

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581-0065. Accordingly, this rule would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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 October 6, 2004, 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.

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.

A 30-day comment period is provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. This comment period is deemed appropriate so that a final determination can be made prior to June 1, 2005, the beginning of the 2005-2006 marketing year. All written comments received within the comment period will be considered before a final determination is made on this matter.

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

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

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

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

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

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

2. A new § 985.224 is added to read as follows:

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

#### **§ 985.224 Salable quantities and allotment percentages—2005-2006 marketing year.**

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2005, shall be as follows:

- (a) Class 1 (Scotch) oil—a salable quantity of 677,409 pounds and an allotment percentage of 35 percent.
- (b) Class 3 (Native) oil—a salable quantity of 867,958 pounds and an allotment percentage of 40 percent.

Dated: January 5, 2005.

**Kenneth C. Clayton,**

*Associate Administrator, Agricultural Marketing Service.*

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**BILLING CODE 3410-02-P**

### **DEPARTMENT OF AGRICULTURE**

#### **Agricultural Marketing Service**

#### **7 CFR Part 1160**

[Docket No. DA-04-04]

#### **National Fluid Milk Processor Promotion Program; Invitation To Submit Comments on Proposed Amendments to the Fluid Milk Promotion Order**

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

**ACTION:** Proposed rule.

**SUMMARY:** This document invites comments on a proposed amendment to the Fluid Milk Promotion Order (Order). The proposed amendment, requested by the National Fluid Milk Processor Promotion Board (Board), which administers the Order, would modify the terms of membership on the Board. The proposed amendment would require that any change in a fluid milk processor member's employer or change in ownership of the fluid milk processor who the member represents would disqualify that member. The member would continue to serve on the Board for a period of up to six months until a successor was appointed. In addition, a public member to the Board who

changes employment, gains employment with a new employer, or ceases to continue in the same business would be disqualified in a manner similar to a fluid milk processor member. The Board believes that the proposed amendments are necessary to ensure the Board is able to equitably represent fluid milk processing constituents and the public interest through the National Fluid Milk Processor Promotion Program.

**DATES:** Comments must be submitted on or before February 11, 2005.

**ADDRESSES:** Comments should be filed with USDA/AMS/Dairy Programs, Promotion and Research Branch, Stop 0233—Room 2958-S, 1400 Independence Avenue, SW., Washington, DC 20250-0233.

Comments may be faxed to (202) 720-0285 or e-mailed to

*David.Jamison2@usda.gov*. You may send your comments by using the electronic process available at the Federal Rulemaking portal at <http://www.regulations.gov>. Comments, which should reference the title of the action and the docket number, will be made available for public inspection at the above address during regular business hours. Comments also will be posted at: <http://www.ams.usda.gov/dairy/index.htm>.

#### **FOR FURTHER INFORMATION CONTACT:**

David R. Jamison, USDA/AMS/Dairy Programs, Promotion and Research Branch, Stop 0233—Room 2958-S, 1400 Independence Avenue, SW., Washington, DC 20250-0233, (202) 720-6961, *David.Jamison2@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform and is not intended to have a retroactive effect. If adopted, this proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Fluid Milk Promotion Act of 1990 (Act), as amended, authorizes the Order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to the 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 the law and request a modification of the Order or to be exempted from the

Order. A person subject to an Order is afforded the opportunity for a hearing on the petition. After a 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 person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

#### **Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration as those processors employing not more than 500 employees. For purposes of determining a processor's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. As of March 2004, there were approximately 100 fluid milk processors subject to the provisions of the Order. Most of these processors are considered small entities. The implementation of this rule will not affect the number of fluid milk processors subject to the Order.

The Fluid Milk Promotion Order (7 CFR Part 1160) is authorized under the Fluid Milk Promotion Act of 1990 (Act) (7 U.S.C. 6401 *et seq.*). The Order provides for a 20-member Board with 15 members representing geographic regions and five at-large members. To the extent practicable, members representing geographic regions should represent processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than three members. The at-large members shall include at least three fluid milk processors and at least one member from the general public.

The Board has proposed amendments to the membership provisions of the Order. The proposed amendment would require that any change in a fluid milk processor member's employer or change in ownership of the fluid milk processor who the member represents would disqualify that member. The member would continue to serve on the Board for a period of up to six months until a successor was appointed. In addition,

a public member to the Board who changes employment or ceases to continue in the same business would be disqualified in a manner similar to a fluid milk processor member. These changes would address (1) potential movement of members from one fluid milk processor to another fluid milk processor or any other change in company affiliation; and (2) changes in affiliation of at-large public members.

The Board believes that the proposed amendments are necessary to ensure the Board is able to equitably represent fluid milk processing constituents and the public interest through the National Fluid Milk Processor Promotion Program.

The proposed amendment to the Order should not add any additional burden to regulated parties because it relates only to provisions concerning Board membership. Accordingly, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain the same to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

#### **Statement of Consideration**

The proposed rule, if adopted, would amend the Order by modifying the membership qualification for the Board. Section 1160.200 of the Order sets out the criteria for the Secretary to appoint members to the Board where 15 members represent geographic regions and 5 are at-large members of the Board. The Board is proposing the attached amendment to address (1) potential movement of members from one fluid milk processor to another fluid milk

processor; and (2) changes in affiliation of at-large public members.

