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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[FV98-985-2 IFR]

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 1997-98 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule increases the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1997-98 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 to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

DATES: Effective on April 30, 1998, through May 31, 1998; comments received by May 19, 1998, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 205-6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made

available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2724; Fax: (503) 326-7440; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 720-2491; Fax: (202) 205-6632.

SUPPLEMENTARY INFORMATION: This 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 Nevada, 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 (Department) 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 increases the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1997-98 marketing year, which ends on May 31, 1998. 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 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 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.

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. 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 increases the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1997-98 marketing year, which ends on May 31, 1998. This rule increases the salable quantity from 1,125,351 pounds to 1,185,550 pounds and the allotment percentage from 56 percent to 59 percent for Native spearmint oil for the 1997-98 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 percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 1997–98 marketing year were recommended by the Committee at its October 2, 1996, meeting. The Committee recommended salable quantities of 996,522 pounds and 1,125,351 pounds, and allotment percentages of 55 percent and 56 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the January 7, 1997, issue of the **Federal Register** (62 FR 942). A final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1997–98 marketing year was published in the July 9, 1997, issue of the **Federal Register** (62 FR 36646).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, at its February 25, 1998, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 1997–98 marketing year be increased by 3 percent from 56 percent to 59 percent. Taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantity, the 1997–98 marketing year salable quantity of 1,125,351 pounds will therefore be increased to 1,185,550 pounds.

The original total industry allotment base for Native spearmint oil for the 1997–98 marketing year was established at 2,009,556 pounds and was revised during the year to 2,006,630 pounds to reflect loss of 2,926 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 2,006,630 pounds is applied to the originally established allotment percentage of 56, the 1997–98 marketing year salable quantity of 1,125,351 pounds is effectively modified to 1,123,713 pounds.

Further, § 985.56(a) of the order authorizes producers who have produced more than their salable quantity of spearmint oil during a marketing year to transfer such excess to producers who have produced less than their salable quantity for the same marketing year. If all producers having such an excess transfer their excess oil to producers having a deficiency, all of the annual allotment is utilized. If, on the other hand, this option is not utilized to its full extent, some annual allotment is essentially lost and the effective salable quantity for that year is reduced by the amount of excess oil that was not transferred to fill deficiencies. During the 1997–98 marketing year, producers who were deficient by 3,957

pounds of Native spearmint oil chose not to have this deficiency filled by producers having excess oil. This also effectively reduced the already modified 1997–98 salable quantity by 3,957 pounds leaving a net quantity of 1,119,756 pounds.

By increasing the salable quantity and allotment percentage, this rule makes an additional amount of Native spearmint oil available by releasing such oil from the reserve pool. When applied to each individual producer, the 3 percent allotment percentage increase allows each producer to take up to 3 percent of their allotment base from their Native spearmint oil reserve. If a producer does not have any reserve pool oil, or has less than 3 percent of their allotment base in the reserve pool, the increase in allotment percentage will actually make less than such amount available to the market. Currently, producers receiving 6,201 pounds of additional allotment through this increase do not have any Native spearmint oil in reserve. Thus, rather than 60,199 additional pounds, this action effectively makes an additional 53,998 pounds of Native spearmint oil available to the market.

The following table summarizes the Committee recommendation:

Native Spearmint Oil Recommendation

- (a) Estimated 1997–98 Allotment Base—2,009,556 pounds. This is the estimate that the 1997–98 Native spearmint oil salable quantity and allotment percentage was based on.
- (b) Revised 1997–98 Allotment Base—2,006,630 pounds. This is 2,926 pounds less than the estimated allotment base. This base was lost because some producers failed to produce all of their previous year's allotment.
- (c) Initial 1997–98 Allotment Percentage—56 percent.
- (d) Initial 1997–98 Salable Quantity—1,125,351 pounds. This figure is 56 percent of 2,009,556 pounds.
- (e) Initial Adjustment to the 1997–98 Salable Quantity—1,123,713 pounds. This figure reflects the salable quantity initially available after the beginning of the 1997–98 marketing year due to the 2,296 pound reduction in the industry allotment base to 2,006,630 pounds.
- (f) Final Adjustment to the 1997–98 Salable Quantity—1,119,756 pounds. This figure reflects the salable quantity actually available during the 1997–98 marketing year after the 3,957 pound deficiency was subtracted from the initially adjusted salable quantity of 1,123,713 pounds.
- (g) Increase in Allotment Percentage—3 percent. This percentage increase was recommended by the Committee at its February 25, 1998, meeting.

(h) Revised 1997–98 Allotment Percentage—59 percent. This figure is derived by adding the 3 percent increase to the initial 1997–98 allotment percentage of 56 percent.

(i) Calculated Revised 1997–98 Salable Quantity—1,185,638 pounds. This figure is 59 percent of the estimated 1997–98 allotment base of 2,009,556 pounds.

(j) Computed Increase in the 1997–98 Salable Quantity—60,287 pounds. This is the product of the estimated 1997–98 allotment base of 2,009,556 and the revised 1997–98 allotment percentage of 59 percent.

(k) Effective Increase in the 1997–98 Salable Quantity—53,998 pounds. This figure represents the amount of Native spearmint oil actually being made available by this action based on the adjustments described herein.

