

process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employees of the General Counsel assigned to represent the Board in this rulemaking proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Cherry Industry Administrative Board:

Proposal No. 1

Revise § 930.16 to read as follows:

§ 930.16 Sales constituency.

Sales constituency means a common marketing organization or brokerage firm or individual representing a group of handlers or growers. An organization which receives consignments of cherries and does not direct where the consigned cherries are sold is not a sales constituency.

Proposal No. 2

In § 930.50, revise paragraph (a) to read as follows:

§ 930.50 Marketing policy.

(a) *Optimum Supply*. On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years, reduced by the sales that represent dispositions of restricted cherries qualifying for diversion credit, unless the Board votes to do otherwise,

to which shall be added a desirable carryout inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

* * * * *

The Fruit and Vegetable Programs, Agricultural Marketing Service, submitted the following proposal:

Proposal No. 3

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: November 12, 1998.

Enrique E. Figueroa,
Administrator, Agricultural Marketing Service.

[FR Doc. 98-30828 Filed 11-13-98; 12:58 pm]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV-99-985-1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1999-2000 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: 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 1999-2000 marketing year, which begins on June 1, 1999. This proposal would establish salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 1,199,290 pounds and 65 percent, respectively, and for Class 3 (Native) spearmint oil of 1,125,755 pounds and 55 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, and thus help to maintain stability in the spearmint oil market.

DATES: Comments must be received by December 17, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; Fax: (202) 205-6632. 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.

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, room 369, Portland, Oregon 97204; telephone: (503) 326-2724; Fax: (503) 326-7440; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 205-6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 205-6632, or E-mail: Jay_N_Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

SUPPLEMENTARY INFORMATION: This proposed 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of 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, that may be purchased from or handled for producers by handlers during the 1999–2000 marketing year, which begins on June 1, 1999. This proposed 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 the Secretary 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 the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 1999–2000 marketing year at its October 7, 1998, meeting. With 6 members in favor, 1 member opposed, and 1 member abstaining, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 1 (Scotch) spearmint oil of 1,199,290 pounds and 65 percent, respectively. The member in opposition favored the establishment of a lower salable quantity and allotment percentage. With 6 members in favor and 2 members abstaining, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 3 (Native) spearmint oil of 1,125,755 pounds and 55 percent, respectively. The member abstaining does not currently produce Native spearmint oil. The chairman, as is traditional with this committee, abstained on both the Scotch and the Native spearmint oil recommendations.

This proposed rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year, which begins on June 1, 1999. 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 accounts for approximately 65 percent of the annual U.S. production of Scotch spearmint oil and approximately 90 percent of the annual U.S. production of Native 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 80 percent was produced in the regulated production area in the Far West. International production characteristics have changed in recent years, however, with foreign Scotch spearmint oil production contributing significantly to world production. Although still a leader in production, the Far West's market share has decreased to approximately 39 percent of the world total. Therefore, the Committee's recommendation for Scotch spearmint oil could maintain market stability by avoiding extreme fluctuations in supplies and prices, and would help the industry remain competitive on an international level by hopefully regaining some of the Far West's historical share of the global market. The Committee's recommendation is intended to foster market stability so that the Far West's Scotch spearmint oil market share will not only be retained, but expanded as well.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from \$3.00 per pound to \$11.00 per pound. In contrast, under the order, prices have stabilized between \$10.50 and \$11.50 per pound for the past ten years. The average price for Native spearmint oil in 1997 was \$11.00. With approximately 90 percent of the U.S. production located in the Far West, the method of calculating the Native spearmint oil salable quantity and allotment percentage primarily utilizes information on price and available supply as they are affected by the estimated trade demand.

The proposed salable quantity and allotment percentage for each class of spearmint oil for the 1999–2000 marketing year is based upon the

Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1999—598,929 pounds. This figure is derived by subtracting the estimated 1998–99 marketing year trade demand of 900,000 pounds from the revised 1998–99 marketing year total available supply of 1,498,929 pounds.

(B) Estimated world production for the 1998–99 marketing year—3,280,758 pounds. This figure is based on information the Committee has compiled.

(C) Estimated Far West production for the 1998–99 marketing year—1,278,508 pounds.

(D) Approximate Far West percentage of total world production in 1998–99—39 percent. This is down from the 1980 level of approximately 80 percent.

(E) Total estimated allotment base for the 1999–2000 marketing year—1,845,061 pounds. This figure represents a one percent increase over the revised 1998–99 allotment base.

(F) Recommended 1999–2000 allotment percentage—65 percent. This figure is based upon recommendations made at the October 7, 1998, meeting, as well as at the five Scotch spearmint oil production area meetings held during September.

