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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–09–0082; FV10–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2010–2011 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle for, producers during the 2010–2011 marketing year, which begins on June 1, 2010. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 566,962 pounds and 28 percent, respectively, and for Class 3 (Native) spearmint oil of 980,265 pounds and 43 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

DATES: *Effective Date:* This final rule becomes effective June 1, 2010.

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SUPPLEMENTARY INFORMATION: This final 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 marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule establishes the quantity of spearmint oil produced in the Far West, by class, which may be purchased from or handled for producers by handlers during the 2010–2011 marketing year, which begins on June 1, 2010. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Committee meets annually in the fall to review sales and other market information for the current marketing year, and to recommend the establishment of salable quantities and allotment percentages for each class of oil for the forthcoming marketing year beginning on June 1. The salable quantity establishes the amount of each class of spearmint oil that may be sold during the marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to that producer's allotment base for the applicable class of spearmint oil. The salable quantities are intended to satisfy anticipated market needs.

Recommendations are made well in advance to allow producers the chance to adjust their spearmint plantings in relation to the salable quantities and allotment percentages in the proposed regulation. In developing a regulatory recommendation for USDA, the Committee utilizes information pertaining to current and projected supply, demand, production costs and producer prices, as well as input from spearmint oil handlers and producers regarding prospective marketing conditions.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on October 14, 2009, and recommended salable quantities and allotment percentages for both classes of oil for the 2010–2011 marketing year. The Committee, in a vote with six members in favor and two members opposed, recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 566,962 pounds and 28 percent, respectively. The two members opposing the action were in favor of a greater salable quantity and allotment percentage for Scotch. For Native spearmint oil, the Committee unanimously recommended the establishment of a salable quantity and allotment percentage of 980,265 pounds and 43 percent, respectively.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers

during the 2010–2011 marketing year, which begins on June 1, 2010. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

Class 1 (Scotch) Spearmint Oil

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, and Oregon and a portion of Nevada and Utah. Scotch spearmint oil is also produced in the Midwest States of Indiana, Michigan, and Wisconsin, as well as in the States of Montana, South Dakota, North Dakota, and Minnesota.

When the order became effective in 1980, the Far West had about 72 percent of global Scotch spearmint oil sales. This was produced on about 9,702 acres within the Far West production area. In 2004, Scotch spearmint was planted on 4,772 acres in the Far West, whereas acreage in 2009 was up to 7,583 acres. About 84 percent of the Far West Scotch spearmint oil acreage is produced in Washington State.

During the last 40 years, the Far West's share of world Scotch production has varied. In 2002, for example, the Far West share of world sales reached a low of about 27 percent according to Committee records. The earlier downward trend in the Far West share of world sales was attributable to the increase in global production—specifically increases in Canada and China—and decreasing acreage in the Far West. Since that low, Far West spearmint oil sales as a percentage of total world sales is back up to over 41 percent.

This recent resurgence in overall share of the world market is due to many factors, including an increase in Far West production, a decrease in production in China coupled with an increase in Chinese utilization of its own production, and a recent decrease in acreage in other production areas within the United States. For example, production in the Midwest states has gone from 186,000 pounds in 2004, down to an estimated 35,000 pounds in 2009. This has increased the Far West's percentage of annual U.S. sales of Scotch spearmint oil to approximately 60 percent from the 2002 low of about 43 percent.

Other factors that have played a significant role in the Far West share of the global Scotch spearmint oil market include the overall quality of imported oil and technological advances that allow for more blending of lower quality oils. Such factors have provided the Committee with challenges in accurately predicting trade demand for Scotch spearmint oil. Despite these challenges, the marketing order has continued to contribute to price and market stabilization for Far West producers.

When the Committee met in October 2008 to recommend the 2009–2010 volume regulation, demand for spearmint oil appeared high in relation to expected production. The Committee consequently recommended a relatively high 2009–2010 Scotch salable quantity and allotment percentage in an effort to match supply with anticipated demand. When the Committee recommended the 2009–2010 Scotch salable quantity and allotment percentage of 842,171 pounds and 42 percent, respectively, it also estimated that the quantity of salable Scotch spearmint oil carried over from the 2008–2009 marketing year into the 2009–2010 marketing year would approximate 124,735 pounds. The actual amount carried forward on June 1, 2009, however, was 207,976 pounds, an amount higher than the Committee considers desirable. Major factors contributing to the large quantity of Scotch spearmint oil being carried into the 2009–2010 marketing year included fewer 2008–2009 sales than anticipated and production levels higher than expected.

