

# Proposed Rules

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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

[Doc. No. AMS–SC–19–0026; SC19–985–2 PR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to increase the assessment rate established for the 2019–2020 and subsequent marketing years. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by July 1, 2019.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: <http://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this 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:

Barry Broadbent, Senior Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: [Barry.Broadbent@usda.gov](mailto:Barry.Broadbent@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov). Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: [Richard.Lower@usda.gov](mailto: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 is comprised of spearmint oil producers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Far West spearmint oil handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the

assessment rate would be applicable to all assessable spearmint oil for the 2019–2020 marketing year, and continue until amended, suspended, or terminated.

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

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee’s needs and with the costs of goods and services in their local area and can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting where all directly affected persons have an opportunity to participate and provide input.

This proposed rule would increase the assessment rate from \$0.09 to \$0.10 per pound of Far West spearmint oil handled for the 2019–2020 and subsequent marketing years. The proposed higher rate is necessary to cover most of the Committee’s 2019–2020 marketing year budgeted expenditures. The Committee has had to draw from its monetary reserve to partially fund program activities during the last five marketing years and is expected to do so again for the 2019–2020 marketing year because of a one-time \$45,000 expense to update the Committee’s electronic recordkeeping system. However, the Committee believes that drawing from reserves to fund operations on an on-going basis is

not a sustainable strategy moving forward. The Committee believes that increasing the continuing assessment rate would allow the Committee to better fund its 2019–2020 budgeted expenses and fully fund its budgeted expenses for the 2020–2021 and subsequent marketing years.

The Committee met on March 1, 2019, and unanimously recommended 2019–2020 marketing year expenditures of \$272,850 and an assessment rate of \$0.10 per pound of spearmint oil handled. In comparison, last year's budgeted expenditures were \$233,800. The proposed assessment rate of \$0.10 is \$0.01 higher than the \$0.09 rate currently in effect. The Committee recommended the assessment rate increase because expenditures have exceeded assessment revenue in the previous five marketing years and financial reserves have been reduced to approximately \$180,000. Even with an assessment rate increase, monetary reserves are expected to be further reduced during the 2019–2020 marketing year to approximately \$130,000 but should stabilize at that level for the 2020–2021 and subsequent marketing years.

The major expenditures recommended by the Committee for the 2019–2020 marketing year include \$169,000 for contracted administration by Ag Association Management, \$45,000 for software/website maintenance, \$30,850 for administrative expenses, \$15,000 for Committee expenses, and \$13,000 for market research and development projects. In comparison, major expenses for the 2018–2019 marketing year included \$169,000 for contracted administration, \$5,000 for software/website maintenance, \$35,300 for administrative expenses, \$17,500 for Committee expenses, and \$12,000 for market research and development projects.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected spearmint oil sales, and the amount of funds available in the authorized reserve. Income derived from handler assessments of \$220,500 (2,205,000 million pounds of spearmint oil at \$0.10 per pound), along with \$1,650 in interest income and \$50,700 from reserve funds, would be adequate to cover budgeted expenses of \$272,850. Funds in the reserve (estimated to be \$180,561 at the beginning of the 2019–2020 marketing year) would be kept within the maximum permitted by § 927.42(a) and would not exceed the expenses of approximately one marketing year.

The assessment rate proposed in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent marketing years would be reviewed and, as appropriate, approved by USDA.

#### **Initial Regulatory Flexibility Act**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (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 are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 33 producers and 90 producers of Scotch and Native spearmint oil, respectively, in the regulated production area and approximately 8 spearmint oil handlers 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 \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

The Committee reported that recent producer prices for spearmint oil range from \$15.50 to \$18.00 per pound. The National Agricultural Statistics Service (NASS) reported that the 2017 U.S. season average spearmint oil producer price per pound was \$16.20 (NASS has not released data for 2018). Multiplying

\$16.20 per pound by 2016–2017 spearmint oil utilization of 2,186,751 million pounds yields a crop value estimate of about \$35.4 million. Total 2016–2017 spearmint oil utilization, reported by the Committee, is 621,236 pounds and 1,565,515 pounds for Scotch and Native spearmint oil, respectively.

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 \$16.20 average spearmint oil price, and Committee production data for each producer, the Committee estimates that 11 of the 33 Scotch spearmint oil producers and 34 of the 90 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. Multiplying 1.20 by the 2016 producer price of \$16.20 yields a handler f.o.b. price per pound estimate of \$19.44.

