

comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Any changes resulting from this rule should be effective as soon as practicable because the Oregon-Washington pear shipping season began in August; (2) the Committee discussed and unanimously recommended this change at a public meeting and all interested parties had an opportunity to provide input; (3) this action is a relaxation of the handling regulations that is intended to benefit pear handlers while facilitating the sale of fresh, local pears directly to consumers; (4) the industry is aware of this action and wants to take advantage of the relaxation during this shipping season; and (5) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

#### PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. A new § 927.122 is added to read as follows:

#### § 927.122 Consumer direct pear sales.

Notwithstanding any other provision of this section, fresh pears may be handled without regard to the provisions of §§ 927.41, 927.51, 927.60, and 927.70 under the following conditions:

(a) Such pears are sold in person and sold directly to consumers on the premises where grown, at packing facilities, at roadside stands, or at farmers' markets.

(b) Such pears are for home use only and are not for resale.

(c) The total quantity of such pears sold to each consumer during any single transaction does not exceed 220 pounds.

Dated: January 19, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–1508 Filed 1–24–11; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket Nos. AMS–FV–09–0082; FV10–985–1A IR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2010–2011 Marketing Year

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule revises the quantity of Class 3 (Native) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2010–2011 marketing year. This rule increases the Native spearmint oil salable quantity from 980,220 pounds to 1,118,639 pounds, and the allotment percentage from 43 percent to 50 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee unanimously recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

**DATES:** Effective June 1, 2010, through May 31, 2011; comments received by March 28, 2011 will be considered prior to issuance of a final rule.

**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

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:

Barry Broadbent, Marketing Specialist or Gary 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: [Barry.Broadbent@ams.usda.gov](mailto:Barry.Broadbent@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 Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Native spearmint oil produced in the Far West that handlers may purchase from, or handle on behalf of, producers during the 2010–2011 marketing year, which ends on May 31, 2011.

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 original salable quantity and allotment percentages for Scotch and Native spearmint oil for the 2010–2011 marketing year were recommended by the Committee at its October 14, 2009, meeting. The Committee recommended salable quantities of 566,962 pounds and 980,265 pounds, and allotment percentages of 28 percent and 43 percent, respectively, for Scotch and Native spearmint oil. A proposed rule was published in the **Federal Register** on March 22, 2010 (75 FR 13445). Comments on the proposed rule were solicited from interested persons until April 6, 2010. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2010–2011 marketing year was published in the **Federal Register** on May 18, 2010 (75 FR 27631).

This rule revises the quantity of Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2010–2011 marketing year, which ends on May 31, 2011. Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the full eight member Committee met on November 19, 2010, to consider pertinent market information on the current supply, demand, and price of spearmint oil. In a vote with seven members in favor and one member opposed, the Committee recommended that the 2010–2011 Native spearmint oil allotment percentage be increased by 7 percent, from 43 percent to 50 percent. The Committee member that voted against the increase did so without further explanation.

Thus, taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantities, this rule increases the 2010–2011 marketing year salable quantities and allotment percentages for Native spearmint oil to 1,118,639 pounds and 50 percent.

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

The total industry allotment base for Native spearmint oil for the 2010–2011 marketing year was estimated by the Committee at the October 14, 2009, meeting at 2,279,687 pounds. This number was later revised at the beginning of the 2010–2011 marketing year to 2,279,439 pounds to reflect a 2009–2010 marketing year reduction of 248 pounds. Section 985.53(e) of the order requires that producers make a bona fide effort to produce all of their respective allotment base each year. Failure to do so results in a reduction in the producer's allotment base equivalent to such unproduced portion. The 248 pound reduction in allotment base reflects the total base surrendered by all producers due to the non-production of those producers' total annual allotments during the 2009–2010 marketing year.

When the revised total allotment base of 2,279,439 pounds is applied to the originally established allotment percentage of 43 percent, the initially established 2010–2011 marketing year salable quantity of 980,265 pounds is effectively modified to 980,220 pounds.

By increasing the salable quantity and allotment percentage, this rule makes an additional amount of Native spearmint oil available by releasing oil from the reserve pool. As of May 31, 2010, the Committee estimated the reserve pool to be 506,725 pounds.

When the allotment percentage increase established by this rule is applied to each individual producer, that producer may take up to an amount equal to such allotment from their reserve for this respective class of oil. Producers that do not have excess oil in reserve on November 1, 2010, equal to or greater than that individual's respective pro rata increase in the salable quantity allotment will not be able to exercise the full marketing rights associated with such an increase. Also, pursuant to §§ 985.56 and 985.156, producers with excess oil are not able to transfer such excess oil to other producers to fill deficiencies in annual allotments after October 31 of each marketing year. As a result, the Committee has calculated that deficiencies in individual producer's oil

reserves result in an industry total of 21,081 pounds of salable quantity that will not enter the market.

Therefore, the 7 percent increase in the salable percentage established by this rule would result in a total 2010–2011 marketing year salable quantity of 1,118,639 pounds of Native spearmint oil. This reflects an additional 138,419 pounds made available to the market by this rule.

The following summarizes the Committee recommendations:

#### **Native Spearmint Oil Recommendation**

(A) Estimated 2010–2011 Allotment Base—2,279,687 pounds. This is the estimate on which the original 2010–2011 Native spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2010–2011 Allotment Base—2,279,439 pounds. This is 248 pounds less than the estimated allotment base of 2,279,687 pounds. This is less because some producers failed to produce all of their 2009–2010 allotment.

