

Dated: November 23, 2005.

Eric M. Bost,

*Under Secretary for Food, Nutrition and Consumer Services.*

[FR Doc. 05-23619 Filed 12-2-05; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket No. FV05-985-2 IFR A]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2005-2006 Marketing Year

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

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

**SUMMARY:** This rule amends a prior interim final rule that increased the quantity of Class 1 (Scotch) and Class 3 (Native) spearmint oil that handlers may purchase from, or handle for, producers during the 2005-2006 marketing year. The prior interim final rule increased the Scotch spearmint oil salable quantity from 677,409 pounds to 1,062,898 pounds, and the allotment percentage from 35 percent to 55 percent. In addition, the prior interim final rule increased the Native spearmint oil salable quantity from 867,958 pounds to 1,019,600 pounds, and the allotment percentage from 40 percent to 47 percent. This action does not affect the Scotch spearmint oil salable quantity and allotment percentage; however, it increases the Native spearmint oil salable quantity by an additional 151,855 pounds from 1,019,600 pounds to 1,171,455 pounds, and the allotment percentage by an additional 7 percent from 47 percent to 54 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 avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

**DATES:** Effective June 1, 2005, through May 31, 2006; comments received by February 3, 2006 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 Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

#### FOR FURTHER INFORMATION CONTACT:

Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." 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. This rule is not intended to have retroactive effect. 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 initial salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2005-2006 marketing year were recommended by the Committee at its October 6, 2004, meeting. The Committee recommended salable quantities of 677,409 pounds and 867,958 pounds, and allotment percentages of 35 percent and 40 percent, respectively, for Scotch and Native spearmint oil. A proposed rule was published in the **Federal Register** on January 12, 2005 (70 FR 2027). Comments on the proposed rule were solicited from interested persons until February 11, 2005. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2005-2006 marketing year was published in the **Federal Register** on March 24, 2005 (70 FR 14969).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee has made recommendations to increase the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle for, producers during the 2005-2006 marketing year, which ends on May 31, 2006. An interim final rule was published in the **Federal Register** on September 23, 2005 (70 FR 55713), which increased the 2005-2006 marketing year salable quantities and allotment percentages for Scotch and Native spearmint oil to 1,062,898 pounds and 55 percent, and 1,019,600 pounds and 47 percent, respectively. Comments on the interim final rule are being solicited from interested persons through November 22, 2005.

This rule amends the interim final rule that was published in the **Federal Register** on September 23, 2005, and is based on a unanimous Committee recommendation made at a meeting on October 5, 2005, to increase the Native spearmint oil salable quantity by an

additional 151,855 pounds from 1,019,600 pounds to 1,171,455 pounds and the allotment percentage by an additional 7 percent from 47 percent to 54 percent. The Committee did not make a recommendation to increase the Scotch spearmint oil salable quantity or allotment percentage by an additional amount at this time due to stable market conditions.

Thus, taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantity, this rule increases the 2005–2006 marketing year salable quantity and allotment percentage for Native spearmint oil to 1,171,455 pounds and 54 percent, respectively. The 2005–2006 marketing year salable quantity and allotment percentage for Scotch spearmint oil remains unchanged at 1,062,898 pounds and 55 percent, respectively.

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

The original total industry allotment base for Native spearmint oil for the 2005–2006 marketing year was established at 2,169,894 pounds and was revised at the beginning of the 2005–2006 marketing year to 2,169,362 pounds to reflect a 2004–2005 marketing year loss of 532 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 2,169,362 pounds is applied to the originally established allotment percentage of 40 percent, the initially established 2005–2006 marketing year salable quantity of 867,958 is effectively modified to 867,745 pounds.

