

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Doc. No. AMS-SC-16-0107; SC17-985-1 PR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2017-2018 Marketing Year

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to 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 2017-2018 marketing year, which begins on June 1, 2017. The Far West production area includes the states of Washington, Idaho, Oregon, and designated parts of Nevada and Utah. The Committee locally administers the marketing order and is comprised of spearmint oil producers operating within the area of production, and a public member. This action would establish salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 774,645 pounds and 36 percent, respectively, and for Class 3 (Native) spearmint oil of 1,075,051 pounds and 44 percent, respectively. The Committee recommended these salable quantities and allotment percentages to help maintain stability in the spearmint oil market.

**DATES:** Comments must be received by May 1, 2017.

**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, Specialty Crops Program,

AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. 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 proposal 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:** Dale Novotny, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or Email: [DaleJ.Novotny@ams.usda.gov](mailto:DaleJ.Novotny@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 Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: [Richard.Lower@ams.usda.gov](mailto:Richard.Lower@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal 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 proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. Under the 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 2017-2018 marketing year, which begins on June 1, 2017.

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. Input from spearmint oil handlers and producers regarding prospective marketing conditions for the upcoming year is considered as well.

If the Committee's marketing policy considerations indicate a need for regulating the quantity of any or all classes of spearmint oil marketed, the Committee subsequently recommends to USDA the establishment of a salable quantity and allotment percentage for such class or classes of oil in the forthcoming marketing year. Recommendations for volume regulation are intended to ensure that market requirements for Far West spearmint oil are satisfied and orderly marketing conditions are maintained.

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. The allotment

percentage is the percentage used to calculate each producer's prorated share of the salable quantity. It is derived by dividing the salable quantity for each class of spearmint oil by the total of all producers' allotment bases for the same class of oil. Each producer's annual allotment of salable spearmint oil is calculated by multiplying their respective total allotment base by the allotment percentage for each class of spearmint oil. A producer's allotment base is their quantified share of the spearmint oil market based on a statistical representation of past spearmint oil production, with accommodation for reasonable, normal adjustments to such base as prescribed by the Committee and approved by USDA.

Salable quantities and allotment percentages are established at levels intended to fulfill market requirements and to maintain orderly marketing conditions. Committee recommendations for volume regulation 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 19, 2016, and recommended salable quantities and allotment percentages for both classes of oil for the 2017–2018 marketing year. By a vote of 6–2, the Committee recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 774,645 pounds and 36 percent, respectively. The two Committee members that voted in opposition to the recommendation both supported volume regulation, but at higher levels than were proposed. They felt that a nearly 20 percent year-over-year reduction in the salable quantity and allotment percentage for Scotch spearmint oil was too severe.

For Native spearmint oil, with a unanimous vote (7–0, with the public member abstaining), the Committee recommended the establishment of a salable quantity and allotment percentage of 1,075,051 pounds and 44 percent, respectively. Pursuant to § 985.29(a), seven members of the Committee constitute a quorum, and six concurring votes are required to pass a motion.

This action would set the amount of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2017–2018 marketing year, which begins on June 1, 2017. Salable quantities and allotment percentages

have been placed into effect each season since the order's inception in 1980.

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

As noted above, the Committee recommended a salable quantity of Scotch spearmint oil of 774,645 pounds and an allotment percentage of 36 percent for the upcoming 2017–2018 marketing year. To arrive at these recommendations, the Committee utilized 2017–2018 sales estimates for Scotch spearmint oil, as provided by several of the industry handlers, historical and current Scotch spearmint oil production, inventory statistics, and international market data obtained from consultants for the spearmint oil industry.

The trade demand estimate for Far West Scotch spearmint oil was revised during the 2016–2017 marketing year from an initial estimate of 900,000 pounds to the current estimate of 950,000 pounds. Trade demand is expected to decrease from the 950,000 pounds anticipated in the 2016–2017 marketing year to 925,000 pounds in the 2017–2018 marketing year. Industry reports indicate that the decreased trade demand estimate is the result of decreased consumer demand for spearmint-flavored products, especially chewing gum in China and India, as fruit flavors are becoming preferential to consumers. In addition, better than expected production of spearmint oil in competing markets, most notably Canada and the U.S. Midwest, have also factored into the Committee's assessment of the market.

