

(4) The expected carryover as of July 1 of canned and frozen cherries and other cherry products;

(5) The expected demand conditions for cherries in different market segments;

(6) Supplies of competing commodities;

(7) An analysis of economic factors having a bearing on the marketing of cherries;

(8) The estimated tonnage held by handlers in primary or secondary inventory reserves;

(9) Any estimated release of primary or secondary inventory reserve cherries during the crop year; and

(10) The quantity of grower-diverted cherries during the crop year.

\* \* \* \* \*

4. Revise paragraph (a) of § 930.58 to read as follows:

**§ 930.58 Grower Diversion privilege.**

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler. Any grower diversions completed in accordance with this section, but which are undertaken in districts subsequently exempted by the Board from volume regulation under § 930.52(d), shall qualify for diversion credit.

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 985**

[Doc. No. AMS-FV-11-0088; FV12-985-1 PR]

**Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2012–2013 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 on behalf

of, producers during the 2012–2013 marketing year, which begins on June 1, 2012. This rule invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 782,413 pounds and 38 percent, respectively, and for Class 3 (Native) spearmint oil of 1,162,473 pounds and 50 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 these limitations 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 4, 2012.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document 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.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:**

Manuel Michel, Marketing Specialist, or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or Email: [Manuel.Michel@ams.usda.gov](mailto:Manuel.Michel@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, 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 Email: [Laurel.May@ams.usda.gov](mailto:Laurel.May@ams.usda.gov).

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

985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the “order.” 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 Department of Agriculture (USDA) 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 marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year, which begins on June 1, 2012.

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.

The Committee meets annually in the fall to adopt a marketing policy for the ensuing marketing year or years. In determining such marketing policy, the Committee considers a number of factors, including, but not limited to, the current and projected supply, estimated future demand, production costs, and producer prices for all classes of spearmint oil, as well as input from spearmint oil handlers and producers regarding prospective marketing conditions. During the meeting, the Committee recommends to USDA any volume regulations deemed necessary to meet market requirements and to establish orderly marketing conditions for Far West spearmint oil. If the Committee’s marketing policy

considerations indicate a need for limiting the quantity of any or all classes of spearmint oil marketed, the Committee subsequently recommends the establishment of a salable quantity and allotment percentage for such class or classes of oil for the forthcoming marketing year.

The salable quantity represents the total amount of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the marketing year. Each producer is allotted a prorated share of the salable quantity by applying the allotment percentage to that producer's allotment base for each applicable class of spearmint oil. The producer allotment base is each producer's quantified share of the spearmint oil market based on a statistical representation of past spearmint oil production, with accommodation for reasonable and normal adjustments to such base as prescribed by the Committee and approved by USDA. Salable quantities are established at levels intended to meet market requirements and to establish orderly marketing conditions. Committee recommendations for volume controls are made well in advance of the period in which the regulations are to be effective, thereby allowing producers the chance to adjust their production decisions accordingly.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on October 12, 2011, and recommended salable quantities and allotment percentages for both classes of oil for the 2012–2013 marketing year. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 782,413 pounds and 38 percent, respectively. For Native spearmint oil, the Committee, in a vote of seven members in favor and one member opposed, recommended the establishment of a salable quantity and allotment percentage of 1,162,473 pounds and 50 percent, respectively. The member opposing the action favored recommending an undetermined higher salable quantity and allotment percentage for Native spearmint oil.

This proposed rule would limit the amount of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year, which begins on June 1, 2012. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

### Class 1 (Scotch) Spearmint Oil

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, Oregon, and a portion of Nevada and Utah. Scotch type oil is also produced in seven other States: Indiana, Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin. Additionally, Scotch spearmint oil is produced outside of the U.S., with China and India being the largest global competitors of domestic Scotch spearmint oil production.

The Far West's share of total global Scotch spearmint oil sales has varied considerably over the past several decades, from as high as 72 percent in 1988, and as low as 27 percent in 2002. More recently, sales of Far West Scotch spearmint oil have been approximately 49 percent of world sales, and are expected to hold steady, or increase slightly, in upcoming years.

