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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV04–985–2 FIR–A2]

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 2004–2005 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, the provisions of three interim final rules that increased the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 2004–2005 marketing year. This rule continues in effect the actions that increased the Native spearmint oil salable quantity by an additional 580,024 pounds from 773,474 pounds to 1,353,498 pounds, and the allotment percentage by an additional 27 percent from 36 percent to 63 percent. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, unanimously recommended this rule to avoid extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

EFFECTIVE DATE: June 24, 2005.

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, Oregon 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

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, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 hanler 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 initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 2004–2005 marketing year were recommended by the Committee at its October 8, 2003, meeting. The Committee recommended salable quantities of 766,880 pounds and 773,474 pounds, and allotment percentages of 40 percent and 36 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the **Federal Register** on January 23, 2004 (69 FR 3272). Comments on the proposed rule were solicited from interested persons until February 23, 2004. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 2004–2005 marketing year was published in the **Federal Register** on March 22, 2004 (69 FR 13213).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee has made unanimous Committee recommendations to increase the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 2004–2005 marketing year, which ends on May 31, 2005. The first revision was published as an interim final rule in the **Federal Register** on October 21, 2004 (69 FR 61755), which increased the salable quantity from 773,474 pounds to 1,095,689 pounds, and the allotment percentage from 36 percent to 51 percent. The second revision was published as an amended interim final rule in the **Federal Register** on February 23, 2005 (70 FR 8712), which further increased the salable quantity by 171,873 pounds to 1,267,562 pounds, and the allotment percentage by 8 percent to 59 percent. Finally, the third revision was published as a further amended interim final rule in the **Federal Register** on March 28, 2005 (70 FR 15557), which further increased the salable quantity an additional 85,936 pounds to 1,353,498 pounds, and the allotment percentage an additional 4 percent to 63 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.

Taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantity, the 2004–2005 marketing year salable quantity is increased to 1,353,498 pounds.

The original total industry allotment base for Native spearmint oil for the 2004–2005 marketing year was established at 2,148,539 pounds and was revised at the beginning of the 2004–2005 marketing year to 2,148,410 pounds to reflect a 2003–2004 marketing year loss of 129 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 2,148,410 pounds is applied to the originally established allotment percentage of 36 percent, the 2004–2005 marketing year salable quantity of 773,474 pounds was effectively modified to 773,428 pounds.

This final rule adopts the provisions of the three interim final rules that made additional Native spearmint oil available from the reserve pool. When applied to each individual producer, the 27 percent allotment percentage increase allows each producer to take up to an amount equal to 27 percent of their allotment base from their Native spearmint oil reserve. This final rule continues in effect the actions that made an additional 580,024 pounds of Native spearmint oil available to the market. This figure is less than the salable quantity increase because not all producers have enough native spearmint oil left their reserves to take full advantage of this release.

The following table summarizes the Committee recommendation:

Native Spearmint Oil Recommendation

(A) Estimated 2004–2005 Allotment Base—2,148,539 pounds. This is the estimate that the original 2004–2005 Native spearmint oil salable quantity and allotment percentage was based on.

(B) Revised 2004–2005 Allotment Base—2,148,410 pounds. This is 129 pounds less than the estimated allotment base of 2,148,539 pounds. This is less because some producers failed to produce all of their 2003–2004 allotment.

(C) Initial 2004–2005 Allotment Percentage—36 percent. This was recommended by the Committee on October 8, 2003.

(D) Initial 2004–2005 Salable Quantity—773,474. This figure is 36 percent of 2,148,539 pounds.

(E) Revised 2004–2005 Salable Quantity—773,428 pounds. This figure reflects the salable quantity initially available after the beginning of the 2004–2005 marketing year due to the 129 pound reduction in the industry allotment base to 2,148,410 pounds.

(F) First Revision to the 2004–2005 Salable Quantity and Allotment Percentage.

(1) Increase in Allotment Percentage—15 percent. The Committee recommended a 12 percent increase at its September 13, 2004, meeting and an additional 3 percent increase at its October 6, 2004, meeting, for a total increase of 15 percent, which was effective on October 21, 2004.

