

West, 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:** March 17, 1995.

**FOR FURTHER INFORMATION CONTACT:**

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**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). This marketing 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 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 establishes the quantity of 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 begins on June 1, 1995. 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 a bill in equity 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 Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 8 spearmint oil handlers subject to regulation under the 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) oil allotment base, and approximately 145 producers hold Class 3 (Native) oil allotment base. Small agricultural service firms are 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 have been defined as those whose annual receipts are less than \$500,000. A minority of producers and handlers 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 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 marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the marketing order, the Committee recommended the salable quantities and allotment percentages for the 1995-96 marketing year at its October 5, 1994, meeting. The Committee recommended the establishment of a salable quantity and allotment percentage for Scotch

spearmint oil by a unanimous vote, and a seven to one vote, respectively. The member voting in opposition favored the establishment of a higher salable quantity that would have resulted in a higher allotment percentage. The Committee also recommended the establishment of a salable quantity and allotment percentage for Native spearmint oil by a unanimous vote.

This final rule establishes a salable quantity of 908,531 pounds and an allotment percentage of 51 percent for Scotch spearmint oil, and a salable quantity of 906,449 pounds and an allotment percentage of 46 percent for Native spearmint oil. This rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1995-96 marketing year, which begins on June 1, 1995. Salable quantities and allotment percentages have been placed into effect each season since the marketing order's inception in 1980.

The salable quantity and allotment percentage for each class of spearmint oil for the 1995-96 marketing year is based upon the Committee's recommendations and the following data and estimates:

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1995—57,325 pounds. This number is derived by subtracting the estimated 1994-95 marketing year trade demand of 900,000 pounds from the revised 1994-95 marketing year total available supply of 957,325 pounds.

(B) Estimated trade demand (domestic and export) for the 1995-96 marketing year—950,000 pounds. This number is an estimate that takes into account the average of total annual sales made between 1980 and 1993, handler estimates, and information provided by producers and buyers.

(C) Salable quantity required from 1995-96 regulated production—892,675 pounds. This number is the difference between the estimated 1995-96 marketing year trade demand and the estimated carry-in on June 1, 1995.

(D) Total allotment base for the 1995-96 marketing year—1,781,433 pounds.

(E) Computed allotment percentage—50.1 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—51 percent.

(G) The Committee's recommended salable quantity—908,531 pounds.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1995—156,733 pounds. This number is