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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket Nos. AMS-FV-07-0134; FV08-985-1 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 2007-2008 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 2007-2008 marketing year. This rule continues in effect the action that increased the Native spearmint oil salable quantity from 1,162,336 pounds to 1,172,956 pounds, and the allotment percentage from 48 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 and to help maintain stability in the Far West spearmint oil market.

**DATES:** *Effective Date:* May 12, 2008.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Coleman, Marketing Specialist, or 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:

*Sue.Coleman@usda.gov* or *GaryD.Olson@usda.gov*.

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 2007-2008 marketing year, which ends on May 31, 2008. 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 2007-2008 marketing year were recommended by the Committee at its October 4, 2006, meeting. The Committee recommended salable quantities of 886,667 pounds and 1,062,336 pounds, and allotment percentages of 45 percent and 48 percent, respectively, for Scotch and Native spearmint oil. A proposed rule was published in the **Federal Register** on January 22, 2007 (71 FR 2639). Comments on the proposed rule were solicited from interested persons until February 21, 2007. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2007-2008 marketing year was published in the **Federal Register** on March 29, 2007 (72 FR 14657).

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 2007-2008 marketing year, which ends on May 31, 2008. Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee, with seven of its eight members present, met on October 17, 2007, and unanimously recommended that the 2007-2008 Native spearmint oil allotment percentage be increased by 5 percent.

Thus, taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantities, this rule continues in effect the action that increased the 2007-2008 marketing year salable quantities and allotment percentages for Native spearmint oil to 1,172,956 pounds and 53 percent.

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 total industry allotment base for Native spearmint oil for the 2007–2008 marketing year was estimated by the Committee at the October 4, 2006, meeting at 2,213,200 pounds. This was later revised at the beginning of the 2007–2008 marketing year to 2,213,124 pounds to reflect a 2006–2007 marketing year loss of 76 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 2,213,124 pounds is applied to the originally established allotment percentage of 48 percent, the initially established 2007–2008 marketing year salable quantity of 1,062,336 pounds is effectively modified to 1,062,300.

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. As of February 20, 2008, the reserve pool is estimated at 258,435 pounds. When applied to each individual producer, the allotment percentage increase allows each producer to take up to an amount equal to their allotment base from their reserve for this respective class of oil. In addition, pursuant to §§ 985.56 and 985.156, producers with excess oil are not able to transfer such excess oil to other producers to fill deficiencies in annual allotments after October 31 of each marketing year.

The following table summarizes the Committee recommendations:

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

(A) Estimated 2007–2008 Allotment Base—2,213,200 pounds. This is the estimate on which the original 2007–2008 Native spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2007–2008 Allotment Base—2,213,124 pounds. This is 76 pounds less than the estimated allotment base of 2,213,200 pounds. This is less because some producers failed to produce all of their 2006–2007 allotment.

(C) Original 2007–2008 Allotment Percentage—48 percent. This was unanimously recommended by the Committee on October 4, 2006.

(D) Original 2007–2008 Salable Quantity—1,062,336 pounds. This figure is 48 percent of the estimated 2007–2008 allotment base of 2,213,200 pounds.

(E) Adjustment to the Original 2007–2008 Salable Quantity—1,062,300 pounds. This figure reflects the salable quantity initially available after the beginning of the 2006–2007 marketing

year due to the 76-pound reduction in the industry allotment base to 2,213,124 pounds.

(F) First Revision to the 2007–2008 Salable Quantity and Allotment Percentage:

(1) Increase in Allotment Percentage—5 percent. The Committee recommended a 5 percent increase at its October 17, 2007, meeting.

(2) 2007–2008 Allotment Percentage—53 percent. This figure is derived by adding the increase of 5 percent to the original 2007–2008 allotment percentage of 48 percent.

(3) Calculated Revised 2007–2008 Salable Quantity—1,172,956 pounds. This figure is 53 percent of the revised 2007–2008 allotment base of 2,213,124 pounds.

(4) Computed Increase in the 2007–2008 Salable Quantity—110,656 pounds. This figure is 5 percent of the revised 2007–2008 allotment base of 2,213,124 pounds.

The 2007–2008 marketing year began on June 1, 2007, with an estimated carry-in of 83,417 pounds of salable oil. When the estimated carry-in is added to the revised 2007–2008 salable quantity of 1,062,300 pounds, a total estimated available supply for the 2007–2008 marketing year of 1,145,717 pounds results. In actuality, this final rule made an additional 98,097 pounds of Native spearmint oil available, since not all producers have reserve pool oil. This resulted in a revised available supply of 1,243,814 pounds. As of February 20, 2008, 1,030,839 pounds of oil has already been sold or committed for the 2007–2008 marketing year, which leaves 212,975 pounds available for sale.

