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DEPARTMENT OF AGRICULTURE

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7 CFR Part 985

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Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 1 (Scotch) and Class 3 (Native) Spearmint Oil for the 2012–2013 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule revises the quantity of Class 1 (Scotch) and Class 3 (Native) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year under the Far West spearmint oil marketing order. This rule increases the Scotch spearmint oil salable quantity from 782,413 pounds to 2,622,115 pounds, and the allotment percentage from 38 percent to 128 percent. In addition, this rule increases the Native spearmint oil salable quantity from 1,162,473 pounds to 1,348,270 pounds, and the allotment percentage from 50 percent to 58 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 recommended this rule for the purpose of maintaining orderly marketing conditions in the Far West spearmint oil market.

DATES: Effective June 1, 2012, through May 31, 2013; comments received by February 26, 2013 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable 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 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 Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov.*

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 Scotch and Native spearmint oil produced in the Far West that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year, which began on June 1, 2012, and ends on May 31, 2013.

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.

This rule revises the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year under the Far West spearmint oil marketing order. This rule increases the Scotch spearmint oil salable quantity from 782,413 pounds to 2,622,115 pounds, and the allotment percentage from 38 percent to 128 percent. In addition, this rule increases the Native spearmint oil salable quantity from 1,162,473 pounds to 1,348,270 pounds, and the allotment percentage from 50 percent to 58 percent.

Under the volume regulation provisions of the order, the Committee meets each year to adopt a marketing policy for the ensuing year. When the Committee's marketing policy considerations indicate a need for limiting the quantity of spearmint oil available to the market to establish or maintain orderly marketing conditions, the Committee submits a recommendation to the Secretary for volume regulation.

Volume regulation under the order is effectuated through the establishment of a salable quantity and allotment percentage applicable to each class of spearmint oil handled in the production area during a marketing year. The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle on behalf of, producers during a given marketing year. The allotment percentage for each class of oil is derived by dividing the salable quantity by the total industry allotment base for that same class of oil. The total industry allotment base is the aggregate of all allotment base held individually by producers. Producer allotment base is the quantity of each class of spearmint oil that the Committee has determined is representative of a producer's spearmint oil production. Each producer is allotted a pro rata share of the total salable quantity of each class of spearmint oil each marketing year. Each producer's annual allotment is determined by applying the allotment percentage to the producer's individual allotment base for each applicable class of spearmint oil.

Salable oil held over and carried into the ensuing marketing year is accounted for by the Committee as salable carry-in when it considers its marketing policy. Producers who produce spearmint oil in excess of their annual allotment must identify such excess oil to the Committee. After identification, excess oil must be either transferred to another producer to fill a deficiency in that producer's annual allotment or be held in reserve for future sale in accordance with the provisions of the order. Transfers of oil between producers to fill deficiencies must be completed prior to October 31 of each marketing year. Section 985.56(b) specifies that before November 1, or such other date as the Committee, with the approval of the Secretary, may establish, excess oil, not used to fill another producer's deficiency, shall be delivered to the Committee or its designees for storage. Section 985.57(a) provides that on November 1, or such other date as the Committee, with the approval of the Secretary may establish, the Committee shall pool identified excess oil as reserve oil in such manner as to accurately account for its receipt, storage, and disposition.

The full Committee met on October 12, 2011, to consider its marketing policy for the ensuing year. At that meeting, the Committee determined that marketing conditions indicated a need for volume regulation of both classes of spearmint oil for the 2012–2013 marketing year. The Committee recommended salable quantities of 782,413 pounds and 1,162,473 pounds, and allotment percentages of 38 percent and 50 percent, respectively, for Scotch and Native spearmint oil. A proposed rule to that effect was published in the **Federal Register** on March 5, 2012 (77 FR 13019). Comments on the proposed rule were solicited from interested persons until April 4, 2012. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2012–2013 marketing year was published in the **Federal Register** on June 5, 2012 (77 FR 33076).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the full eight member Committee met again on October 17, 2012, to consider pertinent market information on the current supply, demand, and price of spearmint oil. The Committee, in two separate motions, recommended that the 2012–2013 marketing year Scotch and Native spearmint oil allotment percentages be increased by 90 percent and 8 percent, respectively. The motion to increase the allotment percentage for Scotch was unanimous, and the motion to increase the allotment percentage for Native passed with six members in favor and two members opposed. The members opposed to the motion agreed that an increase was necessary for the industry to respond to increasing demand, but based their votes on the opinion that an 8 percent increase was not high enough to adequately respond to the current marketing environment.