In making this latest recommendation, the Committee considered all available information on supply and demand. The 1997–98 marketing year began on June 1, 1997. 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, 1998. Without the increase, the Committee believes the industry would not be able to meet market needs. As of February 25, 1998, approximately 89,000 pounds of Native spearmint oil was available for market. Average demand for Native spearmint oil from March 1 to May 31 over the past 17 years has been 108,029 pounds. Therefore, based on past history the industry may not be able to meet market demand without this increase. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 1997–98 marketing year, it had anticipated that the year would end with an ample available supply. This action has the effect of adding 53,998 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the period February 25 through May 31, 1998, up to approximately 144,000 pounds.

The Department, based on its analysis of available information, has determined that the 1997–98 salable quantity and allotment percentage for Native spearmint oil for the 1997–98 marketing year should be increased to 1,185,638 and 59 percent, respectively.

This rule relaxes the regulation of Native spearmint oil and will allow growers to meet market needs and improved returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 1997–98 marketing

year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, fully meets the intent of section 985.50 of the order. During its discussion of revising the 1997-98 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 the Department'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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial 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 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 9 spearmint oil handlers subject to regulation under the marketing order and approximately 200 producers of spearmint oil in the regulated production area. Of the 200 producers, approximately 125 producers hold Class 1 (Scotch) spearmint oil allotment base, and approximately 110 producers hold Class 3 (Native) spearmint oil allotment base. Small agricultural service firms are defined by

the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than \$500,000.

Based on the SBA's definition of small entities, the Committee estimates that two of the nine handlers regulated by the order would 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 29 of the 124 Scotch spearmint oil producers and 14 of the 110 Native spearmint oil producers would 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. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms would fall into the category of large businesses.

Small spearmint oil producers represent a minority of farming operations and are more vulnerable to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the resources 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 of stronger incomes from alternate crops which could support the operation for a period of time. Despite the advantage of larger producers, increasing the Native salable quantity and allotment percentage will help both large and small producers by improving returns. In addition, this change may potentially benefit the small producer more than large producers. This is because the

change ensures that small producers are more likely to maintain a profitable cash flow and meet annual expenses.

Alternatives to this rule included not increasing the available supply of Native spearmint oil, which could potentially hurt small producers. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the level recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs. As of February 25, 1998, approximately 88,000 pounds of Native spearmint oil were available for market. Average demand for Native spearmint oil from March 1 to May 31 over the past 17 years has been 108,029 pounds. Therefore, based on past history the industry may not be able to meet market demand without this change. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 1997-98 marketing year, it had anticipated that the year would end with an ample available supply. This revision has the effect of adding 53,998 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the period February 25 through May 31, 1998, up to 144,158 pounds.

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. Accordingly, this action will 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 Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

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 quantities and allotment percentages for Scotch and Native spearmint oils for the 1997–98 marketing year, the Committee's recommendation and other available information, it is found that to revise section 985.216 (62 FR 36650) to change the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a revision to the salable quantity and allotment percentage for Native spearmint oil. A 20-day comment period is provided. This comment period is appropriate because the marketing year ends on May 31, 1998. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year which ends on May 31, 1998; (2) the quantity of Native spearmint planted for the 1998–99 marketing year may be affected, thus handlers and producers should be apprised as soon as possible of the salable quantity and allotment percentage of Native spearmint oil contained in this interim final rule; (3) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 20-day comment period and any comments received will be considered prior to finalization of this rule.

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

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

Authority: 7 U.S.C. 601–674.

2. Section 985.216 is amended by revising paragraph (b) to read as follows:

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

§ 985.216 Salable quantities and allotment percentages—1997–98 marketing year.

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,185,550 pounds and an allotment percentage of 59 percent.

Dated: April 24, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–11446 Filed 4–28–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–143–AD; Amendment 39–10499; AD 98–09–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A320 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 and A321 series airplanes, that requires replacement of two elevator aileron computers (ELAC) with ELAC's that contain new software. This amendment is prompted by a report indicating difficulty maintaining the intended flight path during landing in turbulent conditions. The actions specified by this AD are intended to prevent situations that could lead to reduced controllability of the airplane due to adverse airplane-pilot coupling characteristics.

DATES: Effective June 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 and A321 series airplanes was published in the **Federal Register** on January 7, 1997 (62 FR 949). That action proposed to require replacement of two elevator aileron computers (ELAC) with ELAC's that contain new software.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

One commenter, Airbus, does not object to the proposed AD, but offers the following comments suggesting changes for clarity and accuracy. The commenter requests that the statement of unsafe condition, "To prevent reduced controllability of the airplane due to problems associated with the ELAC, accomplish the following: * * *," be replaced with, "In order to adapt lateral control law to real flap position in case of failure/jamming of flaps, and in order to harmonize the lateral behavior between 'full' and '3' configurations, in turbulence, of the ELAC, accomplish the following: * * *." The commenter states that its proposed wording of the unsafe condition is supported by the fact that the improvement of the ELAC is the result of an in-service event that arose from three conditions surrounding that event:

- Very strong turbulence during landing preparation;
- Flaps locked between "full" and "3" configurations resulting from flaps extension under strong turbulent conditions, the monitoring of the interconnecting strut between inner and outer flap having detected an abnormal surfaces displacement; and
- An electronic centralized aircraft monitor (ECAM) procedure requesting to select slat/flap lever to "conf 3" when flaps are locked between configurations "3" and "full" (lever in position "full").

Additionally, the commenter notes that no system failure initiated the reported event. In conjunction with its