(2) 2004–2005 Allotment Percentage—51 percent. This figure was derived by adding the first revised increase of 15 percent to the initial 2004–2005 allotment percentage of 36 percent.

(3) Calculated 2004–2005 Salable Quantity—1,095,689 pounds. This figure is 51 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

(4) Computed Increase in the 2004–2005 Salable Quantity—322,262 pounds. This figure is 15 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

(G) Second Revision to the 2004–2005 Salable Quantity and Allotment Percentage.

(1) Increase in Allotment Percentage—8 percent. The Committee recommended an 8 percent increase at its meeting on January 20, 2005, which was effective on February 23, 2005.

(2) 2004–2005 Allotment Percentage—59 percent. This figure was derived by adding the 8 percent to the first revised 2004–2005 allotment percentage of 51 percent.

(3) Calculated 2004–205 Salble Quantity—1,267,562 pounds. This figure is 59 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

(4) Computed Increase in the 2004–2005 Salable Quantity—171,873 pounds. This figure is 8 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

(H) Third Revision to the 2004–2005 Salable Quantity and Allotment Percentage.

(1) Increase in Allotment Percentage—4 percent. The Committee recommended a 4 percent increase at its meeting on February 23, 2005, which was effective on March 28, 2005.

(2) 2004–2005 Allotment Percentage—63 percent. This figure was derived by adding the 4 percent to the second revised 2004–2005 allotment percentage of 59 percent.

(3) Calculated 2004–2005 Salable Quantity—1,353,498 pounds. This figure is 63 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

(4) Computed Increase in the 2004–2005 Salable Quantity—85,936 pounds. This figure is 4 percent of the revised 2004–2005 allotment base of 2,148,410 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 the report given by the Committee manager from handlers and producers who were not in attendance. The 2004–2005 marketing year began on June 1, 2004. Handlers have reported purchases of 1,070,801 pounds of Native spearmint oil for the period of June 1, 2004, through February 15, 2005. This amount exceeds the five-year average of 899,979 pounds for this period by 170,822 pounds. On average, handlers indicated that the estimated total demand for the 2004–2005 marketing year could range from a minimum of 1,269,000 pounds to as much as 1,279,000 pounds. This amount exceeds the five-year average for an entire marketing year of 973,456 pounds by as little as 295,544 pounds and as much as 305,544 pounds. Therefore, based on past history, the industry may not be able to meet market demand without these increases. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2004–2005 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 2004–2005 marketing year should be increased by 1,353,498 pounds and 63 percent, respectively.

This rule finalizes three interim final rules that relaxed the Native spearmint oil volume regulation and allows producers to meet market needs and improve returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2004–2005 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 2004–2005 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 ensuring 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 increases in the Native spearmint oil salable quantity and allotment percentage allow 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 currently 8 handlers of spearmint oil who are subject to regulation under the marketing order and 98 producers of Class 3 (Native) spearmint oil in the regulated 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 $6,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on 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 15 of the 98 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 final rule adopts, without change, the provisions of the interim final rules published in the **Federal Register** on October 21, 2004 (69 FR 61755) and amended on February 23, 2005 (70 FR 8712) and March 23, 2005 (70 FR 15557). Specifically, the rule published on October 21, 2004, increased the salable quantity from 773,474 pounds to 1,095,689 pounds, and the allotment percentage from 36 percent to 51 percent for Native spearmint oil for the 2004–2005 marketing year. The rule that subsequently amended the interim final rule was published on February 23, 2005, and increased the salable quantity an additional 171,873 pounds to 1,267,562 pounds, and the allotment percentage an additional 8 percent to 59 percent. Finally, the rule published on March 28, 2005, increased the salable quantity an additional 85,936 pounds to 1,353,498 pounds, and the allotment percentage an additional 4 percent to 63 percent. This rule finalizes three interim final rules that relaxed the Native spearmint oil volume regulations and allows producers to meet market needs and improve returns.