Thus, taking into consideration the following discussion, this rule increases the 2012–2013 marketing year salable quantities and allotment percentages for Scotch and Native spearmint oil to 2,622,115 pounds and 128 percent, and 1,348,270 pounds and 58 percent, respectively.

The total industry allotment base for Scotch spearmint oil for the 2012–2013 marketing year was estimated by the Committee at the October 12, 2011, meeting at 2,058,981 pounds. This was later revised at the beginning of the 2012–2013 marketing year to 2,048,527 pounds to reflect the loss of 10,454 pounds of base due to non-production of some producers' total annual allotments during the 2011–2012 marketing year.

Section 985.53(e) of the order requires that producers make a bona fide effort to produce their entire 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 10,454 pound reduction in allotment base for Scotch spearmint oil reflects the total base surrendered by all producers due to the non-production of those producers' total annual allotments during the 2011–2012 marketing year.

When the revised total Scotch allotment base of 2,048,527 pounds is applied to the originally established allotment percentage of 38 percent, the initially established 2012–2013 marketing year salable quantity of 782,413 pounds is effectively modified to 778,440 pounds.

The same situation applies to Native spearmint oil. The Committee estimated at the October 12, 2011, meeting that the total industry allotment base for Native spearmint oil for the 2012–2013 marketing year was 2,324,945 pounds. That number was later revised at the beginning of the 2012–2013 marketing year to 2,324,604 pounds to reflect the bona fide effort reduction of 341 pounds. Just as with Scotch spearmint oil, the 341 pound reduction in Native allotment base reflects the total base surrendered by all producers due to the non-production of such producers' total annual allotments during the 2011–2012 marketing year.

When the revised total Native allotment base of 2,324,604 pounds is applied to the originally established allotment percentage of 50 percent, the initially established 2012–2013 marketing year Native salable quantity of 1,162,473 pounds is effectively modified to 1,162,302 pounds.

This rule makes additional amounts of Scotch and Native spearmint oil available to the market by increasing the salable quantity and allotment percentage of each class of oil. Such additional oil may come from spearmint oil produced in the current marketing year or by releasing oil held in the reserve pool. As of May 31, 2012, the Scotch reserve pool contained 215,350 pounds of spearmint oil and the Native reserve pool contained 451,302 pounds of spearmint oil.

The 90 percent increase in the Scotch spearmint oil allotment percentage established by this rule will result in a 2012–2013 marketing year salable quantity of 2,622,115 pounds. Likewise, the 8 percent increase in the Native spearmint oil allotment percentage established by this rule will result in a 2012–2013 marketing year salable quantity of 1,348,270 pounds. Theoretically, this reflects an additional 1,843,665 pounds of Scotch spearmint oil and 185,968 pounds of Native spearmint oil being made available to the market by this rule. However, due to the limited amount of spearmint oil held in reserve by individual producers, the Committee expects that only an additional 197,350 pounds of Scotch spearmint oil and 120,254 pounds of Native spearmint oil will be available to the spearmint oil market as a result of this rule.