Despite the Far West's growing share of the world market for Scotch spearmint oil, in recent years the U.S. industry has faced challenging marketing conditions. From 2004 to 2007 the Far West spearmint oil industry experienced relatively good economic conditions, which motivated producers to increase their production acreage. The Far West region, which produced 635,508 pounds of Scotch spearmint oil in 2004, gradually increased production over a five-year period to 1,050,700 pounds in 2009, an increase of 65 percent.

However, as the Far West spearmint oil production was increasing, demand for spearmint oil started to decline significantly due in part to a weakening global economy. Sales, which had peaked at 1,002,779 pounds in 2005, declined to 627,868 pounds in 2009. As production rose and sales dropped, excess inventory of uncommitted Scotch spearmint oil began to accumulate. Scotch spearmint oil carry-in (unsold salable quantity from prior years that is available for sale at the beginning of a new marketing year), which serves as a measure of oversupply in the market, grew from 23,141 pounds in 2007 to 431,028 pounds in 2010.

The Committee's response to the deteriorating marketing environment after 2008 was to recommend the tightening of volume control regulations. The Committee, which had recommended a Scotch spearmint oil salable quantity of 993,067 pounds for 2008–2009, dropped the recommendation to only 566,523 pounds for the 2010–2011 marketing year. Similarly, the recommended allotment percentage was reduced from

50 percent during 2008–2009 to just 28 percent during the 2010–2011 marketing year.

By 2011, production of Far West Scotch spearmint oil had declined to an estimated 753,947 pounds and was at levels considered more in line with demand. Salable carry-in on June 1, 2011, had also dropped to 227,241 pounds.

When the Committee met in October 2011 to consider volume regulation for the 2012–2013 marketing year, the outlook for Far West Scotch spearmint oil was slightly more optimistic than in previous years and an increase in salable quantity and allotment percentage was recommended.

Although the spearmint industry continues to have some concern over the strength of the U.S. economy, at the same time there have been incremental improvements in the marketing conditions for Scotch spearmint oil. Current inventories, steady production, and increases in projected demand are all positive indicators of improving marketing conditions for Scotch spearmint oil, and are approaching levels considered stable for the industry.

Certain factors may be contributing to the recent increase in demand for Far West Scotch spearmint oil. First, although China and India have been significant suppliers of spearmint oil for the past 15 years, they have started to replace some spearmint acreage with other mint varieties, such as *Mentha arvensis* (wild mint), and other non-mint competing crops. In addition, both countries are utilizing more of their domestically produced spearmint oil, removing oil that might otherwise have been exported. Finally, the Midwest region of the U.S. is experiencing a significant reduction in spearmint production. This decrease in regional production is partly due to unexpected disease and weather related factors and partly the result of competition from other alternate crops, such as corn and soybeans, which are currently experiencing higher than average returns.

The Committee estimates that the carry-in of Scotch spearmint oil on June 1, 2012, the primary measure of excess supply, will be approximately 161,154 pounds. This amount is down from the previous year's high of 227,241 pounds and is closer to a carry-in quantity that the Committee would consider to be favorable.

As previously mentioned, production of Scotch spearmint oil has also been decreasing and is nearing a level that the Committee would view as optimum. Production has declined from a high of 1,050,700 pounds in 2009 to 753,947

pounds in 2011 and is expected to remain comparatively the same during the 2012 season. The Committee considers this trend to be favorable because it has contributed relief to the industry's oversupply situation.

There are also reports that indicate consumer demand for mint flavored products is steady, providing some optimism for long-term increases in the demand for Far West spearmint oil. Spearmint oil handlers have indicated that demand for Scotch spearmint oil may be gaining strength. Handlers that had projected the 2011–2012 trade demand for Far West Scotch Spearmint oil to be in the range of 785,000 pounds to 1,000,000 pounds now expect it to increase to between 800,000 pounds to 1,100,000 pounds during the 2012–2013 marketing year.