By increasing the salable quantity and allotment percentage, this rule makes an additional amount of Native spearmint oil available by releasing oil from the reserve pool. When applied to each individual producer, this allotment percentage increase allows each producer to take up to an amount equal to their allotment base from their Native oil reserve. This action makes an additional 80,766 pounds of Native spearmint oil available to the market. This figure is less than the salable quantity increase because not all producers have enough Native spearmint oil left in their reserves to take full advantage of this release. In

addition, pursuant to §§ 985.56 and 985.156, producers with excess oil are not able to transfer such excess oil to other producers to fill deficiencies in annual allotments after November 1 of each marketing year. Since this increase in the Native spearmint oil salable quantity is effective after November 1, 71,089 pounds of the 151,855 pound increase is not being made available.

The following table summarizes the Committee recommendation:

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

(A) Estimated 2005–2006 Allotment Base—2,169,894 pounds. This is the estimate on which the original 2005–2006 Native spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2005–2006 Allotment Base—2,169,362 pounds. This is 532 pounds less than the estimated allotment base of 2,169,894 pounds. This is less because some producers failed to produce all of their 2004–2005 allotment.

(C) Initial 2005–2006 Allotment Percentage—40 percent. This was recommended by the Committee on October 6, 2004.

(D) Initial 2005–2006 Salable Quantity—867,958. This figure is 40 percent of 2,169,894 pounds.

(E) Initial Adjustment to the 2005–2006 Salable Quantity—867,745 pounds. This figure reflects the salable quantity initially available after the beginning of the 2005–2006 marketing year due to the 532 pound reduction in the industry allotment base to 2,169,362 pounds.

(F) First Revision to the 2005–2006 Salable Quantity and Allotment Percentage.

(1) Increase in Allotment Percentage—7 percent. The Committee recommended a 7 percent increase at its August 24, 2005, meeting.

(2) 2005–2006 Allotment Percentage—47 percent. This figure is derived by adding the increase of 7 percent to the initial 2005–2006 allotment percentage of 40 percent.

(3) Calculated Revised 2005–2006 Salable Quantity—1,019,600 pounds. This figure is 47 percent of the revised 2005–2006 allotment base of 2,169,362 pounds.

(4) Computed Increase in the 2005–2006 Salable Quantity—151,855 pounds. This figure is 7 percent of the revised 2005–2006 allotment base of 2,169,362 pounds.

(G) Second (current) Revision to the 2005–2006 Salable Quantity and Allotment Percentage.

(1) Increase in Allotment Percentage—7 percent. The Committee

recommended a 7 percent increase at its October 5, 2005, meeting.

(2) 2005–2006 Allotment Percentage—54 percent. This figure is derived by adding the increase of 7 percent to the initial 2005–2006 allotment percentage of 47 percent.

(3) Calculated Revised 2005–2006 Salable Quantity—1,171,455 pounds. This figure is 54 percent of the revised 2005–2006 allotment base of 2,169,362 pounds.

(4) Computed Increase in the 2005–2006 Salable Quantity—151,855 pounds. This figure is 7 percent of the revised 2005–2006 allotment base of 2,169,362 pounds.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports given by the Committee manager from handlers who were not in attendance. The 2005–2006 marketing year began on June 1, 2005. Handlers have reported purchases and committed sales of 1,051,031 pounds of Native spearmint oil for the period of June 1, 2005, through October 5, 2005. This amount is 109 percent of the total sales for the five-year average of 962,377 pounds. Handlers estimated the total demand for the 2005–2006 marketing year could be between 1,100,000 pounds to 1,300,000 pounds. These amounts exceed the five-year average for an entire marketing year by 137,623 pounds to 337,623 pounds. Therefore, based on past history, the industry may not be able to meet market demand without this increase. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2005–2006 marketing year, it had anticipated that the year would end with an ample available supply.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2005–2006 marketing year should be increased to 1,171,455 pounds and 54 percent, respectively.

This rule relaxes the regulation of Native spearmint oil and will allow for market needs and improve producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2005–2006 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 2005–2006 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

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

As noted earlier, the Committee chose not to recommend an additional increase in Scotch spearmint oil at this time because of the stable market conditions. Handlers had reported purchases and committed sales of 792,382 pounds of Scotch spearmint oil for the period of June 1, 2005, through October 5, 2005. Handlers estimate that the total demand for the 2005–2006 marketing year could be between 800,000 pounds and 950,000 pounds. Therefore, the current salable quantity of 1,019,600 pounds should adequately supply the 2005–2006 marketing year.