Production of Far West Scotch spearmint oil declined from 1,229,258 pounds in 2015 to an estimated 1,113,346 pounds in 2016. Production over the last three seasons has exceeded sales, leading to a gradual build in the salable carry-in of Scotch spearmint oil. Scotch spearmint oil held in the reserve pool, which was completely depleted at the beginning of the 2014–2015 marketing year, has also been gradually increasing over the past three years.

Carry-in represents the amount of salable spearmint oil produced, but not marketed, in a previous year or years that is available for sale in the current year under a previous year's annual allotment. Under volume regulation, spearmint oil that is designated as salable continues to be available to the market until it is sold and may be marketed at any time at the discretion of the owner. Spearmint oil held in reserve, however, is spearmint oil that has been produced in excess of a producer's marketing year allotment that can only be released into the market under certain circumstances.

Salable carry-in is the primary measure of excess spearmint oil supply under the order as it represents overproduction in prior years that is currently available to the market without restriction. Spearmint oil held in the reserve pool is a lesser indicator of excess supply, as it is spearmint oil that is not available to the market in the current marketing year without an increase in the salable quantity and allotment percentage.

The Committee estimates that there will be 174,507 pounds of salable carry-in of Scotch spearmint oil on June 1, 2017. If correct, this figure would be up 8,739 pounds from the 165,768 pounds carried in the previous year on June 1, 2016. The Committee estimates that salable carry-in will decrease to 24,152 pounds at the beginning of the 2018–2019 marketing year, if current market conditions and projections are maintained.

This anticipated level of carry-in (24,152 pounds) would be below the quantity that the Committee considers favorable (generally 150,000 pounds). However, the Committee believes that this lower salable carry-in is manageable given the strong production of spearmint in the current marketing year and the quantity of Scotch spearmint oil held in the reserve pool that could be released into the market if the industry experiences an unexpected increase in demand.

The Committee reported that there was 15,937 pounds of Scotch spearmint oil held in the reserve pool as of May 31, 2016. The Committee expects the reserve pool to increase to 204,691 pounds by May 31, 2017. This quantity of reserve oil should be an adequate buffer to supply the market if necessary.

The Committee estimates the total available supply of Scotch oil for the 2017–2018 marketing year to be 949,152 pounds (174,507 pounds of estimated carry-in plus 774,645 pounds of recommended salable quantity). The 2017–2018 Scotch spearmint oil salable quantity of 774,645 pounds recommended by the Committee represents a decrease of 184,066 pounds from the salable quantity established the previous marketing year (958,711 pounds).

The Committee estimates the 2017–2018 marketing year trade demand for Scotch spearmint oil at 925,000 pounds. As stated previously, the Committee expects that there will be 174,507 pounds of available carry-in of Scotch spearmint oil on June 1, 2017. That carry-in, when combined with the recommended 2017–2018 marketing year salable quantity of 774,645 pounds, would result in a total supply of 949,152

pounds of Scotch spearmint oil for the 2017–2018 marketing year. This quantity of Scotch spearmint oil is expected to fully satisfy estimated market demand of 925,000 pounds and is estimated to leave 24,152 pounds as carry-out for the 2017–2018 marketing year to be used as carry-in for the 2018–2019 marketing year.

The Committee's stated intent in the use of marketing order volume regulation provisions for Scotch spearmint oil is to keep adequate supplies available to meet market needs and maintain orderly marketing conditions. The recommended salable quantity of Scotch spearmint oil for the upcoming marketing year is less than the salable quantity established for the previous year. Even so, the Committee expects that the market will be fully supplied for the 2017–2018 marketing year.

The Committee believes that the recommended salable quantity would adequately meet demand, as well as result in a reasonable carry-in for the following year. The Committee developed its recommendation for the proposed Scotch spearmint oil salable quantity and allotment percentage for the 2017–2018 marketing year based on the information discussed above, as well as the computational data outlined below.