However, this projected increase in demand, generally thought of as a positive indicator for the spearmint oil industry, is viewed cautiously by some industry participants. Due to the inelastic nature of demand for spearmint oil, the industry is aware that demand remains relatively consistent over time. Therefore, some handlers believe that the manufacturers of mint flavored products are currently increasing spearmint oil purchases just to rebuild inventories that were depleted during the worst of the recent U.S. economic recession. As such, those handlers feel that at least some of the recent increase in Scotch spearmint oil sales may not represent an actual increase in sustained demand, but instead a temporary response to fluctuations in the strategic inventories of spearmint product manufacturers.

Given the moderately improving economic indicators for the Far West Scotch spearmint oil industry outlined above, the Committee took a cautiously optimistic perspective into the discussion of establishing appropriate salable quantities and allotment percentages for the upcoming season.

Therefore, at the October 12, 2011, meeting, the Committee recommended the 2012–2013 Scotch spearmint oil salable quantity of 782,413 pounds and allotment percentage of 38 percent. The Committee utilized sales estimates for 2012–2013 Scotch spearmint oil, as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil production and inventory statistics, to arrive at these recommendations. The volume control levels recommended by the Committee represent an increase of 48,500 pounds and 2 percentage points over the previous year's final salable quantity and allotment percentage,

reflecting a more positive assessment of the industry's economic conditions.

The Committee estimates that about 825,000 pounds of Scotch spearmint oil may be sold during the 2012–2013 marketing year. When considered in conjunction with the estimated carry-in of 161,154 pounds of Scotch spearmint oil on June 1, 2012, the recommended salable quantity of 782,413 pounds results in a total available supply of approximately 943,567 pounds of Scotch spearmint oil during the 2012–2013 marketing year. The Committee estimates that carry-in of Scotch spearmint oil into the 2013–2014 marketing year, which begins June 1, 2013, would be 118,567 pounds, a decrease of 42,587 pounds from the beginning of the 2012–2013 marketing year.

The Committee's stated intent in the use of marketing order volume control regulations for Scotch spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation for the proposed Scotch spearmint oil salable quantity and allotment percentage for the 2012–2013 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2012—161,154 pounds.* This figure is the difference between the revised 2011–2012 marketing year total available supply of 961,154 pounds and the estimated 2011–2012 marketing year trade demand of 800,000 pounds.

(B) *Estimated trade demand for the 2012–2013 marketing year—825,000 pounds.* This figure is based on input from producers at six Scotch spearmint oil production area meetings held in late September and early October 2011, as well as estimates provided by handlers and other meeting participants at the October 12, 2011, meeting. The average estimated trade demand provided at the six production area meetings is 859,444 pounds, which is 28,056 pounds less than the average of trade demand estimates submitted by handlers. The average of Far West Scotch spearmint oil sales over the last five years is 743,506 pounds.

(C) *Salable quantity required from the 2012–2013 marketing year production—663,846 pounds.* This figure is the difference between the estimated 2012–2013 marketing year trade demand (825,000 pounds) and the estimated carry-in on June 1, 2012 (161,154 pounds). This figure represents the minimum salable quantity that may be needed to satisfy estimated demand for the coming year with no carryover.

(D) *Total estimated allotment base for the 2012–2013 marketing year—2,058,981 pounds.* This figure represents a one percent increase over the revised 2011–2012 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—32.2 percent.* This percentage is computed by dividing the minimum required salable quantity (663,846 pounds) by the total estimated allotment base (2,058,981 pounds).

(F) *Recommended allotment percentage—38 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (32.2 percent), the average of the computed allotment percentage figures from the six production area meetings (36.2 percent), and input from producers and handlers at the October 12, 2011, meeting. The actual recommendation of 38 percent is based on the Committee's determination that the computed percentage (32.2 percent) may not adequately supply the potential 2012–2013 Scotch spearmint oil market.

(G) *The Committee's recommended salable quantity—782,413 pounds.* This figure is the product of the recommended allotment percentage (38 percent) and the total estimated allotment base (2,058,981 pounds).

(H) *Estimated available supply for the 2012–2013 marketing year—943,567 pounds.* This figure is the sum of the 2012–2013 recommended salable quantity (782,413 pounds) and the estimated carry-in on June 1, 2012 (161,154 pounds).

