

regulations provided in 7 CFR parts 11 and 614.

(b) Before a person may seek judicial review of any administrative action concerning eligibility for program participation under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final Agency action except a decision of the Chief under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by NRCS in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of NRCS in accordance with applicable law.

(d) Enforcement actions undertaken by NRCS in furtherance of its federally held property rights are under the jurisdiction of the Federal District Court and are not subject to review under administrative appeal regulations.

#### § 625.20 Scheme and device.

(a) If it is determined by NRCS that a person has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such person during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for 10-year cost share agreements, contracts, or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A person who succeeds to the responsibilities under this part shall report in writing to NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

#### Arlen L. Lancaster,

*Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.*

[FR Doc. E9-506 Filed 1-13-09; 8:45 am]

BILLING CODE 3410-16-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket Nos. AMS-FV-08-0104; FV09-985-1 PR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2009-2010 Marketing Year

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would establish the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle for, producers during the 2009-2010 marketing year, which begins on June 1, 2009. This rule invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 842,171 pounds and 42 percent, respectively, and for Class 3 (Native) spearmint oil of 1,196,109 pounds and 53 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 March 16, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.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:

Susan M. Coleman, Marketing Specialist or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724; Fax: (503) 326-7440; or E-mail: [Sue.Coleman@usda.gov](mailto:Sue.Coleman@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491; Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@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." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This 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 may be purchased from or handled for producers by handlers during the 2009-2010 marketing year, which begins on June 1, 2009. This 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 USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the

United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on October 15, 2008, and recommended salable quantities and allotment percentages for both classes of oil for the 2009–2010 marketing year. The Committee in a vote with six members in favor and two members opposed, recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 842,171 pounds and 42 percent, respectively. For Native spearmint oil, the Committee unanimously recommended the establishment of a salable quantity and allotment percentage of 1,196,109 pounds and 53 percent, respectively.

This rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2009–2010 marketing year, which begins on June 1, 2009. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, and Oregon and a portion of Nevada and Utah. Scotch spearmint oil is also produced in the Midwest states of Indiana, Michigan, and Wisconsin, as well as in the States of Montana, South Dakota, North Dakota, and Minnesota. However, production in the Midwest states has gone from 200,000 pounds in 2003, down to an estimated 25,000 pounds in 2008. This has increased the percentage of annual U.S. sales of Scotch spearmint oil in the production area covered by the marketing order to approximately 85 percent.

When the order became effective in 1980, the Far West had 72 percent of the world's sales of Scotch spearmint oil. While the Far West is still the leading producer of Scotch spearmint oil, its share of world sales is now estimated to be about 45 percent. This loss in world sales for the Far West region is directly attributed to the increase in global production. Other factors that have played a significant role include the overall quality of the imported oil and technological advances that allow for more blending of lower quality oils. Such factors have provided the Committee with challenges in accurately predicting trade demand for Scotch oil. This, in turn, has made it

difficult to balance available supplies with demand and to achieve the Committee's overall goal of stabilizing producer and market prices.

The marketing order has continued to contribute to price and general market stabilization for Far West producers. The Committee, as well as spearmint oil producers and handlers attending the October 15, 2008, meeting, indicated that the 2008–2009 producer price for Scotch oil ranges from a low of \$12.00 per pound to a high of \$14.00 per pound. Although there is currently some forward contracting being done within this same price range, producers are generally wary of locking in a price because of the significant increases in their cost of production. The \$12.00 to \$14.00 producer price is generally less than the cost of production for most producers as indicated in a study from the Washington State University Cooperative Extension Service (WSU). In 2001, this study estimated production costs to be between \$13.50 and \$15.00 per pound. However, recent cost comparisons by the Committee indicate that the major costs of nitrogen, phosphate, sulfur, potash, herbicide, fuel, and rootstock have increased almost 120% since 2001.

Low producer returns have contributed to an overall reduction in acreage planted to Scotch spearmint in recent years. When the order became effective in 1980, the Far West region had 9,702 acres of Scotch spearmint. The Committee estimates that 2008–2009 Scotch spearmint acreage is about 7,435 acres. Based on this amount, the Committee estimates that Scotch spearmint oil production for the 2008–2009 marketing season will be about 841,427 pounds.

The Committee recommended the 2009–2010 Scotch spearmint oil salable quantity of 842,171 pounds and allotment percentage of 42 percent utilizing sales estimates for 2009–2010 Scotch spearmint oil as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil sales levels. The Committee is estimating that about 850,000 pounds of Scotch spearmint oil, on average, may be sold during the 2009–2010 marketing year. When considered in conjunction with the estimated carry-in of 124,735 pounds of oil on June 1, 2009, the recommended salable quantity of 842,171 pounds results in a total available supply of Scotch spearmint oil next year of about 966,906 pounds.

The recommendation for the 2009–2010 Scotch spearmint oil volume regulation is consistent with the Committee's stated intent of keeping

adequate supplies available at all times, while attempting to stabilize prices at a level adequate to sustain the producers. Furthermore, the recommendation takes into consideration the industry's desire to compete with less expensive oil produced outside the regulated area.