(A) *Estimated carry-in of Scotch spearmint oil on June 1, 2017: 174,507 pounds.* This figure is the difference between the revised 2016–2017 marketing year total available supply of 1,124,507 pounds and the revised 2016–2017 marketing year estimated trade demand of 950,000 pounds.

(B) *Estimated trade demand of Scotch spearmint oil for the 2017–2018 marketing year: 925,000 pounds.* This figure was established at the Committee meeting held on October 19, 2016. The average estimated trade demand derived from six production area producer meetings held prior to the main meeting on October 19, 2016, was 960,400, which is 8,000 pounds more than the average of trade demand estimates submitted by handlers (952,400 pounds). Far West Scotch spearmint oil sales have averaged 1,021,786 pounds per year over the last three years, and 987,639 pounds over the last five years. Given the anticipated market conditions for the coming year, the Committee decided it was prudent to anticipate the lower trade demand at 925,000 pounds. Should the initially established volume regulation levels prove insufficient to adequately supply the market, the Committee has the authority to recommend intra-seasonal increases, as were undertaken in the 2014–2015

marketing year and several other previous marketing years.

(C) *Salable quantity of Scotch spearmint oil required from the 2017–2018 marketing year production: 750,493 pounds.* This figure is the difference between the estimated 2017–2018 marketing year trade demand (925,000 pounds) and the estimated carry-in on June 1, 2017 (174,507 pounds). This salable quantity represents the minimum amount of Scotch spearmint oil that may be needed to satisfy estimated demand for the coming year.

(D) *Total estimated allotment base of Scotch spearmint oil for the 2017–2018 marketing year: 2,151,792 pounds.* This figure represents a one-percent increase over the 2016–2017 total allotment base of 2,130,487 pounds as prescribed by the order under § 985.53(d)(1). The one-percent increase equals 21,305 pounds of Scotch spearmint oil. This total estimated allotment base 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 adjustment is usually minimal.

(E) *Computed Scotch spearmint oil allotment percentage for the 2017–2018 marketing year: 34.9 percent.* This percentage is computed by dividing the minimum required salable quantity (750,493 pounds) by the total estimated allotment base (2,151,792 pounds).

(F) *Recommended Scotch spearmint oil allotment percentage for the 2017–2018 marketing year: 36 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (34.9 percent), and input from producers and handlers at the October 19, 2016, meeting. The recommended 36 percent allotment percentage reflects the Committee's belief that the computed percentage (34.9 percent) may not adequately supply the potential 2017–2018 Scotch spearmint oil market demand.

(G) *Recommended Scotch spearmint oil salable quantity for the 2017–2018 marketing year: 774,645 pounds.* This figure is the product of the recommended salable allotment percentage (36 percent) and the total estimated allotment base (2,151,792 pounds) for the 2017–2018 marketing year.

(H) *Estimated total available supply of Scotch spearmint oil for the 2017–2018 marketing year: 949,152 pounds.* This figure is the sum of the 2017–2018 recommended salable quantity (774,645 pounds) and the estimated carry-in on June 1, 2017 (174,507 pounds).

### Class 3 (Native) Spearmint Oil

The Committee also recommended a 2017–2018 Native spearmint oil salable quantity of 1,075,051 pounds and an allotment percentage of 44 percent at the October 19, 2016, meeting. These figures represent a decrease of 134,495 pounds and 6 percent, respectively, from the salable quantity and allotment percentage established for the previous marketing year. To formulate this recommendation, the Committee utilized Native spearmint oil sales estimates for the 2017–2018 marketing year, as provided by several of the industry's handlers, as well as historical and current Native spearmint oil market statistics.