### Class 3 (Native) Spearmint Oil

The Native spearmint oil industry is facing market conditions similar to those affecting the Scotch spearmint oil market, although not nearly as severe. Approximately 90 percent of U.S. production of Native spearmint oil is produced within the Far West production area, thus domestic production outside this area is not a major factor in the marketing of Far West Native spearmint oil. This has been an attribute of U.S. production since the order's inception. A minor amount of domestic Native spearmint oil is produced outside of the Far West region in the States of Indiana, Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin.

According to the Committee, very little true Native spearmint oil is produced outside of the United States. However, India has been producing an

increasing quantity of spearmint oil with qualities very similar to Native spearmint oil. Committee records show that in 1996 the Far West accounted for nearly 93 percent of the global sales of Native or Native quality spearmint oil. By 2008, that share had declined to only 48 percent. Since then, the percentage has been increasing and Far West Native spearmint oil was estimated to be over 70 percent of global sales in 2011.

Despite the fact that Far West Native spearmint oil has been gaining world market share, the industry has endured challenging marketing conditions over the past several years. Overproduction, coupled with a decrease in demand, created a similar oversupply situation for Native spearmint oil as was previously discussed for Scotch spearmint oil. Production of Native spearmint oil in the Far West region was 701,372 pounds in 2004, but increased to 1,453,896 pounds in 2009, an increase of 107 percent in just five years.

In addition to oversupply issues during this period, demand for Native spearmint oil was moving in the opposite direction. Sales of Far West Native oil peaked in 2004 at 1,249,507 pounds and then steadily declined over the next five years, dropping to just 976,888 pounds in 2009. As production rose and sales dropped, excess inventory of uncommitted Native spearmint oil began to accumulate. Salable carry-in of Native oil measured at the beginning of each marketing year, which serves as a measure of oversupply in the market, increased from 83,417 pounds at the beginning of the 2007–2008 marketing year to 343,517 pounds at the beginning of the 2010–2011 marketing year.

The Committee's response to the changing marketing conditions of Native spearmint oil was similar to its response of the Scotch spearmint oil situation. In order to achieve more orderly marketing conditions and provide the optimal level of Native spearmint oil, the Committee recommended initial salable quantities and allotment percentages at the start of each marketing period and subsequently reassessed the market to determine if intra-seasonal increases were necessary. The approach proved successful in providing the market with adequate levels of Native spearmint oil.

By 2010, production of Far West Native spearmint oil had decreased and was more in line with market demand. The Committee, which recommended a Native spearmint oil salable quantity of 953,405 pounds in 2010–2011, increased the recommendation to 1,266,161 pounds in the 2011–2012 marketing period. Similarly, the

recommended allotment percentage, which was 50 percent in 2010–2011, increased to 55 percent during the 2011–2012 marketing period. Salable carry-in on June 1, 2011, was estimated to be approximately 164,809 pounds.

When the Committee met on October 12, 2011, to consider volume regulations for the upcoming 2012–2013 marketing year, the general consensus within the Native spearmint oil industry was that marketing conditions were improving marginally in comparison to recent years.

Although overproduction of Native spearmint oil has improved significantly, this continues to be an issue of constant concern for the industry. Production of Far West Native spearmint oil, which has declined from a high of 1,453,896 pounds in 2009 to approximately 1,191,707 pounds in 2011, is expected to remain relatively the same, or increase slightly, during the 2012 season. The Committee considers the current level of production to be consistent with the projected demand of Native spearmint oil in upcoming years.

In addition to an improved supply situation, demand for Far West Native spearmint oil appears to have halted its downward movement, and there is even some optimism for modest improvements in demand during the coming year. Spearmint oil handlers, who previously projected the 2011–2012 trade demand for Far West Native spearmint oil in the range of 1,225,000 pounds to 1,400,000 pounds, have projected trade demand for the 2012–2013 marketing period to be in the range of 1,200,000 pounds to 1,500,000 pounds.

However, similar to Scotch spearmint oil, the slight increase in projected Native spearmint oil demand, generally thought of as a positive indicator for the industry, is viewed by some handlers with caution. As mentioned previously, consumer demand for mint flavored products is expected to be steady or increase slightly moving forward, which provides optimism for long-term improvement in the demand for Far West spearmint oil. Some handlers, though, have reported that the manufacturers of such products may just be temporarily increasing purchases of spearmint oil to rebuild inventories that were depleted during the worst of the current U.S. economic recession. As such, the handlers believe that at least some of the recent increase in purchases does not represent an actual increase in sustained demand but, rather, a short-term response to fluctuations in the strategic inventories of the manufacturers.

