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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket No. FV06-985-2 FIR]

#### 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 2006-2007 Marketing Year

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule revising the quantity of Class 3 (Native) spearmint oil that handlers may purchase from, or handle for, producers during the 2006-2007 marketing year. This rule continues in effect the action that increased the Native spearmint oil salable quantity from 1,007,886 pounds to 1,161,260 pounds, and the allotment percentage from 46 percent to 53 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 to help maintain stability in the Far West spearmint oil market.

**DATES:** *Effective Date:* October 10, 2006.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Hiller, Marketing Specialist and Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail:

*Susan.Hiller@usda.gov* and *GaryD.Olson@usda.gov*, respectively.

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*.

**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."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the 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 rule continues in effect the action that increased the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 2006-2007 marketing year, which ends on May 31, 2007. 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 original salable quantity and allotment percentages for Scotch and Native spearmint oil for the 2006-2007 marketing year were recommended by the Committee at its October 5, 2005, meeting. The Committee recommended salable quantities of 878,205 pounds and 1,007,886 pounds, and allotment percentages of 45 percent and 46 percent, respectively, for Scotch and Native spearmint oil. A proposed rule was published in the **Federal Register** on February 1, 2006 (71 FR 5183). Comments on the proposed rule were solicited from interested persons until March 3, 2006. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2006-2007 marketing year was published in the **Federal Register** on April 5, 2006 (71 FR 16986).

This rule continues in effect the action that revised the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 2006-2007 marketing year, which ends on May 31, 2007. Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee, with seven of the eight members present, met on April 18, 2006, and unanimously recommended that the 2006-2007 Native spearmint oil allotment percentage be increased by 7 percent.

Thus, taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantity, the 2006-2007 marketing year salable quantity and allotment percentage for Native spearmint oil is increased to 1,161,260 pounds and 53 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 estimated total industry allotment base for Native spearmint oil for the 2006–2007 marketing year was established at 2,191,056 pounds. This figure represents a one percent increase over the revised 2005–2006 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

By increasing the salable quantity and allotment percentage, this final rule makes an additional amount of Native spearmint oil available by releasing oil from the reserve pool. When applied to each individual producer, the allotment percentage increase allows each producer with reserve pool oil to take up to an amount equal to their allotment base from their reserve for this class of oil. Before November 1, 2006, a producer may also transfer excess oil to another producer to enable that producer to fill a deficiency in that producer's annual allotment for this class of oil.

The following table summarizes the Committee recommendation:

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

(A) Estimated 2006–2007 Allotment Base—2,191,056 pounds. This is the estimate on which the original 2006–2007 Native spearmint oil salable quantity and allotment percentage was based.

(B) Original 2006–2007 Allotment Percentage—46 percent. This was unanimously recommended by the Committee on October 5, 2005.

(C) Original 2006–2007 Salable Quantity—1,007,886 pounds. This figure is 46 percent of the estimated 2006–2007 allotment base of 2,191,056 pounds.

(D) Increase in Allotment Percentage—7 percent. The Committee recommended a 7 percent increase at its April 18, 2006, meeting.

(E) 2006–2007 Allotment Percentage—53 percent. This figure is derived by adding the increase of 7 percent to the original 2006–2007 allotment percentage of 46 percent.

(F) Calculated Revised 2006–2007 Salable Quantity—1,161,260 pounds. This figure is 53 percent of the estimated 2006–2007 allotment base of 2,191,056 pounds.

(G) Computed Increase in the 2006–2007 Salable Quantity—153,374 pounds. This figure is 7 percent of the estimated 2006–2007 allotment base of 2,191,056 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 and producers who were not in attendance. On average, handlers estimated that the demand for 2006–2007 Native spearmint oil is 300,000 pounds above the quantity already contracted for sale.

The 2006–2007 marketing year began on June 1, 2006, with an estimated carry-in of 50,000 pounds of salable oil. When the estimated carry-in is added to the original 2006–2007 salable quantity of 1,007,886 pounds, a total estimated available supply for the 2006–2007 marketing year of 1,057,886 pounds results. Of this amount, 819,560 pounds of oil has already been contracted for the 2006–2007 marketing year. Additionally, an estimated deficiency of 133,800 pounds may exist from producers not producing their full salable quantity. As a result, an estimated 104,526 pounds of oil would remain uncontracted and available for sale without this increase. This increase supplies an additional 153,374 pounds of oil to the market, resulting in 257,900 pounds of oil available for contracting for 2006–2007 marketing year.

The Committee was reluctant to recommend any more of an increase in the salable quantity due to the uncertainty of the 2006–2007 marketing year; however, the Committee continues to believe that an increase is necessary to supply the higher quantity of Native spearmint oil demanded according to their revised market estimate. Therefore, the industry may not be able to meet market demand without this increase. In addition, when the Committee made its original recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2006–2007 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 2006–2007 marketing year should be increased to 1,161,260 pounds and 53 percent, respectively.

This rule finalizes an interim final rule that relaxed the regulation of Native spearmint oil and will allow producers to meet market demand while improving producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2006–2007 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 2006–2007 salable quantity and allotment percentage, 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.