Multiplying this handler f.o.b price by spearmint oil utilization of 2,186,751 pounds results in an estimated handler-level spearmint oil value of \$42.5 million. Dividing this figure by the number of handlers (8) yields estimated average annual handler receipts of about \$5.3 million, which is below the SBA threshold for small agricultural service firms.

Furthermore, using confidential data on pounds handled by each handler, and the abovementioned estimated handler price per pound, the Committee reported that it is likely that at least two of the eight handlers had 2017–2018 marketing year spearmint oil sales value that exceeded the SBA threshold.

Therefore, in view of the foregoing, the majority of producers of spearmint oil may be classified as large entities and the majority of handlers of spearmint oil may be classified as small entities.

This proposed rule would increase the assessment rate collected from handlers for the 2019–2020 and subsequent marketing years from \$0.09 to \$0.10 per pound of spearmint oil handled. The Committee unanimously recommended 2019–2020 marketing year expenditures of \$272,850 and the \$0.10 per pound assessment rate. The proposed assessment rate of \$0.10 is \$0.01 higher than the rate for the 2018–2019 marketing year. The Committee

estimates that the industry will handle 2,205,000 pounds of spearmint oil during the 2019–2020 marketing year. Thus, the \$0.10 per pound rate should provide \$220,500 in assessment income. Income derived from handler assessments, and \$1,650 of interest income, would be adequate to cover most of the budgeted expenses. Given the budgeted one-time \$45,000 expense to upgrade the Committee's electronic recordkeeping system, the Committee anticipates needing to draw \$50,700 from its monetary reserve in the 2019–2020 marketing year to fully fund all its budgeted expenses. However, the Committee expects that assessment revenue will completely cover budgeted expenses for the 2020–2021 and subsequent marketing years.

The major expenditures recommended by the Committee for the 2019–2020 marketing year include \$169,000 for contracted administration by Ag Association Management, \$45,000 for software/website maintenance, \$30,850 for administrative expenses, \$15,000 for Committee expenses, and \$13,000 for market research and development projects. Budgeted expenses for these items in the 2018–2019 marketing year were \$169,000, \$5,000, \$35,300, \$17,500, and \$12,000, respectively.

The proposed higher assessment rate is necessary to cover most of the Committee's 2019–2020 marketing year budgeted expenditures. The Committee has had to draw from its monetary reserve to partially fund program activities during the previous five marketing years and expects to draw \$50,700 from the reserve in the 2019–2020 marketing year to fund a one-time \$45,000 upgrade to its electronic recordkeeping system. However, the Committee believes that drawing from its financial reserve to fund operations on an on-going basis is not a sustainable strategy. Increasing the continuing assessment rate would allow the Committee to fully fund budgeted expenses, and replenish its financial reserve, beginning in the 2020–2021 marketing year.

Prior to arriving at this budget and assessment rate, the Committee considered maintaining the current assessment rate of \$0.09 per pound. However, leaving the assessment rate unchanged would not have generated enough revenue to meet the Committee's 2019–2020 marketing year budgeted expenses and would have required the Committee to deplete its financial reserve to a fiscally dangerous level. Based on estimated shipments, the recommended assessment rate of \$0.10 per pound of spearmint oil should

provide \$220,500 in assessment income. The Committee determined assessment revenue would be adequate to cover most of the budgeted expenditures for the 2019–2020 marketing year and all of the Committee's budgeted expenditures for the 2020–2021 and subsequent marketing years. Moving forward, any excess funds would be used to replenish the Committee's monetary reserve. Reserve funds would be kept within the amount authorized in the Order.

A review of historical information and preliminary information pertaining to the upcoming marketing year indicates that the average producer price for the 2019–2020 season should be approximately \$15.50–18.00 per ton of spearmint oil. Therefore, the estimated assessment revenue for the 2019–2020 marketing year as a percentage of total producer revenue would be between 0.55 and 0.65 percent.

This proposed action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the Order.

The Committee's meetings were widely publicized throughout the Far West Spearmint Oil industry. All interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the March 1, 2019, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection 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 the OMB and assigned OMB No. 0581–0178, Specialty Crops. No changes in those requirements would be necessary because of this 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.

USDA 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: <http://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.

#### 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 part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 985.141 is revised to read as follows:

#### **§ 985.141 Assessment rate.**

On and after June 1, 2019, an assessment rate of \$0.10 per pound is established for Far West spearmint oil. Unexpended funds may be carried over as a reserve.

Dated: May 23, 2019.

**Bruce Summers,**  
*Administrator, Agricultural Marketing Service.*

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**BILLING CODE 3410–02–P**