Given the economic indicators for the Far West Native spearmint oil industry outlined above, the Committee took a cautiously optimistic perspective into the discussion of establishing appropriate salable quantities and allotment percentages for the upcoming season.

As such, at the October 12, 2011, meeting, the Committee recommended a 2012–2013 Native spearmint oil salable quantity of 1,162,473 pounds and an allotment percentage of 50 percent. The Committee utilized Native spearmint oil sales estimates for 2012–2013, as provided by several of the industry's handlers, as well as historical and current Native spearmint oil market statistics to establish these thresholds. These recommended volume control levels represent a 103,688 pound and a 5 percentage point decrease over the previous year's final salable quantity and allotment percentage. However, the Committee maintains the option to recommend an intra-seasonal increase, as it has done in the past two marketing periods, if demand rises beyond expectations.

The Committee estimates that approximately 1,300,000 pounds of Native spearmint oil may be sold during the 2012–2013 marketing year. When considered in conjunction with the estimated carry-in of 180,970 pounds of Native spearmint oil on June 1, 2012, the recommended salable quantity of 1,162,473 pounds results in an estimated total available supply of 1,343,443 pounds of Native spearmint oil during the 2012–2013 marketing year. The Committee also estimates that carry-in of Native spearmint oil at the beginning of the 2013–2104 marketing year will be approximately 43,443 pounds.

The Committee's stated intent in the use of marketing order volume control regulations for Native spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation for the proposed Native spearmint oil salable quantity and allotment percentage for the 2012–2013 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2012—180,970 pounds.* This figure is the difference between the revised 2011–2012 marketing year total available supply of 1,430,970 pounds and the estimated 2011–2012 marketing year trade demand of 1,250,000 pounds.

(B) *Estimated trade demand for the 2012–2013 marketing year—1,300,000 pounds.* This estimate is established by

the Committee and is based on input from producers at the seven Native spearmint oil production area meetings held in late September and early October 2011, as well as estimates provided by handlers and other meeting participants at the October 12, 2011, meeting. The average estimated trade demand provided at the seven production area meetings was 1,300,833 pounds, whereas the handler estimate ranged from 1,200,000 pounds to 1,500,000 pounds.

(C) *Salable quantity required from the 2012–2013 marketing year production—1,119,030 pounds.* This figure is the difference between the estimated 2012–2013 marketing year trade demand (1,300,000 pounds) and the estimated carry-in on June 1, 2012 (180,970 pounds). This is the minimum amount that the Committee believes would be required to meet the anticipated 2012–2013 Native spearmint oil trade demand.

(D) *Total estimated allotment base for the 2012–2013 marketing year—2,324,945 pounds.* This figure represents a one percent increase over the revised 2011–2012 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—48.1 percent.* This percentage is computed by dividing the required salable quantity (1,119,030 pounds) by the total estimated allotment base (2,324,945 pounds).

(F) *Recommended allotment percentage—50 percent.* This is the Committee's recommendation based on the computed allotment percentage (48.1 percent), the average of the computed allotment percentage figures from the seven production area meetings (51.3 percent), and input from producers and handlers at the October 12, 2011, meeting. The actual recommendation of 50 percent is based on the Committee's determination that the computed percentage (48.1 percent) may not adequately supply the potential 2012–2013 Native spearmint oil market.

(G) *The Committee's recommended salable quantity—1,162,473 pounds.* This figure is the product of the recommended allotment percentage (50 percent) and the total estimated allotment base (2,324,945 pounds).

(H) *Estimated available supply for the 2012–2013 marketing year—1,343,443 pounds.* This figure is the sum of the 2012–2013 recommended salable quantity (1,162,473 pounds) and the

estimated carry-in on June 1, 2012 (180,970 pounds).