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 salable percentages, upon which 2004–2005 producer allotments are based, are 40 percent for Scotch and 63 percent for Native (a 27 percentage point increase from the original salable percentage of 36 percent). Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.30 per pound decline in the season average producer price (for 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). A previous price decline estimate of $1.71 per pound was based on the 2004–2005 salable percentages (40 percent for Scotch and 36 percent for Native) published in the **Federal Register** on March 22, 2004 (69 FR 13213).

The 2003 Far West producer price for both classes of spearmint oil was $9.50 per pound, which is below the average of $11.33 for the period of 1980 through 2002, based on National Agricultural Statistics Service data. The surplus situation for the spearmint oil market that would exist without volume controls in 2004–2005 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 meetings, the Committee considered alternatives to each of the increases finalized herein. The Committee not only considered leaving the Native spearmint oil salable quantity and allotment percentage unchanged, but also looked at various increases. The Committee reached each of its recommendations to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the level now reached will achieve the objectives sought. Without the three increases, the Committee believes the industry would not have been 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, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the September 13, 2004, October 6, 2004, January 20, 2005, and the February 23, 2005, meetings were public meetings and all entities, both large and small, were able to express their views on each of the recommended increases in the 2004–2005 Native spearmint oil salable quantity and allotment percentage.

The first revision was published as an interim final rule in the **Federal Register** on October 21, 2004 (69 FR 61755). Comments on the interim final rule were solicited from interested persons until December 20, 2004. No comments were received. The second revision was published as an amended interim final rule in the **Federal Register** on February 23, 2005 (70 FR 8712). Comments on the amended interim final rule were solicited from interested persons until April 25, 2005. No comments were received. Finally, the third revision was published as a further amended interim final rule in the **Federal Register** on March 28, 2005 (70 FR 15557). Comments on the further amended interim final rule were solicited from interested persons until April 25, 2005. No comments were received. Copies of each of these rules were mailed by the Committee's staff to all committee members, producers, handlers, and other interested persons. In addition, each of these rules were made available through the Internet by USDA and the Office of the Federal Register.

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 by 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 recommendations, and other information, it is found that finalizing the interim final rules, without change, as published in the **Federal Register** (69 FR 61755, October 21, 2004; 70 FR 8712, February 23, 2005; and 70 FR 15557, March 28, 2005) 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 rules amending 7 CFR part 985 which were published at 69 FR 61755 on October 21, 2004; 70 FR 8712 on February 23, 2005; and 70 FR 15557 on March 28, 2005, are adopted as a final rule without change.

Dated: May 20, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–10441 Filed 5–24–05; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1439

RIN 0560–AH26

American Indian Livestock Feed Program; Livestock Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This regulation sets forth the terms and conditions of the 2003/2004 American Indian Livestock Feed Program (AILFP). Assistance will be available to eligible livestock producers for livestock feed crop years 2003 or 2004 whose eligible livestock occupied tribal-governed land at the time of a natural disaster in an area where a significant loss of livestock feed has occurred, creating a livestock feed emergency, as determined by the Commodity Credit Corporation (CCC). Eligible producers can receive benefits for livestock feed crop year 2003, or 2004, but not both. Eligible tribal-governed land must be located in a primary county or counties that have received an emergency declaration by the President or emergency designation by the Secretary of Agriculture on or after January 1, 2003, for losses occurring in calendar year 2003, or calendar year 2004. Although the Presidential declarations and Secretarial designations were issued for natural disasters in those calendar years, tribal governments may request an initial 90-day feeding period and up to three 90-day extensions that extend from the beginning of a livestock feed crop year, to the end of that same livestock feed crop year. Further, livestock owners who sold eligible livestock as a direct result of natural disaster shall report those livestock as owned through the end of the production year (livestock feed crop year) in order to mitigate the livestock owner's losses. This rule is intended to implement legislation and assist affected producers in overcoming the effects of drought. In addition, this rule provides technical revisions for the Livestock Assistance Program regulations.

DATES: Effective May 24, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah O'Donoghue, Program Specialist, Noninsured Assistance Programs Branch (NAPB), Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of