The following is a detailed discussion of the Committee recommendations:

Scotch Spearmint Oil Recommendation

The 2012–2013 marketing year began on June 1, 2012, with an estimated carry-in of 149,740 pounds of salable Scotch spearmint oil. When the estimated carry-in is added to the revised 2012–2013 salable quantity of 778,440 pounds, the result is a theoretical total available supply of Scotch spearmint oil for the 2012–2013 marketing year of 928,180 pounds. However, the Committee estimates that Scotch spearmint oil producers do not have sufficient production to fill approximately 138,960 pounds of their respective 2012–2013 marketing year annual allotment. In addition, as the October 31 transfer deadline has passed, the anticipated deficiency experienced by some producers can no longer be filled from another producer's excess oil. As such, the Committee estimates that the total actual supply of Scotch spearmint oil available to the market prior to the issuance of this rule is 789,220 pounds, not the 928,180 pounds as previously calculated. Of this amount, the Committee estimates that 727,993 pounds of Scotch spearmint oil have already been sold or committed to be sold as of the October 17, 2012, meeting date. This leaves just 61,227 pounds of uncommitted salable Scotch spearmint oil available for sale for the remainder of the 2012–2013 marketing year. The Committee believes that maintaining such a small amount of salable Scotch spearmint oil would be detrimental to the industry.

In making the recommendation to increase the available supply of Scotch spearmint oil, the Committee considered all currently 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 presented by the Committee manager that were provided by handlers and producers who were not in attendance.

Increasing the 2012–2013 marketing year Scotch spearmint oil allotment percentage by 90 percent will increase the salable quantity by 1,843,674 pounds, to a total of 2,622,115 pounds. However, as mentioned previously, the net effect of the increase will be much less than the calculated increase due to the amount of actual oil individual producers have available from the unused portion of their annual allotment and from their reserve inventory. This action will make an estimated additional 197,350 pounds available to the market, which is the estimated total amount of Scotch spearmint oil held in reserve by producers as of the October 17, 2012, meeting. That amount, combined with the 61,227 pounds of salable Scotch spearmint oil currently available, will make a total of 258,577 pounds available to the market and bring the total available supply of Scotch spearmint oil for the marketing year to 986,570 pounds. The Committee expects that this action will completely deplete reserve stocks of Scotch spearmint oil during the course of the 2012–2013 marketing year.

When the original 2012–2013 marketing policy statement was drafted, handlers estimated the demand for Scotch spearmint oil for the 2012–2013 marketing year at 825,000 pounds. Thus, the Committee's recommendation for the establishment of the Scotch spearmint oil salable quantity and allotment percentage for the 2012–2013 marketing year was based on these estimates and did not anticipate the increase in demand for Scotch spearmint oil that the market is currently experiencing. The Committee believes that the supply of Scotch spearmint oil available to the market, without an increase in the salable quantity, would be insufficient to satisfy the current level of demand for oil at reasonable price levels. It is the opinion of the Committee and the spearmint oil industry that this action is essential to ensuring an adequate supply of Scotch spearmint oil to the market.

As previously stated, this action will make all of the Scotch spearmint oil held by the industry available for marketing, including the entire pool of reserve oil. Accordingly, to achieve the desired net effect under the current supply conditions in the industry, the salable quantity and allotment percentage established under the volume regulation provisions of the order must be set at the established high levels.

The Committee records show that not every producer holds Scotch spearmint oil in reserve. Conversely, a few producers hold a large quantity of oil in reserve relative to their allotment base. Given the process by which volume regulation is effectuated under the order, those producers with large amounts of reserve oil are only able to market their entire inventory of reserve oil when the allotment percentage is set very high. Likewise, producers that do not hold Scotch spearmint oil in reserve do not have oil inventory to market, regardless of the level of increase. As such, the Committee expects that establishing a high salable quantity and allotment percentage for Scotch spearmint oil will translate into a large amount of the increased salable quantity going unmarketed, as many producers have little or no reserve oil available to sell.