The salable quantity is the total quantity of each class of spearmint oil that 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 782,413 pounds and 38 percent, and 1,162,473 pounds and 50 percent, respectively, are based on the goal of establishing and maintaining market stability. The Committee anticipates that this goal would be achieved by matching the available supply of each class of Spearmint oil to the estimated demand of such, thus avoiding extreme fluctuations in inventories and prices.

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 could be satisfied by an intra-seasonal increase in the salable quantity. The order makes the provision for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions. In addition, producers who produce more than their annual allotments during the 2012–2013 marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment, or, up until November 1, 2012, place it into the reserve pool to be released in the future in accordance with market needs.

This proposed regulation, if adopted, would be similar to regulations issued in prior seasons. The average allotment percentage for the five most recent marketing years for Scotch spearmint oil is 36.5 percent, while the average allotment percentage for the same five-year period for Native spearmint oil is 49.3 percent. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this proposed rule, USDA has reviewed the Committee's marketing policy statement for the 2012–2013 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of § 985.50 of the order.

During its discussion of potential 2012–2013 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) 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. 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, the Committee considered historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2012–2013 season in order to meet anticipated market demand.

#### Initial Regulatory Flexibility Analysis

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 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 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 eight spearmint oil handlers subject to regulation under the order, and approximately 32 producers of Scotch spearmint oil and approximately 88 producers of 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 \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 15 of the 32 Scotch spearmint oil producers and 26 of the 88 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

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

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

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year. The Committee recommended this rule 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 or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

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 handlers. Notwithstanding the recent global recession and the overall negative impact on demand for consumer goods that utilize spearmint oil, demand for spearmint oil tends to change slowly from year to year.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products 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 virtually no impact on retail prices for those goods.

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

The significant variability of the spearmint oil market is illustrated by the fact that the coefficient of variation (a standard measure of variability; "CV") of Far West spearmint oil grower prices for the period 1980–2010 (when the marketing order was in effect) is 0.17 compared to 0.34 for the decade prior to the promulgation of the order (1970–79) and 0.48 for the prior 20-year period (1960–79). This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 48 percent of the 31-year average (1.89 million pounds from 1980 through 2010) and the largest crop was approximately 163 percent of the 31-year average. A key consequence is that, in years of oversupply and low prices, the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service).

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the order, can create liquidity problems for some producers. The 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 increase in production costs. While prices have been relatively steady, the cost of production has increased to the extent that plans to plant spearmint may be postponed or changed indefinitely. Producers are also enticed by the prices of alternative crops and their lower cost of production.

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 of each 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 USDA approves a Committee recommendation to increase the salable quantity and allotment percentage for a class of oil and make a portion of the pool available. However, limited quantities of reserve oil are typically sold by one producer to another producer 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. All of these provisions need to be exercised prior to November 1 of each year.

In any given year, the total available supply of spearmint oil is composed of current production plus carryover stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

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

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. This could result 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 trade demand for the 2012–2013 marketing year for both classes of oil at 2,125,000 pounds, and that the expected combined carry-in will be 342,124 pounds. This results in a combined required salable quantity of 1,782,876 pounds. With volume control, sales by producers for the 2012–2013 marketing year would be limited to 1,944,886 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended allotment percentages, upon which 2012–2013 producer allotments are based, are 38 percent for Scotch and 50 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 \$1.19 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The surplus situation for the spearmint oil market that would exist without volume controls in 2012–2013 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

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

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

After computing the initial 32.2 percent Scotch spearmint oil allotment percentage, the Committee considered various alternative levels of volume control for Scotch spearmint oil. Given the moderately improving marketing conditions, there was consensus that the allotment percentage for 2012–2013 should be more than the percentage established for the 2011–2012 marketing year (36 percent). After considerable discussion, the eight-member committee unanimously determined that 782,413 pounds and 38 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2012–2013 marketing year.

The Committee was also able to reach a consensus regarding the level of volume control for Native spearmint oil. After first determining the computed allotment percentage at 48.1 percent, the Committee, in a vote of seven members in favor and one member opposed, recommended 1,162,473 pounds and 50 percent for the effective salable quantity and allotment percentage, respectively, for the 2012–2013 marketing year. The dissenting member felt that the salable quantity and allotment percentage for Native spearmint oil should be set at an unidentified higher level.