The Committee estimates that there will be 1,094,659 pounds of Native spearmint oil in the reserve pool on June 1, 2017. This figure, which is the excess Native spearmint oil production held in reserve by producers, is 499,305 pounds higher than the reserve pool held by producers on June 1, 2016. This would be the highest reserve pool level since 2004. Reserve pool levels of Native spearmint oil had been slowly moving toward the level that the Committee believes is optimal for the industry prior to the increases experienced in 2015 and 2016. The large year-over-year increase in Native spearmint oil held in reserve (84 percent) is the result of substantially increased production and only moderately increased industry trade demand.

Far West Native spearmint oil production was estimated at 1,510,936 pounds in 2015, compared to 1,694,684 pounds estimated for 2016. Although total estimated acres of Native spearmint production decreased by 164 acres, yield per acre has risen from 145.8 in 2015 to 166.2 pounds per acre this year. Conversely, sales of Native spearmint oil, which were increasing at about a 4 percent rate from 2009 to 2014, dropped by 12 percent for the 2015–2016 marketing year.

Despite Committee statistics that indicate a sharp drop for Far West Native spearmint oil sales from the previous marketing year (2015–2016), monthly sales, to date, for the 2016–2017 marketing year have been moderately stronger. The Committee expects this trend to continue, even as imports of spearmint oil are also rising. Canada more than doubled its shipments of spearmint oil into the U.S. market from 2014 to 2015, and Chinese shipments are up 14 percent over the same period. While it is a common practice for buyers to mix U.S. and foreign-produced oils to create a final

product with a certain flavor profile, the greatest percentage of oil in those blends continues to be from the Far West. The Committee and the industry expect that practice to continue into the future.

One exception to the rising trend in spearmint oil imports, India has reduced shipments over the last two years. Recent reports used by the Committee indicate that spearmint oil produced in India is improving in quality, yet decreasing in acreage. Indian spearmint oil is increasingly regarded as an alternative to high quality, Far West Native spearmint oil, but production problems have limited its importation into the U.S. market. As a result, imports from India, while still in demand, decreased in the past year. However, spearmint oil from India may return as a major threat to the Far West Native spearmint oil industry's domestic market share in the future.

One of the factors considered by the Committee when it estimated trade demand was that sales of mint products, both domestically and abroad, have slowed down. This is largely the result of slowing economies in Europe and Asia. In addition, demand is expected to be impacted by the purchasing patterns of end users. Over the last several years, end users may have been building reserve stocks of Far West oil when prices were low as a hedge against future price increases. End users of spearmint oil are expected to continue to rely on Far West production as their main source of high quality Native spearmint oil, but demand may be at lower quantities moving forward in response to the current market factors. However, Committee members remain optimistic that demand will rise again in the long term.

As such, spearmint oil handlers, who regularly help predict trade demand for Far West Native spearmint oil, estimate demand to range between 1,300,000 and 1,400,000 pounds (with an average of 1,320,000 pounds) for the 2017–2018 marketing year. This estimate is the same as the estimate for the previous year. The Committee used the handlers' input when it estimated 2017–2018 marketing year Native spearmint oil trade demand to be 1,250,000 pounds. This figure is 25,000 pounds less than the figure used in the previous marketing year and approximately 75,000 pounds below the 3-year average sales figure (1,324,560 pounds).

The estimated carry-in of 189,820 pounds of Native spearmint oil on June 1, 2017, in conjunction with the Committee recommended salable quantity of 1,075,051 pounds, would result in an estimated total available supply of 1,264,871 pounds of Native

spearmint oil during the 2017–2018 marketing year. With estimated trade demand of 1,250,000 pounds for the 2017–2018 marketing year, the Committee projects that 14,871 pounds of Native spearmint oil will be carried into the 2018–2019 marketing year, a reduction of 174,909 pounds from the estimated 2017–2018 marketing year carry-in. The Committee estimates that there will be 1,094,659 pounds of Native spearmint oil held in the reserve pool at the beginning of the 2017–2018 marketing year. Should the industry experience an unexpected increase in trade demand during the 2017–2018 marketing year, Native spearmint oil in the reserve pool could be released to satisfy that demand.