As an example, assume Producer A has 2,000 pounds of Scotch spearmint oil allotment base. In addition, assume that during the 2012–2013 marketing year Producer A produced 760 pounds of Scotch spearmint oil and currently holds 1,800 pounds in reserve from production in prior years. Given that the initial 2012–2013 marketing year allotment percentage was established at 38 percent, Producer A would be able to use all 760 pounds of the current year production (38 percent × 2,000 pounds). Without an increase in the allotment percentage, however, the producer would not be able to use any reserve oil. For Producer A to use all 1,800 pounds of the producer's reserve oil, the allotment percentage would need to be increased by 90 percent, to a total of 128 percent (90 percent × 2,000 pounds = 1,800 pounds). An increase in the allotment percentage of anything less than 90 percent would fail to release all of the Scotch spearmint oil he holds in reserve.

In contrast, assume that another producer, Producer B, likewise has 2,000 pounds of Scotch spearmint oil allotment base and produced 760 pounds of Scotch spearmint oil during the 2012–2013 marketing year. Unlike Producer A, however, Producer B has no oil held in reserve. As in the first case, Producer B would be able to use all of the producer's current year production under the initial allotment percentage of 38 percent. However, a subsequent increase in the allotment percentage of 90 percent would have no impact on Producer B, as there is no reserve oil for the producer to use. As a result, the theoretical 1,800 pounds of additional annual allotment allocated to Producer B after a 90 percent increase in the allotment percentage would go unfilled.

As mentioned previously, the Committee estimated at the October 17 meeting that producers hold just 197,350 pounds of Scotch spearmint oil in reserve. The Committee estimates that a 90 percent increase in the allotment percentage is required to release the entire Scotch spearmint oil reserve pool to the market. The Committee acknowledges that the high allotment percentage will create a large theoretical salable quantity for which no

Scotch spearmint oil actually exists. Accordingly, the Committee expects that a large portion of the recommended 1,843,674 pound increase in salable quantity will go unfilled.

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

(A) Estimated 2012–2013 Scotch Allotment Base—2,058,981 pounds. This is the estimate on which the original 2012–2013 salable quantity and allotment percentage was based.

(B) Revised 2012–2013 Scotch Allotment Base—2,048,527 pounds. This is 10,454 pounds less than the estimated allotment base of 2,058,981 pounds. The difference is the result of some producers failing to produce all of their 2011–2012 allotment.

(C) Original 2012–2013 Scotch Allotment Percentage—38 percent. This was unanimously recommended by the Committee on October 12, 2011.

(D) Original 2012–2013 Scotch Salable Quantity—782,413 pounds. This figure is 38 percent of the estimated 2012–2013 allotment base of 2,058,981 pounds.

(E) Adjusted 2012–2013 Scotch Salable Quantity—778,440 pounds. This figure reflects the salable quantity actually available at the beginning of the 2012–2013 marketing year. This quantity is derived by applying the 38 percent allotment percentage to the revised allotment base of 2,048,527.

(F) Current Revision to the 2012–2013 Scotch Salable Quantity and Allotment Percentage:

(1) Increase in Scotch Allotment Percentage—90 percent. The Committee recommended a 90 percent increase at its October 17, 2012, meeting.

(2) 2012–2013 Scotch Allotment Percentage—128 percent. This figure is derived by adding the increase of 90 percent to the original 2012–2013 allotment percentage of 38 percent.

(3) Calculated Revised 2012–2013 Scotch Salable Quantity—2,622,115 pounds. This figure is 128 percent of the revised 2012–2013 allotment base of 2,048,527 pounds.

(4) Computed Increase in the 2012–2013 Scotch Salable Quantity—1,843,674 pounds. This figure is 90 percent of the revised 2012–2013 allotment base of 2,048,527 pounds.

(5) Expected Actual Increase in the 2012–2013 Scotch Spearmint Oil Available to the Market—197,350 pounds. This figure is based on the Committee's calculation of oil actually held by producers that may enter the market as a result of this rule.