#### **Final 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 final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and 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 59 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 \$6,500,000, and small agricultural producers are

defined as those having annual receipts of less than \$750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 59 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 alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This rule continues in effect the action that revised the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 2006–2007 marketing year, which ends on May 31, 2007. That interim final rule increased the Native spearmint oil salable quantity from 1,007,886 pounds to 1,161,260 pounds, and the allotment percentage from 46 percent to 53 percent.

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 2006–2007 producer allotments are based, are 45 percent for Scotch and 53 percent for Native (a 7 percentage point increase from the original salable percentage of 46 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 \$1.40 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 \$1.40 per pound if volume controls were not used. A previous price decline estimate of \$1.49 per pound was based on the 2006–2007 allotment percentages (45 percent for Scotch and 46 percent for Native) published in the **Federal Register** on April 5, 2006 (71 FR 16986).

The surplus situation for the spearmint oil market that would exist without volume controls in 2006–2007 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 meeting, the Committee considered

alternatives to the increase finalized herein. 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 recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the level recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs.

The AMS is committed to compliance 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.

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, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, 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. Like all Committee meetings, the April 18, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on May 26, 2006. Copies of the rule were mailed by the Committee's staff to all committee members, producers, handlers, and other interested persons. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended July 25, 2006. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:

<http://www.ams.usda.gov/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 Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (71 FR 30266, May 26, 2006) will tend to effectuate the declared policy of the Act.

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

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

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

■ Accordingly, the interim final rule amending 7 CFR part 985, which was published at 71 FR 30266 on May 26, 2006, is adopted as a final rule without change.

Dated: August 31, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6-14760 Filed 9-6-06; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1437

RIN 0560 AH19

### Noninsured Crop Disaster Assistance Program—Tropical Regions

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule changes how the Commodity Credit Corporation (CCC) handles certain claims under the Noninsured Crop Disaster Assistance Program (NAP) for "tropical" regions, including Hawaii, Puerto Rico and other specified areas. The changes will reduce the burden on the affected program participants and ease program administration in the affected areas.

**EFFECTIVE DATE:** January 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Frances Williams, Program Specialist, Noninsured Crop Disaster Assistance Program, Farm Service Agency, United States Department of Agriculture (USDA), STOP 0517, Room 3648-S, 1400 Independence Avenue, SW., Washington, DC 20250-0517. Telephone: 202-690-0700. Electronic Mail: [Frances.Williams@wdc.usda.gov](mailto:Frances.Williams@wdc.usda.gov). Persons with disabilities who require

alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

#### SUPPLEMENTARY INFORMATION:

##### Background

A proposed rule published on October 3, 2005 proposed changes for handling certain but not all claims for assistance in certain defined "tropical regions" (including Hawaii and Puerto Rico) under the Noninsured Crop Disaster Assistance Program (NAP) program administered by CCC under rules found at 7 CFR Part 1437. The comment period for the rule ended on November 2, 2005, and no comments were received. The background and need for the rule were described in the preamble to the proposed rule. The new regulations, as proposed, are adopted by final rule with minor clarifying changes. This final rule is made effective as of January 1, 2006, since, as contemplated in the proposed rule, the rule was to be effective with all covered crops planted as of that date. Provision is made in the rule itself for adjustments as may be needed between the old and new rules. It is understood, however, that the changes in 7 CFR 1437 are, in all cases, advantageous to producers. If not, any producer with a claim arising from a policy issued before the date of publication of this final rule who would have profited from the old policy may apply for relief.

In the preamble to the proposed rule it was indicated that the source of authority for extending the rule to certain tropical regions was 48 U.S.C. 1469d. However, the NAP program has been since inception extended to those regions. NAP was first provided for in crop insurance legislation that allowed for crop insurance in such regions and allowed NAP as an alternative to catastrophic crop insurance coverage where such coverage is not available. It remains the case, even though the statutory authority for NAP has changed, that NAP is to be available where conventional federal crop insurance catastrophic insurance is not available and the authority for federal crop insurance continues to include an allowance for federal crop insurance in the areas covered by this NAP rule. That noted, on review, the provisions of the rule which provide for different treatment in certain tropical areas as opposed to others have been found to be justified because of differing agricultural conditions and no change has been made in the rule in this regard.

##### Executive Order 12866

This rule is issued in conformance with Executive Order 12866, was

determined to be not significant, and was not reviewed by the Office of Management and Budget (OMB).

##### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required to publish a notice of proposed rulemaking for the subject matter of this rule.

##### Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA regulations for compliance with NEPA, 7 CFR 799. FSA has concluded that this rule is categorically excluded from further environmental review and documentation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

##### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State and other local laws that are inconsistent with it. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

##### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. "States" for this purpose included the 50 States and other areas addressed in the rule. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

##### Unfunded Mandates Reform Act of 1995

The rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, Local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

##### Paperwork Reduction Act of 1995

The information collection burden for NAP is by OMB under 5 CFR 1320 and