The Committee's stated intent in the use of marketing order volume regulation provisions for Native spearmint oil is to keep adequate supplies available to meet market needs while maintaining 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 2017–2018 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in of Native spearmint oil on June 1, 2017: 189,820 pounds.* This figure is the difference between the revised 2016–2017 marketing year total available supply of 1,430,820 pounds and the revised 2016–2017 marketing year estimated trade demand of 1,241,000 pounds.

(B) *Estimated trade demand of Native spearmint oil for the 2017–2018 marketing year: 1,250,000 pounds.* This estimate was established by the Committee and is based on input from producers at six Native spearmint oil production area meetings held in mid-October 2016, as well as estimates provided by handlers and other meeting participants at the October 19, 2016, main meeting. This figure represents a decrease of 25,000 pounds from the previous year's estimate. The average estimated trade demand for Native spearmint oil from the six production area grower's meetings was 1,287,500 pounds, whereas the handlers' estimates ranged from 1,300,000 to 1,400,000 pounds. The average of Far West Native spearmint oil sales over the last three years is 1,324,560 pounds. However, the quantity marketed over the most recent full marketing year, 2015–2016, was 1,241,140 pounds. The Committee chose to be conservative in the establishment of its trade demand estimate for the 2017–2018 marketing year to avoid

oversupplying the market in the face of increasing production.

(C) *Salable quantity of Native spearmint oil required from the 2017–2018 marketing year production: 1,060,180 pounds.* This figure is the difference between the estimated 2017–2018 marketing year estimated trade demand (1,250,000 pounds) and the estimated carry-in on June 1, 2017 (189,820 pounds). This is the minimum amount of Native spearmint oil that the Committee believes would be required to meet the anticipated 2017–2018 marketing year trade demand.

(D) *Total estimated allotment base of Native spearmint oil for the 2017–2018 marketing year: 2,443,297 pounds.* This figure represents a one-percent increase over the 2016–2017 total allotment base of 2,419,106 pounds as prescribed by the order in § 985.53(d)(1). The one-percent increase equals 24,191 pounds of Native spearmint oil. This estimate 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 Native spearmint oil allotment percentage for the 2017–2018 marketing year: 43.4 percent.* This percentage is calculated by dividing the required salable quantity (1,060,180 pounds) by the total estimated allotment base (2,443,297 pounds) for the 2017–2018 marketing year.

(F) *Recommended Native spearmint oil allotment percentage for the 2017–2018 marketing year: 44 percent.* This is the Committee's recommendation based on the computed allotment percentage (43.4 percent), the average of the computed allotment percentage figures from the six production area meetings (46.7 percent), and input from producers and handlers at the October 19, 2016, meeting. The recommended 44 percent allotment percentage is also based on the Committee's belief that the computed percentage (43.4 percent) may not adequately supply the potential market for Native spearmint oil in the 2017–2018 marketing year.

(G) *Recommended Native spearmint oil 2017–2018 marketing year salable quantity: 1,075,051 pounds.* This figure is the product of the recommended allotment percentage (44 percent) and the total estimated allotment base (2,443,297 pounds).

(H) *Estimated available supply of Native spearmint oil for the 2017–2018 marketing year: 1,264,871 pounds.* This figure is the sum of the 2017–2018 recommended salable quantity (1,075,051 pounds) and the estimated carry-in on June 1, 2017 (189,820 pounds).

Under volume regulation, 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 774,645 pounds and 36 percent, and 1,075,051 pounds and 44 percent, respectively, are based on the goal of 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 each, thus avoiding extreme fluctuations in inventories and prices.

The salable quantities proposed in this rule 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 contains a provision in § 985.51 for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions.

Under volume regulation, producers who produce more than their annual allotments during the marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment. In addition, on December 1 of each year, producers that have not transferred their excess spearmint oil to other producers must place their excess spearmint oil production into the reserve pool to be released in the future in accordance with market needs and under the Committee's direction.

This proposed action, if adopted, would be similar to regulations issued in prior seasons. The average initial allotment percentage for the five most recent marketing years for both Scotch and Native spearmint oil is 52.6 percent.