(C) Original 2010–2011 Allotment Percentage—43 percent. This was unanimously recommended by the Committee on October 14, 2009.

(D) Original 2010–2011 Salable Quantity—980,265 pounds. This figure is 43 percent of the estimated 2010–2011 allotment base of 2,279,687.

(E) Adjustment to the Original 2010–2011 Salable Quantity—980,220 pounds. This figure reflects the salable quantity initially available at the beginning of the 2010–2011 marketing year due to the 248 pound reduction in the industry allotment base to 2,279,439 pounds.

(F) Current Revision to the 2010–2011 Salable Quantity and Allotment Percentage:

(1) Increase in Allotment Percentage—7 percent. The Committee recommended a 7 percent increase at its November 19, 2010, meeting.

(2) 2010–2011 Allotment Percentage—50 percent. This figure is derived by adding the increase of 7 percent to the original 2010–2011 allotment percentage of 43 percent.

(3) Calculated Revised 2010–2011 Salable Quantity—1,118,639 pounds. This figure is 50 percent of the revised 2010–2011 allotment base of 2,279,439 pounds, less the 21,081 pounds that are not covered by individual producer's reserves.

(4) Computed Increase in the 2010–2011 Salable Quantity—138,419 pounds. This figure is 7 percent of the revised 2010–2011 allotment base of 2,279,439 pounds less the 21,081 pound reserve deficiency.

The 2010–2011 marketing year began on June 1, 2010, with an estimated carry-in of 343,517 pounds of salable Native spearmint oil. When the estimated carry-in is added to the revised 2010–2011 salable quantity of 1,118,639 pounds, the result is a total estimated available supply of Native spearmint oil for the 2010–2011 marketing year of 1,462,156 pounds. Of this amount, 1,112,292 pounds of oil has already been sold or committed for the 2010–2011 marketing year, which leaves 349,864 pounds available for sale.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports given by the Committee manager from handlers and producers who were not in attendance. By increasing the 2010–2011 Native spearmint oil salable percentage by 7 percent, an estimated additional 138,419 pounds will be made available to the market. This amount combined with the 211,445 pounds currently available, will make a total of 349,864 pounds available to the market and bring the total available supply for the year to 1,462,156 pounds. The handlers are estimating that the demand for 2010–2011 year may be 1,133,333 pounds, which would leave 328,823 pounds as a carry out at the end of the year.

However, when the Committee made its original recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2010–2011 marketing year, it had anticipated that the year would end with an ample available supply. In the interim, the Native spearmint market experienced dynamic changes in the supply and demand of oil. The Committee believes that the current available supply is insufficient to satisfy current demand at reasonable price levels. Therefore, the industry may not be able to adequately meet market demand without this increase.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2010–2011 marketing year should be increased to 1,118,639 pounds and 50 percent, respectively.

This rule relaxes the regulation of Native spearmint oil and will allow producers to meet market demand while improving producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing

policy statement for the 2010–2011 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2010–2011 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The increase in the Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and 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 8 spearmint oil handlers subject to regulation under the order, and approximately 38 producers of Scotch spearmint oil and approximately 84 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 two of the eight 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 19 of the 38 Scotch spearmint oil producers and 29 of the 84 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 to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because 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 rule revises the quantity of Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2010–2011 marketing year, which ends on May 31, 2011. This rule increases the Native spearmint oil salable quantity from 980,220 pounds to 1,118,639 pounds and the allotment percentage from 43 percent to 50 percent.

The use of volume control regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of oversupplying these markets. Volume control is believed to have little or no effect on consumer prices of products containing spearmint oil and likely does not result in fewer retail sales of such products. Without volume control, producers would not be limited in the production and marketing of spearmint oil. Under those conditions, the spearmint oil market would likely fluctuate widely. Periods of oversupply could result in low producer prices and a large volume of oil stored and carried over to future crop years. Periods of undersupply could lead to excessive price spikes and could drive end users to source flavoring needs from other markets, potentially causing long term economic damage to the domestic spearmint oil industry. The marketing order's volume control provisions have been successfully implemented in the domestic spearmint oil industry for nearly three decades and provide benefits for producers, handlers, manufacturers, and consumers.

Based on projections available at the meeting, the Committee considered a number of alternatives to this increase. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also considered other potential levels of increase. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the levels recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to satisfactorily meet market demand.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, 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. Like all Committee meetings, the November 19, 2010, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on a change to the salable quantity and allotment percentage for Native spearmint oil for the 2010–2011 marketing year. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year, which ends on May 31, 2011; (2) the current quantity of Native spearmint oil may be inadequate to meet demand for the 2010–2011 marketing year, thus making the additional oil available as soon as is practicable will be beneficial to both handlers and producers; (3) the Committee recommended these changes

at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

#### 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 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. In § 985.229, paragraph (b) is revised to read as follows:

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

#### **§ 985.229 Salable quantities and allotment percentages—2010–2011 marketing year.**

\* \* \* \* \*

(b) Class 3 (Native) oil—a salable quantity of 1,118,639 pounds and an allotment percentage of 50 percent.

Dated: January 19, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–1429 Filed 1–24–11; 8:45 am]

**BILLING CODE 3410–02–P**

#### **FEDERAL DEPOSIT INSURANCE CORPORATION**

#### **12 CFR Part 380**

#### **Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Interim final rule.

**SUMMARY:** The FDIC is issuing an interim final rule (“Rule”), with request for comments, which implements certain provisions of its authority to resolve covered financial companies under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The FDIC’s purpose in issuing this Rule is to provide greater clarity and certainty about how key components of this authority will be implemented and to