The large carry-in, coupled with the overall lackluster economy and current lack of demand for spearmint oil has led to an over-supply situation within the Far West spearmint oil industry, particularly with Scotch spearmint oil. In October 2008, spearmint oil handlers had projected that the 2009–2010 trade demand for Far West Scotch spearmint oil would range from a low of 800,000 pounds to a high of 1,000,000 pounds. In October 2009, the same handlers reassessed their earlier projection for this period with a less optimistic range of 700,000 pounds to 750,000 pounds of Scotch spearmint oil trade demand. Although consumer demand for mint flavored products is reportedly steady—thus providing sustained optimism for the long term demand for Far West spearmint oil—these handlers reported that the manufacturers of such products were reducing purchases and meeting demand by trimming their own inventories to reduce the recessionary impact on their businesses.

The Committee recommended the 2010–2011 Scotch spearmint oil salable quantity of 566,962 pounds and allotment percentage of 28 percent utilizing sales estimates for 2010–2011 Scotch spearmint oil as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil sales levels. The Committee is estimating that about 800,000 pounds of Scotch spearmint oil may be sold during the 2010–2011 marketing year. When considered in conjunction with the estimated carry-in of 349,998 pounds of oil on June 1, 2010, the recommended salable quantity of 566,962 pounds results in a total available supply of about 916,960 pounds of Scotch spearmint oil during the 2010–2011 marketing year.

The Committee's stated intent is to keep adequate supplies available to meet market needs and improve producer prices.

The Committee developed its recommendation for the Scotch spearmint oil salable quantity and allotment percentage for the 2010–2011 marketing year on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2010—349,998 pounds.* This figure is the difference between the revised 2009–2010 marketing year total available supply of 1,049,998 pounds and the estimated 2009–2010 marketing year trade demand of 700,000 pounds.

(B) *Estimated trade demand for the 2010–2011 marketing year—800,000 pounds.* This figure is based on input from producers at six Scotch spearmint oil production area meetings held in late September and early October 2009, as well as estimates provided by handlers and other meeting participants at the October 14, 2009, meeting. The average estimated trade demand provided at the six production area meetings is 800,000 pounds, which is the same level as estimated by handlers. The average of sales over the last five years is 841,436 pounds.

(C) *Salable quantity required from the 2010–2011 marketing year production—450,002 pounds.* This figure is the difference between the estimated 2010–2011 marketing year trade demand (800,000 pounds) and the estimated carry-in on June 1, 2010 (349,998 pounds).

(D) *Total estimated allotment base for the 2010–2011 marketing year—2,024,863 pounds.* This figure represents a one percent increase over the revised 2009–2010 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—22.2 percent.* This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) *Recommended allotment percentage—28 percent.* The Committee's recommendation is based

on the computed allotment percentage (22.2 percent), the average of the computed allotment percentage figures from the six production area meetings (23.7 percent), and input from producers and handlers at the October 14, 2009, meeting. The actual recommendation of 28 percent is based on the Committee's determination that the computed percentage (22.2 percent) may not adequately supply the potential 2010–2011 Scotch spearmint oil market.

(G) *The Committee's recommended salable quantity—566,962 pounds.* This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) *Estimated available supply for the 2010–2011 marketing year—916,960 pounds.* This figure is the sum of the 2010–2011 recommended salable quantity (566,962 pounds) and the estimated carry-in on June 1, 2010 (349,998 pounds).

Class 3 (Native) Spearmint Oil

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

According to the Committee, very little true Native spearmint oil is produced outside of the United States. However, India produces an increasing quantity of spearmint oil with qualities very similar to Native spearmint oil. Committee records show that in 1996 the Far West accounted for nearly 93 percent of global sales of Native or Native quality spearmint oil. By 2009, that share had shrunk to less than 60 percent.

As with Scotch spearmint, acreage planted to Native spearmint has fluctuated with demand and producer price. In 2004, Committee records indicate that there were 4,805 acres of Native spearmint planted as opposed to the 8,919 acres planted in 2009.

When the Committee met in October 2008 to recommend the 2009–2010 volume regulation, the same relatively good market conditions buoying the industry since 2004 were in effect (although the Committee initially recommended Native spearmint oil allotment percentages averaging less than 43 percent between 2004 and 2008, demand proved better than anticipated and multiple intra-seasonal increases were effectuated each year to bring the final percentages up to a four-year average of nearly 56 percent). As a consequence, the Committee recommended a 2009–2010 marketing year allotment percentage of 53 percent for Native spearmint oil to match supply with anticipated demand.