Native Spearmint Oil Recommendation

The 2012–2013 marketing year for Native spearmint oil began on June 1, 2012, with an estimated carry-in of 135,855 pounds of salable oil. When the estimated carry-in is added to the revised 2012–2013 salable quantity of 1,162,302 pounds, the result is a total available supply of Native spearmint oil for the 2012–2013 marketing year of 1,298,157 pounds. Of this amount, the Committee estimates that 1,185,965 pounds of Native spearmint oil have already been sold or are committed to be sold as of the October 17, 2012, meeting date. This leaves just 112,192 pounds available for sale for the remainder of the 2012–2013 marketing year. The Committee believes that this is a relatively small amount of salable oil and maintaining available stocks at this level at this point in the marketing year would be detrimental to the industry. As a result, the Committee initiated this rulemaking action.

In making this recommendation to increase the available supply of Native spearmint oil, 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 presented by the Committee manager that were provided by handlers and producers who were not in attendance.

Increasing the 2012–2013 Native spearmint oil allotment percentage by 8 percent will increase the salable quantity by 185,968 pounds, to a total of 1,348,270 pounds. However, the net effect of the increase will be less than the calculated increase due to the amount of actual oil producers have available from the unused portion of their annual allotment or in reserve. The Committee estimates that this action will make an additional 120,254 pounds available to the market. This amount, combined with the 112,192 pounds of salable Native spearmint oil currently available, will make a total of 232,446 pounds available to the market and bring the total available supply of Native spearmint oil for the marketing year to 1,418,411 pounds.

When the original 2012–2013 marketing policy statement was drafted, handlers estimated the demand for Native spearmint oil for the 2012–2013 marketing year at 1,300,000 pounds. Thus, the Committee's recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2012–2013 marketing year was based on these estimates and did not anticipate the increase in demand for Native spearmint oil that the market is currently experiencing. The Committee believes that the supply of Native spearmint oil available to the market, without an increase in the salable quantity, will be insufficient to satisfy the current demand for oil at reasonable price levels. It is the opinion of the Committee and the spearmint oil industry that this action is essential to ensuring an adequate supply of Native spearmint oil to the market.

As previously stated, this action will make an additional 120,254 pounds of Native spearmint oil available to the market. Similar to the situation with Scotch spearmint oil, the salable quantity and allotment percentage has to be set relatively high to create the net effect desired. According to the Committee's calculations, the Native spearmint oil salable quantity and allotment percentage need to be increased 8 percent and 185,968 pounds, respectively, to release all of the 120,254 pounds that the Committee believes is necessary to adequately supply the market. The discrepancy between the calculated 185,968 pound increase in the salable quantity and the expected actual 120,254 pound increase in the amount of Native spearmint oil made available to the market is attributed to salable quantity being allocated to producers that do not have Native spearmint oil available to market. Accordingly, the Committee expects that 65,714 pounds of the recommended increase in the Native spearmint oil salable quantity will go unfilled.

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

(A) Estimated 2012–2013 Native Allotment Base—2,324,945 pounds. This is the estimate on which the original 2012–2013 Native spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2012–2013 Native Allotment Base—2,324,604 pounds.

This is 341 pounds less than the estimated allotment base of 2,324,945 pounds. The difference is the result of some producers failing to produce all of their 2011–2012 allotment.

(C) Original 2012–2013 Native Allotment Percentage—50 percent. This percentage was recommended by the Committee at its October 12, 2011, meeting.

(D) Original 2012–2013 Native Salable Quantity—1,162,473 pounds. This figure is 50 percent of the estimated 2012–2013 allotment base of 2,324,945.

(E) Adjusted 2012–2013 Native Salable Quantity—1,162,302 pounds. This figure reflects the salable quantity actually available at the beginning of the 2012–2013 marketing year. This quantity is derived by applying the 50 percent allotment percentage to the revised allotment base of 2,324,604.

(F) Current Revision to the 2012–2013 Native Salable Quantity and Allotment Percentage:

(1) Increase in Native Allotment Percentage—8 percent. The Committee recommended an 8 percent increase at its October 17, 2012, meeting.