In conjunction with the issuance of this proposed rule, USDA has reviewed the Committee's marketing policy statement for the 2017–2018 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of §§ 985.50 and 985.51 of the order.

During its discussion of potential 2017–2018 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 USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The establishment of the proposed 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 would also provide producers with information on the amount of spearmint oil that should be produced for the 2017 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 businesses 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, approximately 41 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) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

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 12 of the 41 Scotch spearmint oil producers and 31 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.

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 2017–2018 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 coordinate their spearmint oil production with the expected market demand. Authority for this action is provided in §§ 985.50, 985.51, and 985.52 of the order.

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 production of spearmint oil and are not financially able to hold spearmint oil for sale in future years. In addition, small producers generally do not have a large assortment of 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 their operation for a period of time. Reasonable assurance of a stable price and market provides all producing entities with the ability to maintain proper cash flow and to meet annual expenses.

Costs to producers and handlers, large and small, resulting from this rule are expected to be offset by the benefits derived from a more stable market and increased returns. The benefits of this rule are expected to be equally available to all producers and handlers regardless of their size.

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. Historically, 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 spearmint 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 little impact on the retail prices for those goods.

In 2013, 2014, and 2015, the Committee set salable percentages at levels that resulted in most, if not all, of the spearmint oil production being made available to the market. This was in response to the increased demand for spearmint oil from the Far West due to increased utilization by end users and the reduced supply of spearmint oil coming from other production areas, both domestic and foreign.

Although there is still strong demand for spearmint oil, competing areas (mainly Canada) have experienced better than expected production in 2015 and 2016, and will create some marketing pressure for spearmint oil from the Far West. In addition, the slowing of international markets for spearmint-flavored products has negatively impacted the demand for domestically produced spearmint oil. Thus, the lower salable quantities and allotment percentages recommended by the Committee for the 2017–2018 marketing year are intended to be

responsive to the changing environment of the spearmint oil market.

In the late 1990s, the Committee recommended higher than normal salable quantities and allotment percentages in hopes of gaining market share. This approach did not work, and in the following years, the salable quantities and allotment percentages were established at lower levels in order to reduce the excess spearmint oil production and resulting build-up of inventory. In order to avoid a similar scenario moving forward, the Committee, relying heavily on the information provided to them by spearmint oil handlers during the October 19, 2016, meeting, ultimately recommended reducing the 2017–2018 marketing year salable quantities and allotment percentages from the previous year to better align the available supply with market demand.

The Committee reported that recent producer prices for spearmint oil are \$16.50 to \$18.00 per pound. Average producer prices for all types of spearmint oil for 2013 through 2015 were \$18.79, \$19.21, and \$18.32, respectively. These are computed price averages for Washington, Oregon, and Idaho combined, based on NASS data.

Spearmint oil production tends to be cyclical. Prior to the inception of the marketing order in 1980, extreme variability in producer prices was common. For example, the season average producer price for Washington Native spearmint oil in 1971 was \$3.00 per pound. By 1975, the producer price had risen to \$11.00 per pound, an increase of over 260% in just four years. Such fluctuations were not unusual in the spearmint oil industry in the years leading up to the promulgation of the order. For most producers, this was an untenable situation. Years of relatively high spearmint oil production, with demand remaining relatively stable, led to periods in which large producer stocks of unsold spearmint oil depressed producer prices. Shortages and high prices followed in subsequent years, as producers responded to price signals by cutting back production.

After establishment of the order, the supply and price variability in the spearmint oil market moderated. During the 25-year period from 1982 to 2006, the season average producer price for Native spearmint oil ranged from a high of \$11.10 to a low of \$9.00 per pound, or a difference of 23 percent. No change in producer price from one year to the next during this period was more than \$1.00 per pound. This is a remarkable record of price stability. From 2006 to 2008, when production contracts tied to input costs were prevalent in the

industry, the annual average Native producer price jumped by \$3.80 per pound. During this time period, prices for fuel, fertilizer, and labor increased dramatically, resulting in higher contracted producer prices and a concurrent increase in the overall season average producer price for the industry.