#### 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. Thus, both statutes have small entity orientation and compatibility.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 56 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 \$6,000,000, 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 14 of the 56 Scotch spearmint oil producers and 18 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 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 for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternative crops could support the operation for a period of time. Being

reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This rule amends an interim final rule that was published in the **Federal Register** on September 23, 2005, and is based on a unanimous Committee recommendation made at a meeting on October 5, 2005, to increase the Native spearmint oil salable quantity by an additional 151,855 pounds from 1,019,600 pounds to 1,171,455 pounds, and the allotment percentage by an additional 7 percent from 47 percent to 54 percent. The Committee did not make a recommendation to further increase the Scotch spearmint oil salable quantity or allotment percentage at this time due to stable market conditions.

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 recommended allotment percentages, upon which 2005–2006 producer allotments are based, are 55 percent for Scotch (a 20 percentage point increase from the original allotment percentage of 35 percent) and 54 percent for Native (a 14 percentage point increase from the original salable percentage of 40 percent). Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint oil. The econometric model estimated a \$1.32 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 if volume controls were not used (*i.e.*, if the salable percentages were set at 100 percent).

Loosening the volume control restriction by increasing the allotment percentages resulted in this revised price decline estimate of \$1.32 per pound if volume controls were not used. The initial price decline estimate of

\$1.60 per pound was based on the 2005–2006 allotment percentages (35 percent for Scotch and 40 percent for Native) published in the **Federal Register** on March 24, 2005 (70 FR 14969). The 2004 Far West producer price for both classes of spearmint oil was \$9.48 per pound.

The surplus situation for the spearmint oil market that would exist without volume controls in 2005–2006 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.

Based on projections available at the October 5, 2005, meeting, the Committee considered alternatives to the recommended Native spearmint oil increase. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also looked at various increases ranging from 0 percent to 10 percent. The Committee reached its recommendations to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the levels recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs.

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.

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

Further, the Committee's meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate in Committee deliberations. Like all Committee meetings, the August 24, 2005, and October 5, 2005, meetings were public meetings and all entities, both large and small, were able to express their views on modification of the 2005–2006 salable quantities and allotment percentages. Finally, interested persons are invited to submit information on the regulatory and

informational impacts of this action on small businesses.

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

This rule invites comments on a further change to the salable quantity and allotment percentage for Native spearmint oil for the 2005–2006 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 final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year which ends on May 31, 2006; (2) the current quantity of Native spearmint oil may be inadequate to meet demand for the remainder of the marketing year, thus making the additional oil available as soon as is practicable is 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 § 985.224, paragraph (b) is revised to read as follows:

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

#### **§ 985.224 Salable quantities and allotment percentages—2005–2006 marketing year.**

\* \* \* \* \*

(b) Class 3 (Native) oil—a salable quantity of 1,171,455 pounds and an allotment percentage of 54 percent.

Dated: November 11, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 05–23620 Filed 12–2–05; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. **FAA–2005–23144**; Directorate Identifier **2005–NM–218–AD**; Amendment **39–14393**; AD **2005–24–13**]

**RIN 2120–AA64**

#### **Airworthiness Directives; Learjet Model 45 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Learjet Model 45 airplanes. This AD requires modifying the electrical wire bundle for the alternator on the left-hand engine, inspecting for clearance between wire harnesses and engine tubing for each engine, and corrective actions if necessary. For certain airplanes, this AD also requires replacing the fuses for the hydraulic shutoff valves with fuses having higher amperage. This AD results from a report of a fire in the left-hand engine nacelle. We are issuing this AD to prevent chafing between the wire bundle for the alternator on each engine and the hydraulic lines, which could result in a fire in the engine nacelle.

**DATES:** This AD becomes effective December 20, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 20, 2005.

We must receive comments on this AD by February 3, 2006.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD.