

Yakima

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket No. FV00-985-4 IFR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Decreased Assessment Rate

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

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

**SUMMARY:** This rule decreases the assessment rate established for the Spearmint Oil Administrative Committee (Committee) for the 2000-2001 and subsequent marketing years from \$0.10 per pound to \$0.09 per pound of spearmint oil handled. The Committee is responsible for local administration of the marketing order which regulates the handling of spearmint oil produced in the Far West. Authorization to assess spearmint oil handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The marketing year begins June 1 and ends May 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective June 1, 2000.

Comments received by May 5, 2000, 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, room 2525-S, PO Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be 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 Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George

Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 985, as amended (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), 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 (Department) 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, Far West spearmint oil handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable spearmint oil beginning June 1, 2000, and continue until amended, suspended, or terminated. 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 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. Such 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 the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2000-2001 and subsequent marketing years from \$0.10 per pound to \$0.09 per pound of spearmint oil handled.

The spearmint oil order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of spearmint oil. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1995-1996 and subsequent marketing years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on February 23, 2000, and unanimously recommended 2000-2001 expenditures of \$212,900 and an assessment rate of \$0.09 per pound of spearmint oil handled. In comparison, last year's budgeted expenditures were \$219,028. The assessment rate of \$0.09 is \$0.01 lower than the rate currently in effect. The Committee discussed assessment rates both lower and greater than \$0.09 per pound. However, the Committee decided that an assessment rate of less than \$0.09 would not generate the income necessary to administer the program with an adequate reserve. The Committee recommended the decreased assessment rate to help offset the negative effects the current depressed spearmint oil market is having on the industry.

Expenditures recommended by the Committee for the 2000-2001 marketing year include \$178,500 for Committee expenses and \$34,400 for administrative expenses. For 2000-2001, a total of \$156,000 is budgeted for agency fees, \$21,000 is budgeted for Committee per diem and travel, \$16,500 is budgeted for agency staff travel, and \$10,700 is budgeted for copying, mail handling,

postage, telephone and fax, cellular phone charges, officer liability insurance, and auditing. Actual expenses for these items in 1999–2000 are estimated to total \$165,000, \$22,133, \$16,843, and \$10,900. For 2000–2001, funds also are budgeted for market development (\$5,000) and for compliance (\$1,000). Expenditures for these items in 1999–2000 are expected to total \$5,000.

The Committee estimates that spearmint oil sales for the 2000–2001 marketing year will be approximately 2,058,474 pounds, which should provide \$185,263 in assessment income. This assessment income, when combined with \$13,029 from the monetary reserve, \$3,500 in interest income, and \$11,108 from the sale of certain assets should be adequate to meet this year's expenses of \$212,900. The Committee estimates that its monetary reserve will be approximately \$156,757 at the beginning of the 2000–2001 marketing year. It is not anticipated that the reserve fund will exceed the maximum permitted by the order of approximately one marketing year's operational expense (\$ 985.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, the 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 7 spearmint oil handlers subject to regulation under the marketing order and approximately 119 producers of Scotch spearmint oil and 105 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 \$5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than \$500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 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 25 of the 119 Scotch spearmint oil producers and 7 of the 105 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent marketing years from \$0.10 per pound to \$0.09 per pound of spearmint oil handled. The Committee estimates that spearmint oil sales will total 2,058,474 pounds in the 2000–2001 marketing year. The \$0.09 per pound assessment rate should provide an estimated income of \$185,263, which, when combined with \$13,029 from the monetary reserve, \$3,500 in interest income, and \$11,108 from the sale of certain assets should be adequate to meet this year's expenses of \$212,900. The Committee estimates that its monetary reserve will be approximately \$156,757 at the beginning of the 2000–2001 marketing year and that the fund will not exceed the maximum permitted by the order of approximately one marketing year's operational expense (\$ 985.42).

The Committee reviewed and unanimously recommended 2000–2001 expenditures of \$212,900 which is \$6,128 less than approved for last year. Prior to arriving at this budget, the

Committee considered information from various sources, including the Committee's Executive Committee and the current marketing year's actual and anticipated expenditures. Alternative expenditure levels and assessment rates were discussed by the Committee officers prior to presentation to the full Committee for approval. The Committee decided that an assessment rate of less than \$0.09 would not generate the income necessary to administer the program with an adequate reserve. The Committee recommended the decreased assessment rate to help offset the negative effects the current depressed spearmint oil market is having on the industry.

Expenditures recommended by the Committee for the 2000–2001 marketing year include \$178,500 for Committee expenses and \$34,400 for administrative expenses. For 2000–2001, a total of \$156,000 is budgeted for agency fees, \$21,000 is budgeted for Committee per diem and travel, \$16,500 is budgeted for agency staff travel, and \$10,700 is budgeted for copying, mail handling, postage, telephone and fax, cellular phone charges, officer liability insurance, and auditing. Actual expenses for these items in 1999–2000 are estimated to total \$165,000, \$22,133, \$16,843, and \$10,900. For 2000–2001, funds also are budgeted for market development (\$5,000) and for compliance (\$1,000). Expenditures for these items in 1999–2000 are expected to total \$5,000.

Based on 1999 prices, the average price paid to producers for both Scotch and Native spearmint oils during the 2000–2001 marketing year could be about \$9.80 per pound. Therefore, the estimated assessment revenue for the 2000–2001 marketing year as a percentage of total producer revenue could be about 0.92 percent.

This action decreases the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Far West 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 February 23, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit

information on the regulatory and informational impacts of this action on small businesses.

This action imposes no 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.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: <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.

After consideration of all relevant material 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.

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 because: (1) The 2000–2001 marketing year begins June 1, 2000, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable spearmint oil handled during such marketing year; (2) this action decreases the assessment rate for assessable spearmint oil beginning with the 2000–2001 marketing year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

Interested persons are invited to comment on this rule. A 30-day comment period is provided. This period is deemed appropriate because the 2000–2001 marketing year begins June 1, 2000.

#### 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. Section 985.141 is revised to read as follows:

#### **§ 985.141 Assessment rate.**

On and after June 1, 2000, an assessment rate of \$0.09 per pound is established for Far West spearmint oil. Unexpended funds may be carried over as a reserve.

Dated: March 30, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

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#### **DEPARTMENT OF AGRICULTURE**

#### **Grain Inspection, Packers and Stockyards Administration**

#### **9 CFR Part 201**

**RIN 0580–AA64**

#### **Regulations Issued Under the Packers and Stockyards Act**

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending existing scales and weighing regulations under the Packers and Stockyards (P&S) Act to include requirements regarding the weighing of feed whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement. The current regulations do not contain any requirements regarding the weighing of feed although, in some circumstances, feed weight affects payment or settlement to livestock growers and poultry growers. The amendment to the current regulations will provide livestock growers and poultry growers with a measure of assurance that feed weight is accurately or reasonably determined and feed weight is properly documented whenever feed weight

affects payment or settlement to livestock growers or poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement.

**EFFECTIVE DATE:** May 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael J. Caughlin Jr., Director, Office of Policy/Litigation Support, GIPSA, USDA, 1400 Independence Ave., SW, Stop 3646, Washington, DC 20250–3646. He can be reached by phone at 202–720–6951.

**SUPPLEMENTARY INFORMATION:** GIPSA is amending existing scales and weighing regulations to include requirements regarding the weighing of feed when the weight of feed is a factor in determining payment or settlement to livestock growers and poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement.

#### **Background**

On February 12, 1997, GIPSA published an Advance Notice of Proposed Rulemaking (ANPRM) (62 FR 5935–5937) soliciting comments from poultry growers, integrators, and other interested parties on the need for and the possible wording of regulations regarding comparison contracts, feed weighing procedures, and live poultry weighing. GIPSA received 3,415 comments, of which 1,129 expressed concerns regarding feed weighing procedures including concerns that feed is not properly weighed; the weight should be printed electronically and not handwritten; the truck delivering the feed should be sealed to secure each individual lot of feed; and excess feed that is returned should be measured and properly documented to credit the grower for the unused feed.

Many of those comments also suggested that feed scales should be better regulated by requiring semiannual testing by competent testing agencies or companies as is currently required for scales used to weigh live poultry. In addition, GIPSA received comments prior to initiating this rulemaking process from livestock growers and continues to receive complaints that indicate that these same concerns exist in the livestock industry. Furthermore, GIPSA continues to receive complaints from individual livestock growers and poultry growers concerning feed weights both with respect to feed deliveries and excess feed picked up or returned at the end of the growing cycle.

On April 2, 1999, GIPSA published a Notice of Proposed Rulemaking (NPRM) (64 FR 15938–15942) proposing to amend existing scales and weighing