

through the applicable one of the following offices, at least the specified number of the days prior to the time when the fruit will be imported:

\* \* \* \* \*

5. A new § 944.700 is added to read as follows:

**§ 944.700 Fresh prune import regulation.**

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any fresh prunes, other than the Brooks variety, during the period July 15 through September 30 of each year is prohibited unless such fresh prunes meet the following requirements:

(1) Such fresh prunes grade at least U.S. No. 1, except that at least two-thirds of the surface of the fresh prune is required to be purplish in color, and such fresh prunes measure not less than 1¼ inches in diameter as measured by a rigid ring: Provided, That the following tolerances, by count, of the fresh prunes in any lot shall apply in lieu of the tolerance for defects provided in the United States Standards for Grades of Fresh Plums and Prunes (7 CFR 51.1520 through 51.1538): A total of not more than 15 percent for defects, including therein not more than the following percentage for the defect listed:

(i) 10 percent for fresh prunes which fail to meet the color requirement;

(ii) 10 percent for fresh prunes which fail to meet the minimum diameter requirement;

(iii) 10 percent for fresh prunes which fail to meet the remaining requirements of the grade: Provided, That not more than one-half of this amount, or 5 percent, shall be allowed for defects causing serious damage, including in the latter amount not more than 1 percent for decay.

(2) [Reserved]

(b) The importation of any individual shipment which, in the aggregate, does not exceed 500 pounds net weight, of fresh prunes of the Stanley or Merton varieties, or 350 pounds net weight, of fresh prunes of any variety other than the Stanley or Merton varieties, is exempt from the requirements specified in this section.

(c) The grade, size and quality requirements of this section shall not be applicable to fresh prunes imported for consumption by charitable institutions, distribution by relief agencies, or commercial processing into products, but such prunes shall be subject to the safeguard provisions in § 944.350.

(d) The term "U.S. No. 1" shall have the same meaning as when used in the United States Standards for Grades of

Fresh Plums and Prunes (7 CFR 51.1520 through 51.1538); the term "purplish color" shall have the same meaning as when used in the Washington State Department of Agriculture Standards for Italian Prunes (April 28, 1978), and the Oregon State Department of Agriculture Standards for Italian Prunes (October 5, 1977); the term "diameter" means the greatest dimension measured at right angles to a line from the stem to the blossom end of the fruit.

(e) The term "Prunes" means all varieties of plums, classified botanically as *Prunus domestica*, except those of the President variety.

(f) The term "importation" means release from custody of the United States Customs Service.

(g) Inspection and certification service is required for imports and will be available in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification (7 CFR 944.400).

(h) Any lot or portion thereof which fails to meet the import requirements, and is not being imported for purposes of consumption by charitable institutions, distribution by relief agencies, or commercial processing into products, prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such fresh prunes borne by the importer.

(i) It is determined that fresh prunes imported into the United States shall meet the same minimum grade, size and quality requirements as those established for fresh prunes under Marketing Order No. 924 (7 CFR part 924).

Dated: August 1, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

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## 7 CFR Part 985

[Docket No. FV96-985-2 FIR]

### Spearmint Oil Produced in the Far West; Assessment Rate

**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 establishing an assessment rate for the

Spearmint Oil Administrative Committee (Committee) under Marketing Order No. 985 for the 1996-97 and subsequent fiscal periods. The Committee is responsible for the local administration of the marketing order which regulates the handling of spearmint oil produced in the Far West. Authorization to assess spearmint oil handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

**EFFECTIVE DATE:** Effective on June 1, 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 Tershirra T. 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) 720-5127. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, D.C. 20090-6456; telephone: (202) 720-2491, Fax (202) 720-5698.

**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 California, Nevada, Montana, and Utah), hereinafter referred to as the "order." The 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Far West spearmint oil handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable spearmint oil beginning June 1, 1996, and continuing until amended, suspended, or terminated. 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. Such 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 the 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 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 approximately 260 producers of spearmint oil in the production area and 8 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of spearmint oil producers and handlers may be classified as small entities.

The spearmint oil marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Far West spearmint oil. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate

budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on February 27, 1996, and unanimously recommended 1996-97 expenditures of \$230,752 and an assessment rate of \$0.10 per pound of spearmint oil. In comparison, last year's budgeted expenditures were \$233,272. The assessment rate of \$.10 is the same as last year's established rate. Major expenditures recommended by the Committee for 1996-97 include \$96,200 for administrative expenses, \$113,552 for salaries, and \$21,000 for committee travel. Budgeted expenses for these items in 1995-96 were \$102,900, \$107,372, and \$23,009, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Far West spearmint oil. Spearmint oil shipments for the year are estimated at 2,081,610 pounds which should provide \$208,161 in assessment income. Income derived from handler assessments, along with interest income and funds from the committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the May 6, 1996, issue of the Federal Register (61 FR 20122). That rule provided for a 30-day comment period. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings

are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment is needed. The Committee's 1996-97 budget and those for subsequent fiscal years will be reviewed and as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of the rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996-97 fiscal period begins on June 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable spearmint oil handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided for a 30-day comment period, no comments were received.

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

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

#### **PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST**

Accordingly, the interim final rule amending 7 CFR 900 which was published at 61 FR 20122 on May 6, 1996, is adopted as a final rule without change.

Dated: August 1, 1996.

Robert C. Keeney,  
Director, Fruit and Vegetable Division.  
[FR Doc. 96-20034 Filed 8-6-96; 8:45 am]

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