Native spearmint oil producers are facing market conditions similar to those affecting the Scotch spearmint oil market. Over 90 percent of the U.S. production of Native spearmint is produced within the Far West production area. Very little pure Native spearmint oil is produced outside of the United States.

The supply and demand characteristics of the current Native spearmint oil market, combined with the stabilizing impact of the marketing order, have kept the price relatively steady. The Committee, as well as spearmint oil producers and handlers attending the October 15, 2008, meeting, estimate that the 2008–2009 Native oil producer price ranges between \$11.50 per pound and \$13.00 per pound. As with Scotch oil, there is some forward contracting of Native spearmint oil within this price range. The Committee is hopeful that this price range will be sufficient to stimulate additional increases in acreage in 2009, although the magnitude of the increases will likely be tempered by substantial increases in production costs and the availability of attractively priced alternative crops. The WSU study referenced earlier indicates that the cost of producing Native spearmint oil has ranged from \$10.26 to \$10.92 per pound. However, as stated earlier, this study was completed in 2001 and recent cost comparisons by the Committee indicate that the major costs of nitrogen, phosphate, sulfur, potash, herbicide, fuel, and rootstock have increased almost 120% since 2001.

As with Scotch, however, the relatively low level of producer returns has also caused an overall reduction in Native spearmint acreage. When the order became effective in 1980, the Far West region had 12,153 acres of Native spearmint. The Committee estimates that about 8,513 acres of Native spearmint were planted for the 2008–2009 season. Based on the reduced Native spearmint acreage, the Committee estimates that production for the 2008–2009 marketing season will be about 1,203,754 pounds.

The Committee's recommendation for the 2009–2010 Native spearmint oil salable quantity of 1,196,109 pounds and allotment percentage of 53 percent utilized sales estimates provided by several of the industry's handlers, as well as historical and current Native

spearmint oil sales levels. The Committee is estimating that about 1,250,000 pounds of Native spearmint oil may be sold during the 2009–2010 marketing year (trade demand). When considered in conjunction with the estimated carry-in of 51,363 pounds of oil on June 1, 2009, the recommended salable quantity of 1,196,109 pounds results in a total 2009–2010 available supply of Native spearmint oil of about 1,247,472 pounds.

The Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand. The Committee's stated intent is to make adequate supplies available to meet market needs and improve producer prices.

The Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. According to the National Agricultural Statistics Service, for example, the average price paid for both classes of spearmint oil ranged from \$4.00 per pound to \$11.10 per pound during the period between 1968 and 1980. Prices since the order's inception, the period from 1980 to 2007, have generally stabilized at an average price of \$12.69 per pound for Scotch spearmint oil and \$9.97 per pound for Native spearmint oil.

The Committee based its recommendation for the proposed salable quantity and allotment percentage for each class of spearmint oil for the 2009–2010 marketing year on the information discussed above, as well as the data outlined below.

#### (1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 2009—124,735 pounds. This figure is the difference between the revised 2008–2009 marketing year total available supply of 974,735 pounds and the estimated 2008–2009 marketing year trade demand of 850,000 pounds.

(B) Estimated trade demand for the 2009–2010 marketing year—850,000 pounds. This figure is based on input from producers at six Scotch spearmint oil production area meetings held in late September and early October 2008, as well as estimates provided by handlers and other meeting participants at the October 15, 2008, meeting. The average estimated trade demand provided at the six production area meetings is 852,447 pounds, whereas the estimated handler trade demand ranged from 800,000 to

1,000,000 pounds. The average of sales over the last three years is 831,342 pounds.

(C) Salable quantity required in the 2009–2010 marketing year production—725,265 pounds. This figure is the difference between the estimated 2009–2010 marketing year trade demand (850,000 pounds) and the estimated carry-in on June 1, 2009 (124,735 pounds).

(D) Total estimated allotment base for the 2009–2010 marketing year—2,005,168 pounds. This figure represents a one percent increase over the revised 2008–2009 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—36.2 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—42 percent. This recommendation is based on the Committee's determination that the computed 36.2 percent would not adequately supply the potential 2009–2010 market.

(G) The Committee's recommended salable quantity—842,171 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2009–2010 marketing year—966,906 pounds. This figure is the sum of the 2009–2010 recommended salable quantity (842,171 pounds) and the estimated carry-in on June 1, 2009 (124,735 pounds).

#### (2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 2009—51,363 pounds. This figure is the difference between the revised 2008–2009 marketing year total available supply of 1,301,363 pounds and the estimated 2008–2009 marketing year trade demand of 1,250,000 pounds.

(B) Estimated trade demand for the 2009–2010 marketing year—1,250,000 pounds. This figure is based on input from producers at the six Native spearmint oil production area meetings held in late September and early October 2008, as well as estimates provided by handlers and other meeting participants at the October 15, 2008 meeting. The average estimated trade demand provided at the six production area meetings was 1,237,945 pounds, whereas the handler estimate ranged

from 1,250,000 pounds to 1,300,000 pounds.

(C) Salable quantity required from the 2009–2010 marketing year production—1,198,637 pounds. This figure is the difference between the estimated 2009–2010 marketing year trade demand (1,250,000 pounds) and the estimated carry-in on June 1, 2009 (51,363 pounds).