(2) 2012–2013 Native Allotment Percentage—58 percent. This figure is derived by adding the increase of 8 percent to the original 2012–2013 allotment percentage of 50 percent.

(3) Calculated Revised 2012–2013 Native Salable Quantity—1,162,302 pounds. This figure is 58 percent of the revised 2012–2013 allotment base of 2,324,604 pounds.

(4) Computed Increase in the 2012–2013 Native Salable Quantity—185,968 pounds. This figure is 8 percent of the revised 2012–2013 allotment base of 2,324,604 pounds.

(5) Expected Actual Increase in the 2012–2013 Native Spearmint Oil Available to the Market—120,254 pounds. This figure is based on the Committee's calculation of oil actually held by producers that may enter the market as a result of this rule.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Scotch spearmint oil for the 2012–2013 marketing year should be increased to 2,622,115 pounds and 128 percent, respectively. In addition, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2012–2013 marketing year should be increased to 1,348,270 pounds and 58 percent, respectively.

This rule relaxes the regulation of Scotch and 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 2012–2013 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 2012–2013 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) 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 increases in the Scotch and Native spearmint oil salable quantity and allotment percentage allow for anticipated market needs for both classes 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 32 producers of Scotch spearmint oil and approximately 88 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 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 8 of the 32 Scotch spearmint oil producers and 22 of the 88 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The use of volume control regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. Without volume control, 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 since 1980 and provide benefits for producers, handlers, manufacturers, and consumers.

This rule increases the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year, which ends on May 31, 2013. The 2012–2013 Scotch and Native spearmint oil salable quantities were initially established at 782,413 pounds and 1,162,473 pounds, respectively, through publication in the **Federal Register** on June 5, 2012 (77 FR 33076). This rule increases the Scotch spearmint oil salable quantity to 2,622,115 pounds and the allotment percentage from 38 percent to 128 percent. Additionally, this rule increases the Native spearmint oil salable quantity to 1,348,270 pounds and the allotment percentage from 50 percent to 58 percent.

Based on the information and projections available at the October 17, 2012, 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 both Scotch and Native spearmint oil after careful consideration of all available information and input from all interested industry participants, 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.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This 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 October 17, 2012, 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: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the salable quantity and allotment percentage for both Scotch and Native spearmint oil for the 2012–2013 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 Scotch and Native spearmint oil that may be marketed during the marketing year, which ends on May 31, 2013; (2) the current quantity of Scotch and Native spearmint oil may be inadequate to meet demand for the 2012–2013 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 § 985.231, paragraphs (a) and (b) are revised to read as follows:

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

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

* * * * *

(a) Class 1 (Scotch) oil—a salable quantity of 2,622,115 pounds and an allotment percentage of 128 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,348,270 pounds and an allotment percentage of 58 percent.

Dated: December 20, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–31102 Filed 12–27–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 100

U.S. Customs and Border Protection

19 CFR Part 101

[Docket No. USCBP–2011–0032; CBP Dec. No. 12–23]

RIN 1651–AA90

Opening of Boquillas Border Crossing and Update to the Class B Port of Entry Description

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This rule establishes a border crossing in Big Bend National Park called Boquillas and designates it as a Customs station for customs purposes and a Class B port of entry (POE) for immigration purposes. The Boquillas crossing will be situated between Presidio and Del Rio, Texas. U.S. Customs and Border Protection (CBP) and the National Park Service (NPS) are partnering on the construction of a joint use facility in Big Bend National Park where the border crossing will operate.

This rule also updates the description of a Class B port of entry to reflect current border crossing documentation requirements.

DATES: *Effective Date:* January 28, 2013.

FOR FURTHER INFORMATION CONTACT: Colleen Manaher, Director, Land Border Integration, CBP Office of Field Operations, telephone 202–344–3003.

SUPPLEMENTARY INFORMATION: This rule establishes a border crossing in Big Bend National Park called Boquillas and designates it as a Customs station for customs purposes and a Class B port of entry for immigration purposes.