

Proposed Rules

Federal Register

Vol. 68, No. 48

Wednesday, March 12, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV-03-985-1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2003-2004 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 2003-2004 marketing year, which begins on June 1, 2003. This rule invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 857,444 pounds and 45 percent, respectively, and for Class 3 (Native) spearmint oil of 808,528 pounds and 38 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 April 1, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed 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. All comments should reference the docket number and the date and page number

of this issue of the **Federal Register** and will be made 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:

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, 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.

SUPPLEMENTARY INFORMATION: This proposal 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 proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of 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 the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 2003-2004 marketing year, which begins on June 1, 2003. This proposed rule would 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. A 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 seven of its eight members present, met on October 2, 2002, and recommended salable quantities and allotment percentages for both classes of oil for the 2003-2004 marketing year. With six members in favor and one opposed, the Committee recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 857,444 pounds and 45 percent, respectively. For Native spearmint oil, the Committee unanimously recommended the establishment of a salable quantity and allotment percentage of 808,528 pounds and 38 percent, respectively.

This proposed rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2003-2004 marketing year, which begins on June 1, 2003. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order currently accounts for approximately 55 percent of the annual U.S. production 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 produced in the regulated production area in the Far West. The Far West continued to produce an average of about 69 percent of the world's Scotch spearmint oil supply during the period from 1980 to 1990. International production characteristics have changed since 1990, however, with foreign Scotch spearmint oil production contributing significantly to world production. The Far West's market share as a percent of total world sales has averaged about 45 percent since 1990.

Between 1996 and 2000, the Committee's marketing strategy for Scotch spearmint oil centered around an attempt to regain a substantial amount of the Far West's historical share of the global market for this class of oil. Although still interested in retaining a sizable share of the global market, the Committee has since refocused its strategy on establishing a salable quantity that is largely determined by information on price and available supply as they are affected by the estimated trade demand.

Although sales had increased somewhat, the Far West's market share as a percentage of total world sales had not increased on average, and the market price for Scotch spearmint oil had continued to decline throughout the 1996–2000 period. During the 1998–1999 and 1999–2000 marketing years, the price paid to producers for Scotch spearmint oil dropped to a low of \$7.00 per pound. Although the current price for Scotch oil is about \$8.00 per pound, the Committee, as well as spearmint oil producers and handlers attending the October 2, 2002, meeting, continue to believe that such returns are generally below the cost of production for most producers. The most recent information available from the Washington State University Cooperative Extension Service (WSU), indicates the production costs to be between \$13.50 and \$15.00 per pound.

The Committee estimates that acreage of Scotch spearmint has declined from about 10,000 acres in 1998 to about 4,000 acres currently. The reduction in acreage is directly attributable to the relatively low level of producer returns. Based on the reduced Scotch spearmint acreage, the Committee estimates that production for the current season (the 2002–2003 marketing season) will be about 472,600 pounds.

The Committee calculated the 2003–2004 Scotch spearmint oil salable quantity (857,444 pounds) and

allotment percentage (45 percent) by utilizing sales estimates for 2003–2004 Scotch oil as provided by several of the industry's handlers, as well as historical and current Scotch oil sales levels. Between June 1, 2002, and September 27, 2002, 415,914 pounds of Scotch oil were sold, a level below the most recent five-year average of 490,926 pounds. Handlers are estimating that sales for the 2002–2003 marketing year may range from a low of 700,000 pounds to a high of 825,000 pounds. With 387,374 pounds carried in to the current marketing year and an estimated 472,608 pounds being produced, the total available supply this year, including the 415,914 pounds already sold, is 859,982 pounds.

The recommendation for the 2003–2004 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 farmers producing the oil. 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 808,528 pounds and an allotment percentage of 38 percent for Native spearmint oil for the 2003–2004 marketing year. The supply and demand characteristics of the current Native spearmint oil market are keeping the price relatively steady at about \$9.00 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.

Although Native spearmint acreage has decreased about 11 percent over the last year, the Committee estimates that over a million pounds of Native oil is expected to be produced this year. With current sales approximating the five-year average of about 500,000 pounds, the current season's salable quantity of 800,761 pounds coupled with the June 1, 2002, carry-in of 202,872 pounds will likely produce a surplus of oil, adding to the nearly 1.2 million pounds already

in reserve. Handlers are estimating that about 918,750 pounds of Native spearmint oil, on average, may be sold during the 2003–2004 marketing year. This estimate, combined with the information available regarding current supply and price, helped lead the Committee to its recommendation for a 2003–2004 salable quantity of 808,528 pounds. When considered in conjunction with the estimated carry-in of 104,562 pounds of oil on June 1, 2003, the recommended salable quantity results in a total available supply of Native spearmint oil next year of about 913,090 pounds.

Thus, with over 90 percent of the world production currently located in the Far West, 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.

Despite the downward trend in the price of both classes of spearmint oil in recent years, 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 about \$4.00 per pound to about \$12.50 per pound during the period between 1968 and 1980. Excluding the most recent four marketing years, prices since the order's inception have generally stabilized at about \$11.00 per pound for Native spearmint oil and at about \$13.00 per pound for Scotch spearmint oil. However, the prices for both classes of oil have dropped over the last few years 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 \$8.00 for Scotch and \$9.00 for Native.

The Committee based its recommendation for the proposed salable quantity and allotment percentage for each class of spearmint oil for the 2003–2004 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, 2003—43,782 pounds. This figure is the difference between the estimated 2002–2003 marketing year trade demand of 816,200 pounds and the revised 2002–2003 marketing year total available supply of 859,982 pounds. The 2002–2003 marketing year total available supply was revised due to differences in the carry-in estimated on October 11, 2001, and the actual carry-in on June 1, 2002, as well as producer deficiencies on June 1, 2002. A producer is deficient when the producer is unable or unwilling to produce oil equal to his or her salable quantity and is unable to fill this deficiency from reserve pool oil or excess oil from another producer. When prices are below a producer's cost of production, they generally reduce acres and produce less oil.

(B) Estimated trade demand for the 2003–2004 marketing year—822,200 pounds. This figure represents the Committee's estimate based on the average of the estimates provided by producers at five Scotch spearmint oil production area meetings held in September 2002, as well as estimates provided by handlers and others at the October 2, 2002, meeting. Handler trade demand estimates for the 2003–2004 marketing year ranged from 750,000 to 800,000 pounds. The average of sales over the last five years was 912,209 pounds.

(C) Salable quantity required from the 2003–2004 marketing year production—778,418 pounds. This figure is the difference between the estimated 2003–2004 marketing year trade demand (822,200 pounds) and the estimated carry-in on June 1, 2003 (43,782 pounds).

(D) Total estimated allotment base for the 2003–2004 marketing year—1,905,430 pounds. This figure represents a one-percent increase over the revised 2002–2003 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—40.9 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—45 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 40.9 percent would not

adequately supply the potential 2003–2004 market. The recommended level of 45 percent is slightly higher than the 22-year average of sales.

(G) The Committee's recommended salable quantity—857,444 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2003–2004 marketing year—901,226 pounds. This figure is the sum of the 2003–2004 recommended salable quantity (857,444 pounds) and the estimated carry-in on June 1, 2003 (43,782 pounds).

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 2003—104,562 pounds. This figure is the difference between the estimated 2002–2003 marketing year trade demand of 900,000 pounds and the revised 2002–2003 marketing year total available supply of 1,004,562 pounds.

(B) Estimated trade demand for the 2003–2004 marketing year—875,000 pounds. This figure is based on input from producers at the five Native spearmint oil production area meetings held in September 2002, from handlers, and from Committee members and other meeting participants at the October 2, 2002, meeting. The average estimated trade demand provided at the five production area meetings was 907,000 pounds, whereas the average handler estimate was 918,750 pounds. According to the Committee, the more conservative estimate chosen for the 2003–2004 trade demand figure reflects a general lack of 2003 contract offers to date.

(C) Salable quantity required from the 2003–2004 marketing year production—770,438 pounds. This figure is the difference between the estimated 2003–2004 marketing year trade demand (875,000 pounds) and the estimated carry-in on June 1, 2003 (104,562 pounds).

(D) Total estimated allotment base for the 2003–2004 marketing year—2,127,706 pounds. This figure represents a one percent increase over the revised 2002–2003 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 normally involves a minimal amount of spearmint oil.

(E) Computed allotment percentage—36.2 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—38 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 (38.6 percent), and input from producers and handlers at the October 2, 2002, meeting.

(G) The Committee's recommended salable quantity—808,528 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2003–2004 marketing year—913,090 pounds. This figure is the sum of the 2003–2004 recommended salable quantity (808,528 pounds) and the estimated carry-in on June 1, 2003 (104,562 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 857,444 pounds and 45 percent and 808,528 and 38 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 2003–2004 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 2003–2004 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 those, which have been issued, in prior seasons. Costs to producers and handlers resulting from this proposed action 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 2003–2004 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 2003–2004 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, which 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 action 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 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 7 spearmint oil handlers subject to regulation under the order, and approximately 98 producers of Class 1 (Scotch) spearmint oil and approximately 100 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 7 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 11 of the 98 Scotch spearmint oil producers and 13 of the 100 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 farmer 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 2003–2004 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 growers 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 action.

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 farmers 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 incomes 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.

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 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.

Instability in the spearmint oil sub sector 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.

The significant variability is illustrated by the fact that between 1980 and 2001, the coefficient of variation (CV) of northwest spearmint oil production was about 0.24. The CV is a standard measure of variability above and below the average production level of 1,880,727 pounds. Production in the shortest crop year was about 48 percent of the 22-year average and the largest crop was approximately 164 percent. 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).

Over the 22-year period, 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.

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 carry-out. 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 grown in large production years are drawn down in short crop 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 crop 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 2003–2004 marketing year for both classes of oil at 1,814,356 pounds, and that the expected carry-in will be 148,344 pounds. Therefore, with volume control, sales by producers for the 2003–2004 marketing year should be limited to 1,665,972 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended salable percentages, upon which 2003–2004 producer allotments are based, are 45 percent for Scotch and 38 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 \$1.57 decline in the season average grower price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. Northwest grower prices for both classes of spearmint oil averaged \$8.86 for 2000 and 2001, based on National Agricultural Statistics Service data,

continuing a downward decline in recent years. The severe surplus situation for the spearmint oil market that would exist without volume controls in 2003–2004 also would likely dampen prospects for improved grower 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 in which there was no support for increasing the percentage and minimal support for decreasing it, the Committee chose to remain at the current level (45 percent). One Committee member voted in favor of establishing an allotment percentage of 40 percent due to his belief that anything more would not help improve the current depressed prices growers are receiving for their oil.

The Committee also discussed alternative allotment percentage levels for Native spearmint oil. With the current price for Native spearmint oil lower than the 20-year average, and demand fairly flat, the Committee, after considerable discussion, determined that 808,528 pounds and 38 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2003–2004 marketing year. With a market situation similar to that of Scotch, none of those in attendance at the October 2, 2002, meeting were in support of a higher level of volume regulation, and only a few voiced support for levels less than 38 percent. After considerable discussion, the Committee unanimously supported the recommendation contained herein.

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 2003–2004 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 about \$4.00 per pound to about \$12.50 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980. For much of the 1990's, prices had stabilized at about \$13.00 per pound for Scotch spearmint oil and about \$11.00 per pound for Native spearmint oil.

Over the last four years, however, large production and carry-in inventories have contributed to declining prices, despite the Committee's efforts to balance available supplies with demand. Further, over the same period, prices have ranged from \$8.00 to \$11.00 per pound for Scotch spearmint oil and between \$9.00 to \$10.00 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 action 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 proposed rule.

The Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. In addition, 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 20-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, 2003, the beginning of the 2003–2004 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 § 985.222 is added to read as follows:

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

§ 985.222 Salable quantities and allotment percentages—2003–2004 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2003, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 857,444 pounds and an allotment percentage of 45 percent.

(b) Class 3 (Native) oil—a salable quantity of 808,528 pounds and an allotment percentage of 38 percent.

Dated: March 6, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–5842 Filed 3–11–03; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[Doc. No. FV–03–701–PR]

Blueberry Promotion, Research, and Information Order; Amendment No. 2 To Change the Name of the U.S.A. Cultivated Blueberry Council and Increase Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to seek comments on changing the title of the U.S.A. Cultivated Blueberry Council to the “U.S. Highbush Blueberry Council” (Council) to help avoid any further confusion in the industry regarding the specific type of blueberry and industry segment represented by the Council, and to make the name of the Council consistent with industry nomenclature and to add one member and alternate to the Council to represent the state of Washington—the sixth largest highbush blueberry producing state.

DATES: Comments must be received by May 12, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244.

Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted