 985,797 pounds. Committee records indicate that spearmint-producing acres in the Far West have declined from a recent high of 9,013 acres in 2019 to an estimated 6,078 acres of Native spearmint production in 2022.

Additionally, sales of Native spearmint oil fell from 1,076,906 pounds in the 2020-2021 marketing year to 988,536 pounds for the 2021-2022 marketing year, the last full year of reported sales. This sales figure represents a 10-year low. However, the Committee expects a moderate rebound from this low, estimating trade demand for Native spearmint oil at 1,150,000 pounds for the 2023-2024 marketing year, which would be in line with the 3-year sales average of 1,132,567 pounds.

The Committee expects that 308,440 pounds of salable Native spearmint oil from prior years will be carried into the 2023-2024 marketing year. This amount is down from the 357,066 pounds of salable oil carried into the 2022-2023 marketing year but still above the level that the Committee generally considers favorable.

Further, the Committee estimates that there will be 1,093,144 pounds of Native spearmint oil in the reserve pool at the beginning of the 2023-2024 marketing year. This figure is 125,978 pounds lower than the quantity of reserve pool oil held by producers at the beginning of the previous marketing year but still well above the level that the Committee believes is optimal. Generally, reserve pool oil has been increasing over the past several marketing years, climbing from 996,050 pounds of Native reserve oil at the start of the 2016-2017 marketing year to the 1,093,144 expected for the 2023-2024 marketing year.

The Committee expects end users of Native spearmint oil to continue to rely on Far West production as their primary source of high-quality Native spearmint oil. Overseas production of Native spearmint has declined in recent years. As a result, U.S. exports of Native spearmint oil have been steadily increasing since 2018. However, increased domestic production of Native spearmint from regions outside of the Far West production area has created additional domestic competition for market share. For example, there were fewer than 2,000 acres of Native spearmint production in the U.S. Midwest region in 2016, compared to over 10,000 acres of Native spearmint oil production in the Far West. However, 2022 Native spearmint acreage estimates show that Far West acreage has declined to approximately 6,078 acres, compared to Native spearmint producing acreage of around 4,300 acres in the Midwest. This situation has contributed to declining trade demand for Far West Native spearmint oil and led to downward pressure on producer prices.

The Committee chose to be cautiously optimistic in the establishment of its trade demand estimate for the 2023-2024 marketing year to ensure that the market would be adequately supplied. At the October 12, 2022, meeting, the Committee estimated the 2023-2024 marketing year Native spearmint oil trade demand to be 1,150,000 pounds. This figure is based on input provided by producers at nine production area meetings held in early October 2022, as well as estimates provided by handlers and other meeting participants. This figure represents a decrease of 50,000 pounds from the previous year's original estimated trade demand for the 2022-2023 marketing year. The average estimated trade demand for Native spearmint oil derived from the area producer meetings was 1,124,857 pounds, whereas the handlers' estimates ranged from 850,000 to 1,250,000 pounds. The average of Native spearmint oil sales over the last three years is 1,132,567 pounds. The quantity marketed over the most recent full marketing year, 2021-2022, was 988,536 pounds.

The estimated June 1, 2023, carry-in of 308,440 pounds of Native spearmint oil, plus the recommended 2023-2024 marketing year salable quantity of 1,034,932 pounds, would result in an estimated total available supply of 1,342,932 pounds of Native spearmint oil during the 2023-2024 marketing year. With the corresponding estimated trade demand of 1,150,000 pounds, the Committee projects that 192,932 pounds of oil will be carried into the 2024-2025 marketing year. This would result in a year-over-year decrease in carryover of 115,508 pounds. The Committee estimates that there will be 1,093,144 pounds of Native spearmint oil held in the reserve pool at the beginning of the 2023-2024 marketing year. Should the industry experience an unexpected increase in trade demand, oil in the Native spearmint oil reserve pool could be released through an intra-seasonal increase in the salable quantity and allotment percentage to satisfy that demand.