(D) Total estimated allotment base for the 2009–2010 marketing year—2,256,810 pounds. This figure represents a one percent increase over the revised 2008–2009 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—53.1 percent. This percentage is computed by dividing the required salable quantity (1,198,637) by the total estimated allotment base (2,256,810).

(F) Recommended allotment percentage—53 percent. This is the Committee's recommendation based on the computed allotment percentage (53.1 percent), the average of the computed allotment percentage figures from the six production area meetings (52.5 percent), and input from producers and handlers at the October 15, 2008, meeting.

(G) The Committee's recommended salable quantity—1,196,109 pounds. This figure is the product of the recommended allotment percentage (53 percent) and the total estimated allotment base (2,256,810).

(H) Estimated available supply for the 2009–2010 marketing year—1,247,474 pounds. This figure is the sum of the 2009–2010 recommended salable quantity (1,196,109 pounds) and the estimated carry-in on June 1, 2009 (51,363 pounds).

The salable quantity is the total quantity of each class of spearmint oil, which handlers may purchase from, or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 842,171 pounds and 42 percent, and 1,196,109 pounds and 53 percent, respectively, are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and the anticipated supply and trade demand during the 2009–2010

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 2009–2010 marketing year may transfer such excess spearmint oil to a producer with spearmint oil production less than their annual allotment or put it into the reserve pool until November 1, 2009.

This proposed regulation, if adopted, would be similar to regulations issued in prior seasons. 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 2009–2010 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of § 985.50 of the order. During its discussion of potential 2009–2010 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, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2009–2010 season in order to meet anticipated market demand.

### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this 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 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 55 producers of Scotch spearmint oil and approximately 94 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 18 of the 55 Scotch spearmint oil producers and 24 of the 94 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 weed, insect, and disease control. To remain economically

viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

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 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.

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 2009–2010 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows 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 buyers. Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these

products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have no impact on retail prices for those goods.

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

The significant variability is illustrated by the fact that the coefficient of variation (a standard measure of variability; "CV") of Far West spearmint oil production from 1980 through 2007 was about 0.23. The CV for spearmint oil grower prices was about 0.14, well below the CV for production. This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 50 percent of the 28-year average (1.85 million pounds from 1980 through 2007) and the largest crop was approximately 166 percent of the 28-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 marketing order, can create liquidity problems for some producers. The marketing order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the increase in production costs. While prices have been relatively steady, the cost of production has dramatically increased which has caused a hesitation by producers to plant. 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 for the applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to make a portion of the pool available. However, limited quantities of reserve oil are typically sold to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies. All of this needs to take place by November 1.

In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of 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 grown in large production years are drawn down in short crop years.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how

much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the trade demand for the 2009–2010 marketing year for both classes of oil at 2,100,000 pounds, and that the expected combined carry-in will be 176,098 pounds. This results in a combined required salable quantity of 1,923,902 pounds. Therefore, with volume control, sales by producers for the 2009–2010 marketing year would be limited to 2,038,280 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended salable percentages, upon which 2009–2010 producer allotments are based, are 42 percent for Scotch and 53 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 \$1.40 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 2009–2010 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.

The Committee considered various alternative levels of volume control for Scotch spearmint oil, including increasing the percentage to a less restrictive level, or decreasing the percentage. After considerable discussion the Committee unanimously determined that 842,171 pounds and 42 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2009–2010 marketing year.

The Committee also considered various alternative levels of volume control for Native spearmint oil. After

considerable discussion the Committee unanimously determined that 1,196,109 pounds and 53 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2009–2010 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable 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 2009–2010 would decline substantially below current levels.

As stated earlier, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year-to-year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from \$4.00 per pound to \$11.10 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980, with an average price for the period from 1980 to 2007 of \$12.77 per pound for Scotch spearmint oil and \$9.98 per pound for Native spearmint oil.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These

requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0178, Vegetable and Specialty Crops. Accordingly, this rule would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and 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 rule.

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 15, 2008, 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: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons the opportunity to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, 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 § 985.228 is added to read as follows:

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

#### § 985.228 Salable quantities and allotment percentages—2009–2010 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2009, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 842,171 pounds and an allotment percentage of 42 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,196,109 pounds and an allotment percentage of 53 percent.

Dated: January 8, 2009.

**James E. Link,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9–604 Filed 1–13–09; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 1000 and 1033

[AMS–DA–08–0049; AO–166–A77; Docket No. DA–08–06]

#### Milk in the Mideast Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and Order

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

**ACTION:** Proposed rule; recommended decision.

**SUMMARY:** This decision recommends adoption of a proposal to adjust Class I prices in certain counties of the Mideast Federal milk marketing order. Class I prices are recommended to be unchanged in 193 counties within the marketing area and to be increased by up to \$0.20 per hundredweight in 110 counties in the southern portion of the marketing area. The original hearing proposal to adjust Class I prices is recommended for adoption, except it is modified to recommend a \$0.20 increase in the Class I price at Charleston, West Virginia.