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
[Doc. No. AMS–FV–12–0014; FV12–985–2 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Change to Administrative Rules Regarding the Transfer and Storage of Excess Spearmint Oil

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on proposed revisions to the administrative rules prescribed under the marketing order regulating the handling of spearmint oil produced in the Far West. The marketing order is administered locally by the Spearmint Oil Administrative Committee (Committee). This rule would change the date by which a producer must transfer excess spearmint oil to another producer or deliver such oil to the Committee or its designees for storage from November 1 to December 1. This action would also change the date that the Committee must pool identified excess oil as reserve oil from November 1 to December 1. The proposed changes would be a relaxation of the handling regulations and are expected to benefit producers, handlers, and consumers.

DATES: Comments must be received by November 16, 2012.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: http://www.regulations.gov. All comments should reference the document number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: http://www.regulations.gov. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: Barry.Broadbent@ams.usda.gov or Gary.D.Olson@ams.usda.gov.

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

SUPPLEMENTARY INFORMATION: This proposed 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 proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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

This rule invites comments on proposed revisions to the administrative rules prescribed under the order. This rule would change the date by which a producer must transfer excess spearmint oil to another producer or deliver such oil to the Committee or its designees for storage from November 1 to December 1. This rule would also change the date that the Committee must pool identified excess oil as reserve oil from November 1 to December 1. The proposed changes were unanimously recommended at a February 22, 2012, meeting of the full Committee.

Section 985.56(a) of the spearmint order specifies that before October 15, or such other date as the Committee, with the approval of the Secretary, may establish, a producer, following notification of the Committee, may transfer excess oil to another producer to fill a deficiency in that producer’s annual allotment. In addition, § 985.56(b) specifies that before November 1, or such other date as the Committee, with the approval of the Secretary, may establish, excess oil, not used to fill another producer’s deficiency, shall be delivered to the Committee or its designees for storage. Section 985.57(a) provides that on November 1, or such other date as the Committee, with the approval of the Secretary may establish, the Committee shall pool identified excess oil as reserve oil in such manner as to accurately account for its receipt, storage, and disposition.

In a rule published on October 30, 1980 (45 FR 71759), § 985.156 was added to the order’s administrative rules and regulations, effectively changing the date by which the transfer of excess oil between producers to fill deficiencies must be completed from October 15 to November 1.

At the February 22, 2012 meeting, the Committee unanimously recommended...
changing the date by which all transfers 
of excess oil between producers to fill 
deficiencies must be completed from 
November 1 to December 1. In addition, 
the Committee recommended changing 
the date by which all excess oil, not 
used to fill another producer’s 
deficiency, must be delivered to the 
Committee or its designees for storage 
from November 1 to December 1. Lastly, 
the Committee recommended changing 
the date that the Committee must pool 
identified excess oil as reserve oil from 
November 1 to December 1. 
In its deliberations, the Committee 
commented that a number of factors 
have contributed to the need to establish 
later dates for the transfer, storage, and 
reserve pooling of excess oil. The largest 
factor driving the recommended change 
is the shift towards harvesting 
spearmint oil later in the year. 
Historically, the harvest of spearmint oil 
has concluded by the end of September. 
However, in recent years, many 
producers have extended the harvest of 
spearmint oil into the middle of 
October. This current trend towards 
harvesting later into the year has been 
facilitated by advances in the 
equipment, technology, and cultural 
practices employed by spearmint 
producers. While extending harvest 
further into October has benefited 
producers, it has also made the 
identification and transfer of excess oil 
prior to the current November 1 
deadline increasingly difficult. 
In addition, after harvest is complete, 
many producers now deliver their 
spearmint oil to a handler to remove excess water 
from the spearmint oil in order to 
derive a “dewatered” net quantity of oil 
produced. This dewatering process can 
take up to several weeks to complete, 
further tightening the timeframe that 
spearmint producers must operate 
under to meet the current volume 
regulation deadlines. 
Lastly, many spearmint oil producers 
have diversified their farming 
operations and are typically involved in 
the harvest of other late bearing crops 
during the month of October. These 
producers may be preoccupied with 
their other farm obligations and may not 
have the time to review their spearmint 
production, ensure all paperwork is in 
order, make marketing decisions, and 
execute any transfers of excess oil prior 
to the current November 1 deadline. 
The Committee staff must account for 
all of the production, transfer, sale, and 
reserve pooling of spearmint oil before 
an accurate determination of the 
statistics can be compiled for the 
market. The Committee believes 
that extending the deadline by which 
producers must transfer or store their 
excess oil, and that the Committee must 
pool identified excess oil, from 
November 1 to December 1 would have 
minimal impact on the Committee 
staff’s ability to perform their required 
functions in a timely manner. 
The proposed changes are expected to 
benefit producers, handlers, and 
consumers of spearmint oil by ensuring 
that all spearmint oil eligible to enter 
the market under volume regulation is 
actually available to the market. 