The Committee recommended a Native spearmint oil allotment percentage of 40 percent for the 2023-2024 marketing year. During its October 12, 2022, meeting, the Committee calculated an initial allotment percentage of 32.5 percent by dividing the minimum required salable quantity to satisfy estimated trade demand (841,560 pounds) by the total allotment base (2,586,229 pounds). However, producers and handlers at the meeting expressed concern that the computed percentage of 32.5 percent may not adequately supply the potential 2023-2024 marketing year Native spearmint oil market demand. Further, it could result in a less than adequate carry-in for the subsequent marketing year. After deliberation, the Committee increased its allotment percentage recommendation to 40 percent. The total estimated Native spearmint oil allotment base (2,586,229 pounds) multiplied by the recommended salable allotment percentage (40 percent) yields 1,034,492 pounds, the recommended Native spearmint oil salable quantity for the 2023-2024 marketing year.

The 2023-2024 marketing year computational data for the Committee's recommendation is further outlined below.

(A) Estimated carry-in of Native spearmint oil on June 1, 2023: 308,440 pounds.

This figure is the difference between the 2022-2023 marketing year total available supply of 1,458,440 pounds and the revised 2022-2023 marketing year estimated trade demand of 1,150,000 pounds.

(B) Estimated trade demand of Native spearmint oil for the 2023-2024 marketing year: 1,150,000 pounds. This estimate was established by the Committee at its October 12, 2022, meeting.

(C) Minimum salable quantity of Native spearmint oil required from the 2023-2024 marketing year production: 841,560 pounds. This figure is the difference between the 2023-2024 marketing year estimated trade demand (1,150,000 pounds) and the estimated carry-in on June 1, 2023 (308,440 pounds). This is the minimum amount of

Native spearmint oil that the Committee believes would be required to meet the anticipated 2023-2024 marketing year trade demand.

(D) Total estimated allotment base of Native spearmint oil for the 2023-2024 marketing year: 2,586,229 pounds. This figure represents a one-percent increase over the 2022-2023 marketing year actual total allotment base of 2,560,623 pounds as prescribed in § 985.53(d). The one-percent increase equals 25,606 pounds of oil. This estimate is revised each year on June 1, to adjust for the bona fide effort production provisions of § 985.53(e).

(E) Computed Native spearmint oil allotment percentage for the 2023-2024 marketing year: 32.5 percent. This percentage is calculated by dividing the required minimum salable quantity (841,560 pounds) by the total estimated allotment base (2,586,229 pounds) for the 2023-2024 marketing year.

(F) Recommended Native spearmint oil allotment percentage for the 2023-2024 marketing year: 40 percent. This is the Committee's recommendation based on the computed allotment percentage (32.5 percent) and input from producers and handlers at the October 12, 2022, meeting. The recommended 40 percent allotment percentage is also based on the Committee's belief that the computed percentage (32.5 percent) may not adequately supply the potential market for Native spearmint oil in the 2023-2024 marketing year or allow for sufficient salable Native spearmint oil to be carried into the beginning of the 2024-2025 marketing year.

(G) Recommended Native spearmint oil 2023-2024 marketing year salable quantity: 1,034,492 pounds. This figure is the product of the recommended allotment percentage (40 percent) and the total estimated allotment base (2,586,229 pounds).

(H) Estimated available supply of Native spearmint oil for the 2023-2024 marketing year: 1,342,932 pounds. This figure is the sum of the 2023-2024 marketing year recommended salable quantity (1,034,492 pounds) and the estimated carry-in on

June 1, 2023 (308,440 pounds). This amount could be increased, as needed, through an intra-seasonal increase in the salable quantity and allotment percentage.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 772,704 pounds and 34 percent, and 1,034,492 pounds and 40 percent, respectively, would match the available supply of each class of spearmint oil to the estimated demand of each, thus avoiding extreme fluctuations in inventories and prices. This proposed rule is similar to regulations issued in prior seasons.

The salable quantities in this proposed rule are not expected to cause a shortage of either class of spearmint oil. Any unanticipated or additional market demand for either class of spearmint oil which may develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity and corresponding allotment percentage.

The Order contains a provision in § 985.51 for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions.

