

# Proposed Rules

Federal Register

Vol. 62, No. 4

Tuesday, January 7, 1997

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket No. FV-96-985-4 PR]

#### Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1997-98 Marketing Year

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1997-98 marketing year. 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 this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

**DATES:** Comments must be received by February 6, 1997.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090-6456.

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.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326-

2043; Fax: (503) 326-7440; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202) 720-5127; Fax: (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah). This marketing 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed 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 proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1997-98 marketing year, which begins on June 1, 1997. This proposed 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 the Secretary 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 the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 1997-98 marketing year at its October 2, 1996, meeting, and reconfirmed its recommendation following review of additional information at its meeting held on November 14, 1996. The Committee recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil with one member opposing the motion because he favored the establishment of a higher salable quantity and allotment percentage. In a unanimous vote, the Committee recommended the establishment of a salable quantity and allotment percentage for Native spearmint oil.

This proposed rule would establish a salable quantity of 996,522 pounds and an allotment percentage of 55 percent for Scotch spearmint oil, and a salable quantity of 1,125,351 pounds and an allotment percentage of 56 percent for Native spearmint oil. This proposed rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1997-98 marketing year, which begins on June 1, 1997. Salable quantities and allotment percentages have been placed into effect each season since the marketing order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order accounts for approximately 75 percent of the annual U.S. production of both classes of spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 80 percent was produced

in the regulated production area in the Far West. International production characteristics have changed in recent years, however, with foreign Scotch spearmint oil production contributing significantly to world production. Although still a leader in production, the Far West's market share has decreased to approximately 65 percent of the world total. Thus, in recent marketing years, the Committee has taken a different approach in its method of addressing the historical fluctuations in supply and price. In conjunction with the goal of maintaining price and market stability, the Committee seeks a moderate growth rate in terms of total North American market share. The Committee's recommendation is intended to find a stable price level while keeping Far West Scotch spearmint oil in a competitive and viable position in the international market. To that end, the Committee is targeting a specific percentage of the North American market share for use in its salable quantity and allotment percentage calculations. For 1997-98, the Committee is targeting 73 percent of the North American market, compared to the nearly 65 percent targeted for the 1996-97 season. Preliminary figures indicate that the Far West Scotch spearmint oil market share in North America will reach approximately 60 percent in 1996-97, up from 55 percent in 1995-96.

Records show that the marketing order has contributed extensively to the stabilization of grower prices, which prior to 1980 experienced wide fluctuations from year to year. Prior to 1980, grower prices for Native spearmint oil were historically cyclical. For example, between 1971 and 1975 the price of Native spearmint oil increased from \$3.00 per pound to \$11.00 per pound. In contrast, under the marketing order, prices have stabilized between \$10.50 and \$11.50 per pound for the past ten years. With approximately 90 percent of U.S. production of Native spearmint oil located in the Far West, the method of calculating the Native spearmint oil salable quantity and allotment percentage primarily utilizes information on price and available supply as they are affected by the estimated trade demand for Far West Native spearmint oil.

The proposed salable quantity and allotment percentage for each class of spearmint oil for the 1997-98 marketing year is based upon the Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1997—309,927 pounds. This figure is derived by subtracting the estimated 1996-97 marketing year trade demand of 900,000 pounds from the revised 1996-97 marketing year total available supply of 1,209,927 pounds.

(B) Estimated North American production (U.S. and Canada) for the 1997-98 marketing year—1,511,461 pounds. This figure is an estimate based on information provided to the Committee by producers and buyers.

(C) Percentage of North American market targeted—73 percent. This figure is an approximate average of the recommended target percentages made at each of the five regional producer meetings held throughout the Far West production area during the month of September, 1996.

(D) Total quantity of Scotch spearmint oil needed to reach targeted percentage—1,103,367 pounds. This figure is the product of the estimated 1997-98 North American production and the targeted percentage.

(E) Minimum amount desired to have on hand throughout the season—200,000 pounds. Producers at all of the five regional meetings had recommended this amount, which continues to reflect the Committee's commitment to regain market share by maintaining a minimum quantity on hand.

(F) Total supply required—1,303,367 pounds. This figure is derived by adding the minimum desired on hand amount to the total quantity required to meet the targeted percentage.

(G) Additional quantity required—993,440 pounds. This figure represents the actual amount of additional or new oil needed to meet the Committee's projections, and is computed by subtracting the estimated carry-in of 309,440 pounds from the total supply required of 1,303,367 pounds.

(H) Total allotment base for the 1997-98 marketing year—1,811,859 pounds.

(I) Computed allotment percentage—54.8 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(J) Recommended allotment percentage—55 percent. This is the Committee's recommendation based on the computed allotment percentage.

(K) The Committee's recommended salable quantity—996,522 pounds. This figure is the product of the recommended allotment percentage and the total 1997-98 allotment base.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1997—71,764 pounds. This figure is derived by subtracting the estimated 1996-97 marketing year trade demand of 1,162,500 pounds from the revised 1996-97 marketing year total available supply of 1,234,264 pounds.

(B) Estimated trade demand (domestic and export) for the 1997-98 marketing year—1,212,500 pounds. This figure represents an average of buyer estimates and the amounts recommended at the regional producer meetings.