(G) The Committee's computed 1999–2000 salable quantity—1,199,290 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 1999–2000 marketing year—1,798,219 pounds. This figure is derived by adding the computed salable quantity to the estimated June 1, 1999, carry-in volume, and represents the total amount of Scotch spearmint oil that could be available to the market during the 1999–2000 marketing year.

(I) Estimated trade demand for Far West Scotch spearmint oil during the 1999–2000 marketing year—910,000 pounds. This figure is based upon estimates provided to the Committee by buyers of spearmint oil.

(J) Estimated carry-out on June 1, 2000—888,219 pounds. This figure is the difference between the 1999–2000 estimated trade demand and the 1999–2000 estimated available supply.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1999—54,815 pounds. This figure is the difference between the estimated 1998–99 marketing year trade demand of 1,170,000 pounds and the revised 1998–99 marketing year total available supply of 1,224,815 pounds.

(B) Estimated trade demand (domestic and export) for the 1999–2000 marketing year—1,155,000 pounds. This figure is based on the average of the three most recent years' sales figures and input from spearmint oil buyers.

(C) Salable quantity required from 1999 production—1,100,185 pounds. This figure is the difference between the estimated 1999–2000 marketing year trade demand and the estimated carry-in on June 1, 1999.

(D) Total estimated allotment base for the 1999–2000 marketing year—2,046,828 pounds. This figure represents a one percent increase over the revised 1998–99 allotment base.

(E) Computed allotment percentage—53.8 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—55 percent. This is the Committee's recommendation based on the computed allotment percentage and input received at the four Native spearmint oil production area meetings held during September.

(G) The Committee's recommended salable quantity—1,125,755 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

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 spearmint oil salable quantity of 1,199,290 pounds and allotment percentage of 65 percent are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and thereby helping the industry remain competitive on the international level. The Committee's recommended Native spearmint oil salable quantity of 1,125,755 pounds and allotment percentage of 55 percent are based on anticipated supply and trade demand during the 1999–2000 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 1999–2000 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, a greater market share, and possible improved returns. In conjunction with the issuance of this proposed rule, the Committee's marketing policy statement for the 1999–2000 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of section 985.50 of the order. During its discussion of potential 1999–2000 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 Department'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, and 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.

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, the 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 9 spearmint oil handlers subject to regulation under the order, and approximately 124 producers of Class 1 (Scotch) spearmint oil and approximately 110 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 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than \$500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 9 handlers regulated by the order would 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 29 of the 124 Scotch spearmint oil producers and 14 of the 110 Native spearmint oil producers would 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. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms would 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 1999–2000 marketing year. The Committee

recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market. This action is authorized by the provisions of sections 985.50, 985.51 and 985.52 of the order.

Small spearmint oil producers generally are not extensively diversified 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.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from \$3.00 per pound to \$11.00 per pound. In contrast, under the order, prices have stabilized between \$10.50 and \$11.50 per pound for the past ten years. The average price for Native spearmint oil in 1997 was \$11.00.

Alternatives to the proposal included not regulating the handling of spearmint oil during the 1999–2000 marketing year, and recommending either higher or lower levels for the salable quantities and allotment percentages. The Committee reached its recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil 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) 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. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of the nearly 1.3 million pounds of spearmint oil reserves would have on the market. According to the Committee, higher or lower salable quantities and allotment percentages would not achieve the intended goals of market and price stability, with market share maintenance and growth.

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

Finally, 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. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

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. Thirty days is deemed appropriate because this rule would need to be effective as soon as possible to provide producers sufficient time prior to the beginning of the 1999–2000 marketing year to adjust their cultural and marketing plans accordingly. 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 § 985.218 is added to read as follows:

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

§ 985.218 Salable quantities and allotment percentages—1999–2000 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1999, shall be as follows:

- (a) Class 1 (Scotch) oil—a salable quantity of 1,199,290 pounds and an allotment percentage of 65 percent.
- (b) Class 3 (Native) oil—a salable quantity of 1,125,755 pounds and an allotment percentage of 55 percent.

Dated: November 9, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–30673 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 79 and 80

[FRL–6187–5]

Use of Alternative Analytical Test Methods in the Reformulated Gasoline Program and Revision of the Specification for the Mixing Chamber Associated with Animal Toxicity Testing of Fuels and Fuel Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule extends the time period during which certain alternative analytical test methods may be used in the Federal reformulated gasoline (RFG) program to September 1, 2000. The time period for use of these alternative methods originally expired on January 1, 1997 and was previously extended to September 1, 1998. The purpose of today's proposed extension