The Board indicates that the fluid milk industry is a dynamic marketplace where mergers and other purchase activities are commonplace. As a result, there have already been circumstances where members representing a fluid milk processor have been subject to employment or ownership changes due to such mergers and other purchase activities. The Board believes that any change in a fluid milk processor member's employer or change in ownership of the fluid milk processor who the member represents should be subject to further examination. Accordingly, the Board has recommended that any change in employment of ownership would disqualify any member. The member would continue to serve on the Board for a period of up to six months until a successor was appointed.

The Board also believes that at-large public members appointed by the Secretary should be subject to the same criteria for disqualification as processor representatives serving on the Board. Pursuant to the Order, the Secretary may appoint up to two members from the general public. Since the Board is comprised of only 20 members, these at-large public representatives play an important role in guiding the Board's operations. Normally, these members have a high level of expertise in a certain area and provide an invaluable perspective in the Board's deliberations. However, the Board believes that changes in a public member's affiliation should be treated similarly to processor members. Therefore, the Board recommended that should a public member change employment or cease to continue in the business that the public member was operating when appointed to the Board, the public member would be disqualified in a manner similar to a fluid milk processor member. This would provide the Secretary with the ability to appoint a new public member should the circumstances warrant a change in representation.

The Board believes that the proposed amendment would ensure the Board is able to equitably represent fluid milk processing constituents and the public interest through the National Fluid Milk Processor Promotion Program.

Interested parties are invited to comment on this proposed rule. A 30-day comment period is provided. This period is deemed appropriate so as to implement the proposed changes, if adopted, as soon as possible, in order to avoid disruption of Board operations and to ensure that the Board represents

its constituents equitably, both geographically and on a volume basis.

#### List of Subjects in 7 CFR Part 1160

Fluid milk, Milk, Promotion.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1160 be amended as follows:

#### PART 1160—FLUID MILK PROMOTION PROGRAM

1. The authority citation for 7 CFR Part 1160 continues to read as follows:

**Authority:** 7 U.S.C. 6401–6417.

2. In § 1160.200, paragraph (a) is revised to read as follows:

##### § 1160.200 Establishment and membership.

(a) There is hereby established a National Fluid Milk Processor Promotion Board of 20 members, 15 of whom shall represent geographic regions and five of whom shall be at-large members of the Board. To the extent practicable, members representing geographic regions shall represent fluid milk processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than three members. The at-large members shall include at least three fluid milk processors and at least one member from the general public. Except for the non-processor member or members from the general public, nominees appointed to the Board must be active owners or employees of a fluid milk processor. The failure of such a member to own or work for such fluid milk processor shall disqualify that member for membership on the Board except that such member shall continue to serve on the Board for a period not to exceed 6 months following the disqualification or until appointment of a successor Board member to such position, whichever is sooner, provided that such person continues to meet the criteria for serving on the Board as a processor representative. Should a member representing the general public cease to be employed by the entity employing that member when appointed, gain employment with a new employer, or cease to own or operate the business which that member owned or operated at the date of appointment, such member shall be disqualified for membership on the Board, except that such member shall continue to serve on the Board for a period not to exceed 6 months, or until appointment of a successor Board member, whichever is sooner.

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Dated: January 5, 2005.

**Kenneth C. Clayton,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 05–580 Filed 1–11–05; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 1205

[Doc. No. CN–04–001]

#### Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports (2004 Amendments)

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

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is proposing to amend the Cotton Board Rules and Regulations by adjusting the total rate of assessment per kilogram for imported cotton collected for use by the Cotton Research and Promotion Program. The proposed total rate of assessment would be calculated by adding together the \$1 per bale equivalent assessment and the supplemental assessment, and adjusting the sum to account for the estimated amount of U.S. cotton contained in imported textile products. The proposed adjustment would reduce the assessable portion of the cotton content of imported textile products by the estimated average amount of U.S. cotton contained therein. Exemptions and refunds would continue to be provided for importers wishing to document the U.S. cotton content of specific goods. The proposed rule would continue to ensure that the total assessment collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton, and that the U.S. cotton content of imported products is not subject to more than one assessment.

**DATES:** Comments must be received on or before March 14, 2005.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule to Whitney Rick, Assistant to the Deputy Administrator, Cotton Program, Agricultural Marketing Service, USDA, 1400 Independence Ave., SW., STOP 0224 Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically to: <http://www.cottoncomments@usda.gov> or <http://www.regulations.gov>. All

comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at Cotton Program, AMS, USDA, Room 2641–S, 1400 Independence Ave., SW., Washington, DC 20250 during regular business hours. A copy of this notice may be found at: <http://www.ams.usda.gov/cotton/rulemaking.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Whitney Rick, Assistant to the Deputy Administrator, Cotton Program, AMS, USDA, 1400 Independence Ave., SW., Stop 0224, Washington, DC 20250–0224, telephone (202) 720–2259, facsimile (202) 690–1718, or e-mail at [whitney.rick@usda.gov](mailto:whitney.rick@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

##### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person 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 person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

##### Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a