Under volume regulation, producers who produce more than their annual allotments during the marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment. In addition, on December 1 of each year, producers who have not transferred their excess spearmint oil to other producers must place their excess spearmint oil production into the reserve pool to be released in the future. Each producer controls the disposition of their respective reserve pool spearmint oil, in accordance with market needs and the Order's volume regulation provisions, and under the Committee's oversight.

In conjunction with the issuance of this proposed rule, AMS has reviewed the Committee's marketing policy statement for the 2023-2024 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, meets the requirements of §§ 985.50 and 985.51.

The establishment of the proposed salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, the Committee considered historical sales, as well as changes and trends in production and demand. This proposal would also provide producers with information regarding the amount of spearmint oil that should be produced for the 2023-2024 and subsequent marketing years to meet anticipated market demand.

Initial Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this proposed 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 businesses 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.

There are approximately 40 producers of Scotch spearmint oil and 94 producers of Native spearmint oil operating within the regulated production area. In addition, there are approximately 8 spearmint oil handlers (both Scotch and Native spearmint) subject to regulation under the Order. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$30,000,000, and small agricultural producers of spearmint oil are defined as those having annual receipts of less than \$2,250,000 (13 CFR 121.201).

The Committee reported that recent producer prices for spearmint oil have ranged from \$18.50 to \$22.00 per pound. The National Agricultural Statistics Service (NASS) reported that the 2021 U.S. season average spearmint oil producer price per pound was \$15.80. Spearmint oil utilization for the 2021-2022 marketing year, as reported by the

Committee, was 667,793 pounds and 988,536 pounds for Scotch and Native spearmint oil, respectively, for a total of 1,656,329 pounds. Multiplying \$15.80 per pound by 2021-2022 marketing year spearmint oil utilization of 1,656,329 pounds yields a crop value estimate of about \$26.17 million.

Given the accounting requirements for the volume regulation provisions of the Order, the Committee maintains accurate records of each producer's production and sales. Using the \$15.80 average spearmint oil price and Committee production data for each producer, the Committee estimates that 39 of the 40 Scotch spearmint oil producers and all of the 94 Native spearmint oil producers could be classified as small entities under the SBA definition.

There is no third-party or governmental entity that collects and reports spearmint oil prices received by spearmint oil handlers. However, the Committee estimates an average spearmint oil handling markup at approximately 20 percent of the price received by producers. Twenty percent of the 2021 producer price (\$15.80) is \$3.16, which results in a handler Free on Board (f.o.b.) price per pound estimate of \$18.96 ($\$15.80 + \3.16).

Multiplying this estimated handler f.o.b. price by the 2020-2021 marketing year total spearmint oil utilization of 1,656,329 pounds results in an estimated handler-level spearmint oil value of \$31.4 million. Dividing this figure by the number of handlers (8) yields estimated average annual handler receipts of about \$3.9 million, which is well below the SBA threshold for small agricultural service firms.

Furthermore, using confidential data compiled by the Committee on the pounds of spearmint oil handled by each handler and the abovementioned estimated handler price per pound, the Committee reported that it is not likely that any of the eight handlers had 2021-2022 marketing year spearmint oil sales that exceeded SBA's \$30-million threshold.

Therefore, in view of the foregoing, the majority of producers of spearmint oil

may be classified as small entities, and all of the handlers of spearmint oil may be classified as small entities.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2023-2024 marketing year. The Committee recommended this proposed action to help maintain stability in the spearmint oil market by matching supply to estimated demand, thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities that may be purchased from or handled on behalf of producers during the marketing year through volume regulation allows producers to coordinate their spearmint oil production with the expected market demand. Authority for this proposal is provided in §§ 985.50, 985.51, and 985.52 of the Order.

The Committee estimates the total trade demand for the 2023-2024 marketing year for both classes of oil at 1,785,000 pounds. In addition, the Committee expects that the combined salable carry-in for both classes of spearmint oil will be 574,969 pounds. As such, the combined required salable quantity for the 2023-2024 marketing year is estimated to be 1,210,031 pounds (1,785,000 pounds trade demand less 574,969 pounds carry-in). Under volume regulation, total sales of spearmint oil by producers for the 2023-2024 marketing year would be held to 2,382,165 pounds (the recommended salable quantity for both classes of spearmint oil of 1,807,196 pounds plus 574,969 of carry-in).