At the same time, the Committee also estimated that the quantity of salable Native spearmint oil that would be carried over from the 2008–2009 marketing year into the 2009–2010 marketing year would approximate 51,363 pounds. The actual amount carried forward on June 1, 2009, however, was 130,323 pounds. Factors contributing to the larger 2009–2010 marketing year carry-in included fewer 2008–2009 sales than anticipated and production levels higher than expected.

Although to a lesser extent than with Scotch spearmint oil, the large Native spearmint oil carry-in, coupled with the recessionary economy and subsequent lack of demand for spearmint oil, has led to a moderately oversupplied Native spearmint oil market. In October 2008, the 2009–2010 trade demand for Far West Native spearmint oil was projected to average about 1,275,000 pounds. In October 2009, these same handlers revised the estimate for the 2009–2010 marketing year for a projected average trade demand of about 1,143,333 pounds for Native spearmint oil.

The Committee's recommendation for the 2010–2011 Native spearmint oil salable quantity of 980,265 pounds and allotment percentage of 43 percent utilized sales estimates provided by several of the industry's handlers, as well as historical and current Native spearmint oil sales levels. With figures about the same as those of the 2009–2010 marketing year, the Committee is estimating that 2010–2011 Native spearmint oil marketing year trade demand will be about 1,140,000 pounds. When considered in conjunction with the estimated carry-in of 186,595 pounds of oil on June 1, 2010, the recommended salable quantity of 980,265 pounds results in a total 2010–2011 available supply of Native spearmint oil of about 1,166,860 pounds.

Similar to the methods used with Scotch spearmint oil, the Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage primarily relies on the relationship between estimated trade demand and available supply. The Committee's stated intent is to make adequate supplies available to meet market needs and improve producer prices.

The Committee based its recommendation for the Native spearmint oil salable quantity and allotment percentage for the 2010–2011 marketing year on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2010—186,595 pounds.* This figure is the difference between the revised 2009–2010 marketing year total available supply of 1,326,595 pounds and the estimated 2009–2010 marketing year trade demand of 1,140,000 pounds.

(B) *Estimated trade demand for the 2010–2011 marketing year—1,140,000 pounds.* This figure is based on input from producers at the six Native spearmint oil production area meetings held in late September and early October 2009, as well as estimates provided by handlers and other meeting participants at the October 14, 2009, meeting. The average estimated trade demand provided at the six production area meetings was 1,140,000 pounds, whereas the handler estimate ranged from 1,150,000 pounds to 1,200,000 pounds.

(C) *Salable quantity required from the 2010–2011 marketing year production—953,405 pounds.* This figure is the difference between the estimated 2010–2011 marketing year trade demand (1,140,000 pounds) and the estimated carry-in on June 1, 2010 (186,595 pounds).

(D) *Total estimated allotment base for the 2010–2011 marketing year—2,279,687 pounds.* This figure represents a one percent increase over the revised 2009–2010 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—41.8 percent.* This percentage is computed by dividing the required salable quantity (953,405 pounds) by the total estimated allotment base (2,279,687 pounds).

(F) *Recommended allotment percentage—43 percent.* This is the Committee's recommendation based on the computed allotment percentage (41.8 percent), the average of the computed allotment percentage figures from the six production area meetings (45 percent), and input from producers and handlers at the October 14, 2009, meeting.

(G) *The Committee's recommended salable quantity—980,265 pounds.* This

figure is the product of the recommended allotment percentage (43 percent) and the total estimated allotment base (2,279,687 pounds).

(H) *Estimated available supply for the 2010–2011 marketing year—1,166,860 pounds.* This figure is the sum of the 2010–2011 recommended salable quantity (980,265 pounds) and the estimated carry-in on June 1, 2010 (186,595 pounds).

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

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 566,962 pounds and 28 percent, and 980,265 pounds and 43 percent, respectively, are based on the goal of maintaining market stability. The Committee anticipates that this goal would be achieved by matching supply to estimated demand and thus avoiding extreme fluctuations in spearmint oil supplies and prices. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil—developing during the marketing year—can be satisfied by an intra-seasonal increase in the salable quantities. Producers who produce more than their annual allotments during the 2010–2011 marketing year may transfer such excess spearmint oil to producers with production less than their annual allotment, or, up until November 1, 2010, place it into the reserve pool.

This regulation is similar to regulations issued in prior seasons. The average allotment percentage for the most recent five marketing years for Scotch spearmint oil is 47 percent, while the average allotment percentage for the same five-year period for Native spearmint oil is 53 percent. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this final rule, USDA has reviewed the Committee's marketing policy statement for the 2010–2011 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of § 985.50 of the order. During its discussion of potential 2010–2011 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages will allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2010–2011 season in order to meet anticipated market demand.