(C) Salable quantity required from 1997 production—1,140,736 pounds. This figure is the difference between the estimated 1997-98 marketing year trade demand and the estimated carry-in on June 1, 1997.

(D) Total allotment base for the 1997-98 marketing year—2,009,556 pounds.

(E) Computed allotment percentage—56.8 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—56 percent. This is the Committee's recommendation based on the computed allotment percentage.

(G) The Committee's recommended salable quantity—1,125,351 pounds. This figure is the product of the recommended allotment percentage and the total 1997-98 marketing year allotment base.

The salable quantity is the total quantity of each class of oil which 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 spearmint oil salable quantity of 996,522 pounds and allotment percentage of 55 percent are based on anticipated supply, demand, and a targeted percentage of the North American market during the 1997-98 marketing year. The Committee's recommended Native spearmint oil salable quantity of 1,125,351 pounds and allotment percentages of 56 percent are based on anticipated supply and trade demand during the 1997-98 marketing year. The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce

more than their annual allotments during the 1997-98 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This proposed regulation, if adopted, would be similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from a stable market, a greater market share, and possible improved returns. In conjunction with the issuance of this proposed rule, the Committee's marketing policy statement for the 1997-98 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of the provisions as set forth in 7 CFR Part 985.50. Conformity with other USDA guidelines has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee. Adoption of this proposed rule would also provide spearmint oil producers with information on the amount of oil which should be produced for next season.

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 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 8 spearmint oil handlers subject to regulation under the marketing order and approximately 250 producers of spearmint oil in the regulated production area. Of the 250 producers, approximately 135 producers hold Class 1 (Scotch) oil allotment base, and approximately 115 producers hold Class 3 (Native) oil allotment base. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as

those having annual receipts of less than \$5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than \$500,000.

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. Crop rotation is an essential cultural practice in the production of spearmint for weed, insect, and disease control. A normal spearmint producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint producing farm would thus have to have considerable more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint production, most spearmint producing farms would fall into the category of large businesses.

Based on the Small Business Administration's definition of small entities, the Committee estimates that none of the eight handlers regulated by the order would be considered small entities as all are national and multinational corporations involved in the buying and selling of essential oils and the products of such essential oils. The Committee also estimates that 17 of the 135 Scotch spearmint oil producers and 10 of the 115 Native spearmint oil producers would be classified as small entities. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1997-97 marketing year. The committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market. This action is authorized by the provisions of sections 985.50, 985.51 and 985.52 of the order.

The small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small farmers 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 incomes 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.

Records show that the marketing order has contributed extensively to the stabilization of grower prices, which prior to 1980 experienced wide fluctuations from year to year. Prior to 1980, grower prices for Native spearmint oil were historically cyclical. For example, between 1971 and 1975 the price of Native spearmint oil increased from \$3.00 per pound to \$11.00 per pound. In contrast, under the marketing order, prices have stabilized between \$10.50 and \$11.50 per pound for the past ten years.

Alternatives to this proposal included not regulating the handling of spearmint oil during the 1997-98 marketing year, and recommending either higher or lower salable quantities and allotment percentages. The Committee reached its recommendation to establish salable quantities and allotment percentages for both classes of oil after careful consideration of all available information, and believe that the levels recommended will achieve the objectives sought. Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of the nearly 1,300,000 pounds of spearmint oil reserves would have on the market. According to the Committee, higher or lower salable quantities and allotment percentages would not achieve the intended balance between market and price stability and market share maintenance and growth.

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. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative

information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Finally, the Committee's meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

#### **PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST**

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. A new § 985.216 is added to read as follows:

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

#### **§ 985.216 Salable quantities and allotment percentages—1997-98 marketing year.**

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1997, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 996,522 pounds and an allotment percentage of 55 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,125,351 pounds and an allotment percentage of 56 percent.

Dated: December 31, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 97-281 Filed 1-6-97; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 95-NM-215-AD]

#### **Airworthiness Directives; Boeing Model 737-100 and -200 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Boeing Model 737-100 and -200 series airplanes, that currently requires various inspections for cracks in the outboard chord of the frame at body station (BS) 727 and in the outboard chord of stringer 18A; and repair or replacement of cracked parts. That AD was prompted by reports of fatigue cracks in those outboard chords. This action would add inspections for certain airplanes, and would revise certain compliance times for all airplanes. The actions specified by the proposed AD are intended to detect and correct fatigue cracking, which could result in reduced structural integrity of the outboard chords, and subsequent rapid decompression of the airplane.

**DATES:** Comments must be received by February 18, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-215-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Della Swartz, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227-2785; fax (206) 227-1181.

## SUPPLEMENTARY INFORMATION:

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-215-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-215-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

### Discussion

On June 5, 1995, the FAA issued AD 95-12-17, amendment 39-9268 (60 FR 36981, July 19, 1995), applicable to certain Boeing Model 737-100 and -200 series airplanes, to require various inspections for cracks in the outboard chord of the frame at body station (BS) 727 and in the outboard chord of stringer 18A; and repair or replacement of cracked parts. That AD also provides for an optional terminating action for the required inspections. That action was prompted by reports of fatigue cracks in those outboard chords. The requirements of that AD are intended to detect and correct such fatigue cracking, which could result in reduced structural integrity of the outboard chords, and subsequent rapid decompression of the airplane.