The significant variability of the spearmint oil market is illustrated by the fact that the coefficient of variation, or CV (a standard measure of variability), of Far West spearmint oil producer prices for the period 1980–2015 (when the marketing order was in effect) is 24 percent, compared to 36 percent for the decade prior to the promulgation of the order (1970–79) and 49 percent for the prior 20-year period (1960–79). The coefficient of variation, as presented herein, was calculated by USDA from information provided by the Committee and NASS. This analysis provides an indication of the price stabilizing impact of the marketing order as higher CV values correspond to greater variability.

Based on NASS data, production in the shortest marketing year since the establishment of the order was about 47 percent of the 36-year average (1.96 million pounds from 1980 through 2015). The largest crop was approximately 157 percent of the 36-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 the cyclical nature of the spearmint oil industry, which were 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 increases to production costs. While prices for spearmint oil have been relatively steady, the cost of production has increased to the extent that plans to plant spearmint may be postponed or vacated indefinitely. Producers may also be 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 regulation 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 spearmint oil produced in a marketing year that producers may sell during that same 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. This 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 market under the order.

By December 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on annual allotment certificates. Prior to December 1, such excess oil can be transferred to another producer to fill a deficiency in that producer's annual allotment as provided for in § 985.156(a).

The order allows limited quantities of excess oil to be sold by one producer to another producer to fill production deficiencies during a marketing year. A deficiency occurs when on-farm production is less than a producer's annual allotment. When a producer has a deficiency, the producer may utilize their own reserve pool oil to fill that deficiency, or excess production (production of spearmint oil in excess of the producer's annual allotment) from another producer may also be secured to fill the deficiency. As mentioned previously, all of these provisions need to be exercised prior to December 1 of each year.

Excess spearmint oil not transferred to another producer to fill a deficiency is held in storage and, on December 1, is added to the reserve pool administered by the Committee pursuant to § 985.157. The Committee maintains the reserve pool for each class of spearmint oil. Once spearmint oil is placed in the reserve pool, such spearmint oil cannot enter the market during that marketing year unless USDA approves a Committee recommendation to increase the salable quantity and allotment percentage for a certain class of oil, subsequently making a portion of the reserve pool of that class of spearmint oil available to the market. Without an increase in the salable quantity and allotment percentage, spearmint oil placed in the reserve pool cannot be removed from the reserve pool and marketed in the marketing year in which it is initially placed in the reserve pool. However, producers may dispose of reserve spearmint oil from their own production, and held in their own

account, under certain provisions in subsequent marketing years under the supervision of the Committee.

While the Committee administers the reserve pool of spearmint oil, ownership and physical possession of spearmint oil held in reserve does not transfer to the Committee. The Committee accounts for, and controls the release of, reserve spearmint oil but does not take title to, or dispose of, any such oil of its own accord or for its own benefit. Producers, at their sole discretion, make the decisions regarding the disposition of oil held in the reserve pool under any one of three possible mechanisms.

Section 985.57(b) details the conditions under which a producer may dispose of their reserve pool spearmint oil. First, producers may utilize reserve oil from their own production to fill intra-seasonal increases in the allotment percentage and salable quantity. Second, producers may fill an ensuing year's annual allotment from spearmint oil held in the reserve pool. Lastly, producers may exchange salable oil of the same class and quantity of reserve oil from their own production to rotate stock, so long as the Committee is properly notified and the oil is properly identified.

In any given year, the total available supply of spearmint oil is composed of current production plus salable 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 salable spearmint oil to carry over into the subsequent marketing year. If the industry has production in excess of the salable quantity, the reserve pool absorbs the surplus quantity of spearmint oil, thereby withholding it from the market, unless such oil is needed to fill unanticipated intra-seasonal increases in demand. In this way, excess spearmint oil is not allowed to oversupply the market and create price instability. Likewise, if production is insufficient in any given year to fully supply the market with spearmint oil, the reserve pool oil can be released to satisfy the market demand until production can be increased.