This total available supply of 2,382,165 pounds should be more than adequate to supply the 1,785,000 pounds of anticipated total trade demand for spearmint oil. In addition, as of May 31, 2022, the total reserve pool for both classes of spearmint oil stood at 1,242,789 pounds. That quantity is expected to remain relatively unchanged over the course of the 2022-2023 marketing year, with current Committee reserve pool estimates totaling 1,130,893 pounds. Should trade demand increase unexpectedly during the 2023-2024 marketing year, reserve pool spearmint oil could be released into the market to

supply that increase in demand.

The recommended allotment percentages, upon which 2023-2024 marketing year annual producer allotments are based, are 34 percent for Scotch spearmint oil and 40 percent for Native spearmint oil. Without volume regulation, producers would not be held to these allotment levels and would be able to sell unrestricted quantities of spearmint oil.

The AMS econometric model used to evaluate the Far West spearmint oil market estimated that the season average producer price per pound (from both classes of spearmint oil) would decline about \$2.65 per pound without volume regulation. The surplus situation for the spearmint oil market that would exist without volume regulation in the 2023-2024 marketing year also would likely dampen prospects for improved producer prices in future years because of the excessive buildup in stocks.

In addition, spearmint oil prices would likely fluctuate with greater amplitude in the absence of volume regulation. The coefficient of variation, or CV (a standard measure of variability), of Far West spearmint oil producer prices for the period 1980-2021 (the years in which the Order has been in effect), is 25 percent, compared to 49 percent for the 20-year period (1960-1979) immediately prior to the establishment of the Order. Since higher CV values correspond to greater variability, this is an indicator of the price-stabilizing impact of the Order.

The use of volume regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume regulation is believed to have little or no effect on consumer prices of products containing spearmint oil and would not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this proposed rule for both classes of spearmint oil. The Committee rejected the idea of not

regulating volume for either class of spearmint oil because of the severe, price-depressing effects that are more likely to occur without volume regulation. The Committee also discussed and considered salable quantities and allotment percentages that were above and below the levels that were eventually recommended for both classes of spearmint oil. Ultimately, the action recommended by the Committee was to slightly reduce the allotment percentage and salable quantity for both Scotch spearmint oil and Native spearmint oil from the levels established for the 2022-2023 marketing year.

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 quantities and allotment percentages recommended would achieve the objectives sought. The Committee also believes that, should there be no volume regulation in effect for the upcoming marketing year, the Far West spearmint oil industry would return to the pronounced cyclical price patterns that occurred prior to the promulgation of the Order. As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the Order's inception. The salable quantities and allotment percentages proposed herein are expected to facilitate the goal of

maintaining orderly marketing conditions for Far West spearmint oil for the 2023-2024 and future marketing years.

This proposed rule would establish the salable quantities and allotment percentages for Scotch and Native spearmint oil produced in the Far West during the 2023-2024 marketing year. Costs to producers and handlers, large and small, resulting from this proposal are expected to be offset by the benefits derived from a more stable market and increased returns. The benefits of this proposed rule are expected to be equally available to all producers and handlers regardless of their size.

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 12, 2022, 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 comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes are necessary in those requirements as a result of this proposed action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Far West spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this proposed rule is consistent with and will effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received 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.

For the reasons set forth in the preamble, Agriculture Marketing Service proposes to amend 7 CFR part 985 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. Add § 985.238 to read as follows:

§ 985.238 Salable quantities and allotment percentages – 2023-2024 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2023, shall be as follows:

(a) Class 1 (Scotch) oil - a salable quantity of 772,704 pounds and an allotment percentage of 34 percent.

(b) Class 3 (Native) oil - a salable quantity of 1,034,492 pounds and an allotment percentage of 40 percent.

Melissa R. Bailey,

Associate Administrator,

Agricultural Marketing Service.

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