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 2012–2013 could decline substantially below current levels.

According to the Committee, the recommended salable quantities and allotment percentages are expected to facilitate the goal of establishing orderly marketing conditions for Far West spearmint oil.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception.

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 Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would establish the salable quantities and allotment percentages of Class 1 (Scotch) spearmint oil and Class 3 (Native) spearmint oil produced in the Far West during the 2012–2013 marketing year. Accordingly, this proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or 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. Furthermore, USDA has not identified any relevant Federal rules



that duplicate, overlap, or conflict with this proposed rule.

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.

In addition, 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, 2011, 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.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: [www.ams.usda.gov/MarketingOrdersSmallBusinessGuide](http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide). Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2012–2013 fiscal period begins on June 1, 2012, and a final determination on the salable quantities and allotment percentages should be made prior to handlers purchasing from, or handling on behalf of, producers any oil for the ensuing marketing year; and (2) handlers are aware of this action, which was recommended by the Committee at a public meeting and is similar to other salable quantities and allotment percentages issued in past years.

#### 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 § 985.231 is added to read as follows:

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

#### § 985.231 Salable quantities and allotment percentages—2012–2013 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2012, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 782,413 pounds and an allotment percentage of 38 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,162,473 pounds and an allotment percentage of 50 percent.

Dated: February 28, 2012.

**Robert C. Keeney,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2012–5195 Filed 3–2–12; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 431

[Docket No. EERE–2010–BT–STD–0037]

RIN 1904–AC39

#### Energy Conservation Program: Energy Conservation Standard for Automatic Commercial Ice Makers

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** On January 24, 2012, the U.S. Department of Energy (DOE) announced that it would hold a public meeting to discuss and receive comments on the product classes that DOE plans to analyze for purposes of establishing energy conservation standards for automatic commercial ice makers; the analytical framework, models, and tools that DOE is using to evaluate new and amended standards for these products; the results of preliminary analyses performed by DOE for these products; and potential energy conservation standard levels derived from these analyses that DOE could consider for these products. DOE also encouraged written comments on these subjects. This document announces an extension of the time period for submitting comments on the energy conservation standards notice of public meeting (NOPM) and availability of the preliminary technical support document (preliminary TSD) for automatic commercial ice makers. The comment period is extended to April 20, 2012.

**DATES:** The comment period for the energy conservation standards NOPM

and preliminary TSD for automatic commercial ice makers, published on January 24, 2012 (77 FR 3404) is extended until April 22, 2012.

**ADDRESSES:** Any comments submitted must provide the appropriate docket number EERE–2010–BT–STD–0037 and/or RIN number 1904–AC39. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal:*

[www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

2. *Email:* [ACIM-2010-STD-0037@ee.doe.gov](mailto:ACIM-2010-STD-0037@ee.doe.gov) or [RCAC-HP-2009-TP-0004@ee.doe.gov](mailto:RCAC-HP-2009-TP-0004@ee.doe.gov). Include the docket number EERE–2010–BT–STD–0037 and/or RIN number 1904–AC39 in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Preliminary TSD for Automatic Commercial Ice Makers, EERE–2010–BT–STD–0037, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone (202) 586–2945. If possible, please submit all items on CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Telephone (202) 586–2945. If possible, please submit all items on CD. It is not necessary to include printed copies.

*Docket:* The docket is available for review at [www.regulations.gov](http://www.regulations.gov), including **Federal Register** notices, key rulemaking documents, public meeting presentations, attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the [regulations.gov](http://www.regulations.gov) index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. The [regulations.gov](http://www.regulations.gov) Web page will contain instructions on how to access all documents in the docket, including public comments.

The rulemaking Web page can be found at: [www.eere.energy.gov/buildings/appliance\\_standards/commercial/automatic\\_ice\\_making\\_equipment.html](http://www.eere.energy.gov/buildings/appliance_standards/commercial/automatic_ice_making_equipment.html).

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2192. Email: [Charles.Llenza@ee.doe.gov](mailto:Charles.Llenza@ee.doe.gov).