Therefore, under its provisions, the order may attempt to stabilize prices by (1) regulating 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. Reserve pool stocks, which increase in high

production years, are drawn down in years where the crop is short.

An econometric model generated by USDA was used to assess the impact that volume regulation has on the prices producers receive for their commodity. Without volume regulation, 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 regulation.

The Committee estimated trade demand for the 2017–2018 marketing year for both classes of oil at 2,175,000 pounds, and that the expected combined salable carry-in will be 364,327 pounds. This results in a combined required salable quantity of 1,810,673 pounds (2,175,000 pounds of total trade demand less 364,327 pounds of total carry-in) for the 2017–2018 marketing year. Under volume regulation, total sales of spearmint oil by producers for the 2017–2018 marketing year would be held to 2,214,023 pounds (the recommended salable quantity for both classes of spearmint oil of 1,849,696 pounds plus 364,327 pounds of carry-in). This total available supply of 2,214,023 pounds should be more than adequate to supply the 2,175,000 pounds of anticipated total trade demand for spearmint oil. In addition, as of June 1, 2016, the total reserve pool for both classes of spearmint oil stood at 611,331 pounds. Furthermore, that quantity is expected to rise over the course of the 2016–2017 marketing year. Should trade demand increase unexpectedly during the 2017–2018 marketing year, reserve pool spearmint oil could be released into the market to supply that increase in demand.

The recommended allotment percentages, upon which 2017–2018 producer allotments are based, are 36 percent for Scotch spearmint oil and 44 percent for Native spearmint oil. Without volume regulation, producers would not be held to these allotment levels, and could produce and sell an unrestricted quantity of spearmint oil. The USDA econometric model estimated that the season average producer price per pound (from both classes of spearmint oil) would decline about \$2.45 per pound as a result of the higher quantities of spearmint oil that would be produced and marketed without volume regulation. The surplus situation for the spearmint oil market that would exist without volume regulation in 2017–2018 also would likely dampen prospects for improved

producer prices in future years because of the buildup in stocks.

The use of volume regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume regulation is believed to have little or no effect on consumer prices of products containing spearmint oil and would 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 not regulating any volume for both classes of spearmint oil because of the severe price-depressing effects that would likely occur without volume regulation. The alternative to establish salable quantities and allotment percentages at the 2016–2017 marketing year's levels was discussed, but not put to any motion, for both classes of oil. The Committee also discussed and considered salable quantities and allotment percentages that were above and below the levels that were ultimately recommended for Scotch spearmint oil. Ultimately, the action taken by the Committee was to decrease the salable quantities and allotment percentages for both Class 1 and Class 3 spearmint oil from the current 2016–2017 marketing year levels.

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 quantities and allotment percentages recommended would achieve the objectives sought. The Committee also believes that, should there be no volume regulation in effect for the upcoming marketing year, the Far West spearmint oil industry would return to the pronounced cyclical price patterns that occurred prior to the promulgation of the order. As

previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. The salable quantities and allotment percentages proposed herein are expected to facilitate the goal of maintaining orderly marketing conditions for Far West spearmint oil for the 2017–2018 and future marketing years.

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, Specialty Crops Program. No changes are necessary in those requirements as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would establish the salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil and Class 3 (Native) spearmint oil produced in the Far West during the 2017–2018 marketing year. Accordingly, this action 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.

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

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

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 19, 2016, 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/rules-regulations/moa/small-businesses>.

Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because handlers are aware of this action, which was recommended by the committee at a public meeting. In addition, this proposed rule would need to be in place as soon as possible since producers will begin planting spearmint root stock as early as February, 2017 and need adequate time to decide which class and how much spearmint to grow. 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 § 985.236 is added to read as follows:

#### **§ 985.236 Salable quantities and allotment percentages—2017–2018 marketing year.**

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2017, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 774,645 pounds and an allotment percentage of 36 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,075,051 pounds and an allotment percentage of 44 percent.

Dated: March 27, 2017.

**Bruce Summers,**

*Acting Administrator, Agricultural Marketing Service.*

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