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. The handlers have estimated that the demand for 2007–2008 year will be 1,200,000 pounds, which would leave 43,814 pounds as a carry out at the end of the year. However, when the Committee made its original recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2007–2008 marketing year, it had anticipated that the year would end with an ample available supply. Therefore, the industry may not be able to meet market demand without this increase.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2007–2008 marketing year should be increased to 1,172,956 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 2007–2008 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 2007–2008 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

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

#### **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.

There are seven spearmint oil handlers subject to regulation under the order, and approximately 58 producers of Scotch spearmint oil and approximately 92 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 one of the seven handlers regulated by the order could be considered a small entity. 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 58 Scotch spearmint oil producers and 22 of the 92 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. 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 increased the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 2007–2008 marketing year, which ends on May 31, 2008. Specifically, this action increases the 2007–2008 marketing year salable quantity and allotment percentage for Native spearmint oil to 1,172,956 and 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 2007–2008 producer allotments are based, are 45 percent for Scotch and 53 percent for Native (a 5 percentage point increase from the original allotment percentage of 48 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 of Far West spearmint oil (combining the two classes of spearmint oil) resulting from the higher quantities that would be produced and marketed if volume controls were not used.

A previous price decline estimate of \$1.45 per pound was based on the original 2007–2008 allotment percentages (45 percent for Scotch and 48 percent for Native) published in the **Federal Register** on March 29, 2007 (72 FR 14657). The revised estimate reflects the impact of the additional quantities that will be made available by this rule compared to the original allotment percentages. In actuality, this rule made

98,097 pounds of Native spearmint oil available, which is lower than the computed increase of 110,656 pounds, since not all producers have reserve pool oil. Loosening the volume control restriction resulted in the smaller price decline estimate of \$1.40 per pound.

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. 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 levels recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The 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.

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 October 17, 2007, 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 December 17, 2007. 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 February 15, 2008. 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 this interim final rule, without change, as published in the **Federal Register** (72 FR 71199) 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.

■ 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**

Accordingly, the interim final rule amending 7 CFR part 985, which was published at 72 FR 71199 on December 17, 2007, is adopted as a final rule without change.

Dated: April 8, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8-7866 Filed 4-10-08; 8:45 am]

**BILLING CODE 3410-02-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 23**

#### **Damage Tolerance and Fatigue Evaluation of Structure**

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This action corrects a paragraph reference that appeared in the

final rule, Airworthiness Standards; Airframe Rules Based on European Joint Aviation Requirements, which the FAA published in the **Federal Register** on February 9, 1996. In that final rule, the FAA inadvertently changed a paragraph reference. The intent of this action is to correct the error in the regulation to ensure the requirement is clear and accurate.

**DATES:** *Effective Date:* April 11, 2008.

**FOR FURTHER INFORMATION CONTACT:** Pat Mullen, Regulations and Policy, ACE-111, Federal Aviation Administration, 901 Locust Street, Kansas City, MO 64106; telephone (816) 329-4111; e-mail [pat.mullen@faa.gov](mailto:pat.mullen@faa.gov).

**SUPPLEMENTARY INFORMATION:** On February 9, 1996, the FAA published in the **Federal Register** (61 FR 5147) a final rule that amended § 23.573(b) by removing the reference “§ 23.571(c)” and adding the reference “§ 23.571(a)(3)” in its place. Paragraph (a)(3) of § 23.571 does not exist, and the reference to § 23.571(c) should have remained. This document corrects § 23.573(b) to reflect the correct paragraph reference, § 23.571(c). This correction will not impose any additional requirements.

#### **Technical Amendment**

This technical amendment will correct § 23.573(b) to properly reference § 23.571(c).

#### **Justification for Immediate Adoption**

Because this action corrects an incorrect paragraph reference, the FAA finds that notice and public comment under 5 U.S.C. 553(b) is unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective upon publication.

#### **List of Subjects in 14 CFR Part 23**

Aircraft, Aviation safety, Signs and symbols.

#### **The Amendment**

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 23 is amended as follows:

#### **PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES**

■ 1. The authority citation for part 23 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40013, 44701, 44702, 44704.

■ 2. Amend § 23.573 by revising the first sentence in paragraph (b) introductory text to read as follows:

#### **§ 23.573 Damage tolerance and fatigue evaluation of structure.**

\* \* \* \* \*

(b) *Metallic airframe structure.* If the applicant elects to use § 23.571(c) or § 23.572(a)(3), then the damage tolerance evaluation must include a determination of the probable locations and modes of damage due to fatigue, corrosion, or accidental damage. \* \* \*

\* \* \* \* \*

Issued in Washington, DC, on April 7, 2008.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

[FR Doc. E8-7649 Filed 4-10-08; 8:45 am]

**BILLING CODE 4910-13-P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 117**

[USCG-2008-0228]

#### **Drawbridge Operation Regulations; Norwalk River, Norwalk, CT**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Washington Street S136 Bridge, across the Norwalk River, mile 0.0, at Norwalk, Connecticut. While in effect, this deviation allows the bridge owner to open only one of the two moveable spans for bridge openings. Vessels that require a full two-span bridge opening will be required to provide at least a twelve-hour advance notice by calling the bridge operator. This deviation is necessary to facilitate scheduled bridge maintenance.

**DATES:** This deviation is effective from April 1, 2008 through April 30, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0228 and are available online at <http://www.regulations.gov>. They are also available for inspection or copying at two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7