Final 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 final 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 38 producers of Scotch spearmint oil and approximately 84 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 38 Scotch spearmint oil producers and 29 of the 84 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

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

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

This final rule establishes the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle for, producers during the 2010–2011 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 to be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by handlers. Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have no impact on retail prices for those goods.

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

The significant variability is illustrated by the fact that the coefficient of variation (a standard measure of variability; "CV") of Far West spearmint oil production from 1980 through 2008 was about 0.23. The CV for spearmint oil grower prices was about 0.14, well below the CV for production. This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 49 percent of the 29-year average (1.87 million pounds from 1980 through 2008) and the largest crop was approximately 165 percent of the 29-year average. A key consequence is that in years of oversupply and low prices the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service.)

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the marketing order, can create liquidity problems for some producers. The marketing order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the increase in production costs. While prices have been relatively steady, the cost of production has increased to the extent that plans to plant spearmint may be postponed or changed indefinitely. Producers are also enticed by the prices of alternative crops and their lower cost of production.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil for the applicable class that the producer can sell.

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

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

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

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

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

The Committee estimated the trade demand for the 2010–2011 marketing year for both classes of oil at 1,940,000 pounds, and that the expected combined carry-in will be 536,593 pounds. This results in a combined required salable quantity of 1,403,407 pounds. With volume control, sales by producers for the 2010–2011 marketing year would be limited to 1,547,227 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended salable percentages, upon which 2010–2011 producer allotments are based, are 28 percent for Scotch and 43 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.51 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The

surplus situation for the spearmint oil market that would exist without volume controls in 2010–2011 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

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

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

After computing the initial 22.2 percent Scotch spearmint oil allotment percentage, the Committee considered various alternative levels of volume control for Scotch spearmint oil. Considered levels ranged from 28 percent to 32 percent. There was consensus that the allotment percentage for 2010–2011 should be less than the percentage established for the 2009–2010 marketing year (42 percent). After considerable discussion, however, the Committee determined that 566,962 pounds and 28 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2010–2011 marketing year.

The Committee was able to reach a consensus regarding the level of volume control for Native spearmint oil. After first computing the allotment percentage at 41.8 percent, the Committee unanimously determined that 980,265 pounds and 43 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2010–2011 marketing year.

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

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2010–2011 would decline substantially below current levels.

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

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0178, Vegetable and Specialty Crops. Accordingly, this rule would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 14, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on March 22, 2010 (75 FR 13445). Copies of the rule were provided to Committee staff, which in turn made it available to all spearmint oil producers, handlers, and interested persons. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending April 6, 2010, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2010–2011 marketing year starts on June 1, 2010, and handlers will need to begin purchasing the spearmint oil allotted under this rulemaking. Further, handlers are aware of this rule, which was recommended at a public meeting. Finally, a 60-day comment period was provided for in the proposed 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. A new § 985.229 is added to read as follows:

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

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

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2010, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 566,962 pounds and an allotment percentage of 28 percent.

(b) Class 3 (Native) oil—a salable quantity of 980,265 pounds and an allotment percentage of 43 percent.

Dated: May 12, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–11862 Filed 5–17–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0538; Airspace Docket No. 09–ASW–15]

Amendment of Class E Airspace; Claremore, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Claremore, OK, adding additional controlled airspace to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Claremore Regional Airport, Claremore, OK. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On February 5, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Claremore, OK, reconfiguring controlled airspace at Claremore Regional Airport (75 FR 5905) Docket No. FAA–2009–0538. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace for the Claremore, OK area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at Claremore Regional Airport. Adjustment to the geographic coordinates will be made in accordance with the FAA's National Aeronautical Charting Office. With the exception of this change, this action is the same as that published in the NPRM. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Claremore Regional Airport, Claremore, OK.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ASW OK E5 Claremore, OK [Amended]

Claremore Regional Airport, OK
(Lat. 36°17′34″ N., long. 95°28′47″ W.)
Claremore Regional Hospital Heliport, OK
Point In Space Coordinates
(Lat. 36°18′23″ N., long. 95°38′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Claremore Regional Airport and that airspace within a 6-mile radius of the Point In Space serving Claremore Regional Hospital Heliport.

Issued in Fort Worth, Texas, on May 7, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–11714 Filed 5–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1154; Airspace Docket No. 09–AGL–35]

Amendment of Class E Airspace; Marion, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.