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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV96-985-1FIR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentages for Class 1 (Scotch) Spearmint Oil the 1995-96 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule increasing the quantity of Class 1 (Scotch) spearmint oil produced in the Far West, that handlers may purchase from, or handle for, producers during the 1995-96 marketing year. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and thus help to maintain stability in the spearmint oil market.

EFFECTIVE DATE: July 11, 1996.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2724; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202) 720-8139; Tershirra Yeager, Marketing Order

Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202) 690-0992.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, 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 final rule increases the quantity of Scotch spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1995-96 marketing year, which ends on May 31, 1996. This final 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 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 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 the Secretary 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 in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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 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 who are subject to regulation under the respective marketing order and approximately 260 producers of spearmint oil in the regulated production area. Of the 260 producers, approximately 160 producers hold Class 1 (Scotch) spearmint oil allotment base, and approximately 145 producers hold Class 3 (Native) spearmint oil allotment base. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. A minority of handlers and producers of Far West spearmint oil may 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 are not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

This rule finalizes an interim final rule that increased the quantity of Scotch spearmint oil that handlers may purchase from, or handle for, producers during the 1995-96 marketing year, which ends on May 31, 1996. This rule increases the salable quantity from 908,531 pounds to 997,317 pounds and the allotment percentage from 51

percent to 56 percent for Scotch spearmint oil for the 1995–96 marketing year.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. 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 base for the applicable class of spearmint oil.

The initial salable quantity and allotment percentages for Scotch and Native percentages for the 1995–96 marketing year were recommended by the Committee at its October 5, 1994, meeting. The Committee recommended salable quantities of 908,531 pounds and 906,449 pounds, and allotment percentages of 51 percent and 46 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the December 15, 1994, issue of the Federal Register (59 FR 64625). Comments on the proposed rule were solicited from interested persons until January 17, 1995. No comments were received. Accordingly, based upon analysis of available information, a final rule establishing the Committee's recommendation as the salable quantities and allotment percentage for Scotch and Native spearmint oils for the 1995–96 marketing year was published in the February 15, 1995, issue of the Federal Register (60 FR 8524). The Committee met again on February 22, 1995, to recommend an increase in the salable quantity and allotment percentage for Native spearmint oil. An interim final rule increasing the salable quantity and allotment percentage for Native spearmint oil by 98,527 and 5 percent, respectively, was published in the Federal Register on April 14, 1995 (60 FR 18950). Comments were solicited on the interim final rule until May 15, 1995. No comments were received. Accordingly, based upon analysis of available information, a final rule establishing as the salable quantity and allotment percentage for Native spearmint oil for the 1995–96 marketing year was published in the June 12, 1995, issue of the Federal Register (60 FR 30785).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, February 27, 1996, meeting, the Committee unanimously recommended, that allotment percentage for Scotch spearmint oil for the 1995–96 marketing year be increased by 5 percent from 51

percent to 56 percent. The 1995–96 marketing year salable quantity of 908,531 pounds would therefore be increased by 89,046 pounds to 997,317 pounds.

However, some Scotch spearmint oil producers did not produce all of their individual salable quantities for the 1995–96 marketing year, or fill their deficiencies from the prior year's production. The marketing order authorizes such producers to have their deficiencies filled by other producers who have production in excess of their salable quantities. This is optional for producers, but must be done before November 1 of each marketing year. Although the Scotch spearmint oil salable quantity for 1995–96 was established at 908,531 pounds, only 887,093 pounds were actually made available. Unfilled deficiencies totaled 21,178 pounds.

In addition, for the Scotch spearmint oil the total industry allotment base of 1,781,433 pounds was revised to 1,780,923 pounds to reflect loss of base due to non-production of their total annual allotments. This adjustment resulted in a 510 pound loss of total industry base, which is reflected in the calculations for the revised salable quantity.

This final rule continues to permit an additional amount of Scotch spearmint oil available by increasing the salable quantity which releases oil from the reserve pool. Only producers with Scotch spearmint oil in the reserve pool will be able to use this increase in the salable quantity. Prior to November 1, 1995, producers without reserve pool oil or producers with an insufficient supply of reserve oil could have deficiencies in meeting their salable quantities filled by producers having excess Scotch spearmint oil. If all producers could use their salable quantity, this 5 percent increase in the allotment percentage would have made an additional 89,046 pounds of Scotch spearmint oil available. However, Scotch spearmint oil producers having 21,260 pounds of Scotch spearmint oil will not be able to use their reserve pool deficiencies this marketing year. Thus, rather than 89,046 additional pounds being made available, this action makes 67,786 additional pounds of Scotch spearmint oil available to the market.

The following table summarizes the Committee recommendation:

Scotch Spearmint Oil Recommendation

- (a) Actual Carry In on June 1, 1995: 150,637 pounds
- (b) 1995–96 Salable Quantity: 908,531 pounds

- (c) 1995–96 Available Supply: 1,059,168 pounds (a+b)
- (d) Total Sales as of February 27, 1996: 883,959 pounds
- (e) Calculated Available Supply as of February 27, 1996: 175,209 pounds (c – d)
- (f) Unfilled Deficiencies in producers' salable quantities prior to November 1, 1995: 21,178 pounds
- (g) Unusable salable quantities due to producers not having reserve pool oil: 21,260 pounds
- (h) Total Deficiency Affecting Salable Quantity: 42,438 pounds (f+g)
- (i) Actual Available Supply (2/27/96): 153,771 pounds (e – f)
- (j) Revised Total Allotment Base: 1,780,923 pounds
- (k) Recommended Allotment Percentage (2/27/96): 56 percent
- (l) Calculated Revised Salable Quantity: 997,317 pounds (j×k)
- (m) Actual Oil Available as Salable Quantity: 954,879 pounds (l – h)

In making this latest recommendation, the Committee considered all available information on supply and demand. The 1996–97 marketing year begins on June 1, 1996. Handlers have indicated that with this action, the available supply of both Scotch and Native spearmint oils appears adequate to meet anticipated demand through May 31, 1996.

However, with increases in Scotch spearmint oil production elsewhere over the past two years, the Committee has embarked on a strategy of maintaining an abundance of Scotch spearmint oil available for market in an attempt to regain lost market share. With 153,771 pounds of Scotch spearmint oil available as of February 27, 1996, the Committee, believes that the increase would ensure that ample supplies of Scotch spearmint oil are available throughout the remainder of the current marketing year. When the Committee made its initial recommendation for the establishment of the Scotch spearmint oil salable quantity and allotment percentage for the 1995–96 marketing year, it had anticipated that the year would end with an ample available supply. An interim final rule was published in the Federal Register [61 FR 15697]. Comments on the interim final rule were solicited from interested persons until May 9, 1996. No comments were received. With this latest revision, 221,557 pounds of Scotch spearmint oil is made available. The Scotch spearmint oil is made available for market during the remainder of the 1995–96 marketing year.

The Department, based on its analysis of available information, has determined

that an allotment percentage of 56 percent should be established for Scotch spearmint oil for the 1995–96 marketing year. This percentage will provide an increased calculated salable quantity of 997,317 pounds, the actual additional amount of Scotch spearmint oil being made available by this final rule is 67,786 pounds. This results in an actual salable quantity of 954,879 pounds of Scotch spearmint oil.

Therefore, based on available information, AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the prior proposed and final rules in connection with the establishment of the salable quantity and allotment percentage for Scotch and Native spearmint oils for the 1995–96 marketing year, the Committee's recommendation and other available information, it is found that to revise section 985.214 (60 FR 8524) to change the salable quantity and allotment percentage for Scotch spearmint oil, as hereinafter set forth, 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—SPEARMINT OIL PRODUCED IN THE FAR WEST

Accordingly, the interim final rule amending 7 CFR part 985 which was published at 61 FR 15695 on April 9, 1996, is adopted as a final rule without change.

Dated: June 3, 1996.

Sharon Bomer Lauritsen,
Acting Director, Fruit and Vegetable Division.
[FR Doc. 96–14755 Filed 6–10–96; 8:45 am]
BILLING CODE 3410–02–P

7 CFR Part 1240

[AMS–FV–96–701.FR]

Honey Research, Promotion, and Consumer Information Order— Amendment of the Rules and Regulations To Add HTS Code for Flavored Honey

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule adds a new Harmonized Tariff Schedule (HTS) code number for imported flavored honey to the rules and regulations issued under the Honey Research, Promotion, and Consumer Information Order to provide authority for the U.S. Customs Service to collect an assessment on all imported, flavored honey.

EFFECTIVE DATE: July 12, 1996.

FOR FURTHER INFORMATION CONTACT: Richard B. Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535-So., Washington, D.C. 20090–6456; telephone (202) 720–9915.

SUPPLEMENTARY INFORMATION: This rule is issued under the Honey Research, Promotion, and Consumer Information Act, as amended [104 Stat. 3904, 7 U.S.C. 4601 *et seq.*], hereinafter referred to as the Act.

This rule has been issued in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It 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 10 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provision of such order, or any obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. 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 such person is an inhabitant, or has a principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided that a complaint is filed within 20 days after the date of entry of the ruling.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service (AMS) has certified that the issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

The board estimates that 500,000 pounds of flavored honey are imported annually at a market value of

approximately \$325,000 and will result in an estimated \$5,000 in assessments. This action will not result in a major price increase or have significant adverse effects on production or marketing.

There are an estimated 145 handlers, 510 producer-packers, 8,300 producers, and 350 importers who are currently subject to the provisions of the Order. The majority of these persons may be classified as small agricultural producers and small agricultural service firms. Small agricultural producers are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$500,000, and small service firms are defined as those having annual receipts of less than \$5 million.

In accordance with the Paperwork Reduction Act [44 U.S.C. Chapter 35], and OMB regulations [5 CFR Part 1320], the information collection and recordkeeping requirements contained in this action have been previously approved under OMB control number 0581–0093.

Background

The Honey Research, Promotion, and Consumer Information Order (Order) provides that each producer and importer shall pay to the Board a one cent per pound assessment rate on honey and honey products produced in or imported into the United States. Section 1240.5 of the Order defines honey products as products wherein honey is a principal ingredient.

In order for the U.S. Customs Service (Customs) to collect the assessments on imported honey and honey products, each product needs to be identified by an HTS Code. Since the Board inception, honey has been assessed by Customs under HTS code number 0409.00.00. However, there were no HTS codes for honey products.

The Board has identified flavored honey as a product containing approximately 99 percent honey. The Board estimates that 500,000 pounds of flavored honey are imported into the United States annually without the importer paying the required assessment. Therefore, at the recommendation of the Board, the Department requested the Committee for Statistical Annotation of Tariff Schedules (Committee) on the International Trade Commission to establish an HTS code for flavored honey. The Committee notified the Department on February 13, 1996, that a code has been established for flavored honey. The purpose of this rule is to add the new HTS code for flavored honey to the rules and regulations under the