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in 
the Regulatory Flexibility Act (RFA), the 
Agricultural Marketing Service (AMS) 
has considered the economic impact of 
this action on small entities. 
Accordingly, AMS has prepared this 
initial regulatory flexibility analysis. 
The purpose of the RFA is to fit 
regulatory actions to the scale of 
business subject to such actions in order 
that small businesses will not be unduly 
or disproportionately burdened. 
Marketing orders issued pursuant to the 
Act, and the rules issued thereunder, are 
unique in that they are brought about 
through group action of essentially 
small entities acting on their own 
behalf. 
There are 8 spearmint oil handlers 
subject to regulation under the order. 
In addition, there are approximately 32 
producers of Scotch spearmint oil and 
approximately 88 producers of Native 
spearmint oil in the regulated 
production area. Small agricultural 
service firms are defined by the Small 
Business Administration (SBA) (13 CFR 
121.201) as those having annual receipts 
of less than $7,000,000, and small 
agricultural producers are defined as 
those having annual receipts of less than 
$750,000. 
Based on the SBA’s definition of 
small entities, the Committee estimates 
that two of the eight handlers regulated 
by the order could be considered small 
entities. Most of the handlers are large 
corporations involved in the 
international trading of essential oils 
and the products of essential oils. 
In addition, the Committee estimates that 
15 of the 32 Scotch spearmint oil 
producers and 26 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 oil 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 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. 
This proposed rule would change the 
date by which transfers of excess 
spearmint oil between producers to fill 
deficiencies in annual allotments must 
be completed from November 1 to 
December 1. This rule would also 
change the date by which all excess oil 
not used to fill deficiencies must be 
transferred to the Committee for storage 
from November 1 to December 1. Lastly, 
this rule would extend the date that the 
Committee must pool identified excess 
oil as reserve oil from November 1 to 
December 1. 
The Committee recommended 
extending the dates to give producers 
more time to assess the quantity of 
spearmint oil they produced relative to 
their annual allotment, to determine if 
there is a deficiency or an excess of such 
oil, and to make decisions regarding any 
transfers of oil. This action is expected 
to benefit producers, handlers, and 
consumers by ensuring that the market 
is adequately supplied with spearmint 
oil. The authority for this action is 
provided in §§ 985.36 and 985.37 of the 
order.
At the February 22, 2012, meeting, the Committee discussed the impact of the proposed changes on handlers and producers. The proposed action would be a relaxation of the current handling regulation, allowing an additional 30 days for industry participants to fully supply the market with the total amount of spearmint oil allotted under the volume regulation provisions of the order. The benefits of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to these proposed changes, including making no changes at all, changing the dates but keeping them within the month of November, and extending the dates further into December or into January. The Committee thought that maintaining the dates in the current regulations would not be responsive to the changing production practices of the industry. In addition, they felt that the dates should be extended at least 30 days for the change to be meaningful. However, the Committee believed that extending the dates any further than the proposed dates would affect the Committee’s ability to establish accurate reports for the completed harvest season in a timely manner. The Committee members unanimously agreed that changing the dates for transferring, storing, and pooling excess oil from November 1 to December 1 addressed the industry’s current needs without negatively impacting the operation of the Committee.

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

This proposed rule would change the date by which excess oil must be transferred between producers to fill annual allotment deficiencies or delivered to the Committee or its designees for storage from November 1 to December 1. In addition, the rule would change the date the Committee must pool identified excess oil as reserve oil from November 1 to December 1. The rule would be a relaxation of the volume regulation provisions of the order. No changes in the reporting or recordkeeping requirements would be necessary as a result of this action. Accordingly, this proposed 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 proposed 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 February 22, 2012, 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 comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the FOR FURTHER INFORMATION CONTACT section.

A 60-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received 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:


2. Revise § 985.156 to read as follows:

§ 985.156 Transfer of excess oil by producers.

(a) Pursuant to § 985.56(a), before December 1 of each marketing year, a producer, following notification of the Committee, may transfer excess oil to another producer to enable that producer to fill a deficiency in that producer’s annual allotment.

(b) Pursuant to § 985.56(b), before December 1 of each marketing year, excess oil not used to fill another producer’s deficiency shall be delivered to the Committee or its designees for storage.

3. Add § 985.157 to read as follows:

§ 985.157 Reserve pool requirements.

Pursuant to § 985.57(a), on December 1, the Committee shall pool identified excess oil as reserve oil in such manner as to accurately account for its receipt, storage, and disposition.

Dated: September 12, 2012.

David R. Shipman,
Administrator, Agricultural Marketing Service.

[FR Doc. 2012–22834 Filed 9–14–12; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2012–0978; Notice No. 25–12–03–SC]

Special Conditions: Embraer S.A., Model EMB–550 Airplane; Electronic Flight Control System: Control Surface Awareness and Mode Annunciation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Embraer S.A. Model EMB–550 airplane. This airplane will have a novel or unusual design feature(s) associated with the control surface awareness and mode annunciation of the electronic flight control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before November 1, 2012.