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(g) It is hereby determined, on the basis of the information currently available, that the minimum quality requirements and size requirements set forth in this part are comparable to those applicable to California canned ripe olives.

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(j) The minimum quality, size, and maturity requirements of this section shall not be applicable to olives imported for charitable organizations or processing for oil, but shall be subject to the safeguard provisions contained in § 944.350.

Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-449 Filed 1-8-97; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 985

[FV96-985-3 IFR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1996-97 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final 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 1996-97 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 January 9, 1997 through May 31, 1997; comments received by February 10, 1997 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 in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698. 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 Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2043; Fax: (503) 326-7440; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-8139; Fax: (202) 720-5698. 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 2525-S, Washington, DC 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 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 1996-97 marketing year, which ends on May 31, 1997. 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 1996-97 marketing year, which ends on May 31, 1997. This rule increases the salable quantity from 1,074,902 pounds to 1,213,692 pounds and the allotment percentage from 54 percent to 61 percent for Native spearmint oil for the 1996-97 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 1996-97 marketing year were recommended by the Committee at its September 26, 1995, meeting. The Committee recommended salable quantities of 989,303 pounds and 1,074,902 pounds, and allotment percentages of 55 percent and 54 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the January 24, 1996, issue of the Federal Register (61

FR 1855). Comments on the proposed rule were solicited from interested persons until February 23, 1996. No comments were received. Accordingly, based upon analysis of available information, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1996–97 marketing year was published in the March 20, 1996, issue of the Federal Register (61 FR 11291).

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, at its November 14, 1996, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 1996–97 marketing year be increased by 7 percent from 54 percent to 61 percent. The 1996–97 marketing year salable quantity of 1,074,902 pounds will therefore be increased to 1,213,692 pounds.

However, some Native spearmint oil producers did not produce all of their

individual salable quantities for the 1996–97 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.

The original total industry allotment base for Native spearmint oil for 1996–97 was established at 1,990,559 pounds and was revised to 1,989,659 pounds to reflect loss of base due to non-production of producer's total annual allotments. This adjustment resulted in a 900 pound loss of total industry base, which is reflected in the calculations for the revised salable quantity.

This interim final rule makes an additional amount of Native spearmint oil available by increasing the salable quantity which releases oil from the reserve pool. Only producers with Native spearmint oil in the reserve pool

will be able to use this increase in the salable quantity. Prior to November 1, 1996, 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 Native spearmint oil. If all producers could use their salable quantity, this 7 percent increase in the allotment percentage would have made an additional 135,276 pounds of Native spearmint oil available ($1,989,659 \times 7$ percent). However, Native spearmint oil producers having 25,546 pounds of Native spearmint oil will not be able to use their reserve pool deficiencies this marketing year. Deficiencies usually exist because of unplanned problems that may reduce spearmint production. Thus, rather than 135,276 additional pounds being made available, this action makes 113,730 additional pounds of Native spearmint oil available to the market.

The following table summarizes the Committee recommendation:

NATIVE SPEARMINT OIL RECOMMENDATION

(a) Actual Carry In on June 1, 1996	45,632 pounds.
(b) 1995–96 Salable Quantity	1,074,902 pounds.
(c) 1995–96 Available Supply	1,120,534 pounds (a + b).
(d) Total Sales as of November 14, 1996	1,036,058 pounds.
(e) Calculated Available Supply as of November 14, 1996	84,476 pounds ((c – d).
(f) Reserve Deficiency Affecting Salable Quantity	25,546 pounds.
(g) Revised Total Allotment Base	1,989,659 pounds.
(h) Recommended Allotment Percentage as of November 14, 1996	61 percent.
(i) Calculated Revised Salable Quantity	1,213,692 pounds (g x h).
(j) Actual Oil Available as Salable Quantity	1,188,146 pounds (i – f).

In making this latest recommendation, the Committee considered all available information on supply and demand. The 1996–97 marketing year began 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, 1997. Without the increase, the Committee believes the industry would not be able to meet market needs. As of November 14, 1996, 84,476 pounds of Native spearmint oil was available for market. Demand for Native spearmint oil from December 1 to May 31 over the past five years has ranged from a high of 245,661 pounds in 1991–92 to a low of 92,658 pounds in 1992–93. The five year average is 157,531 pounds. Therefore, based on past history the industry would be unlikely 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 1996–97 marketing year, it had

anticipated that the year would end with an ample available supply. This revision adds 113,730 pounds of Native spearmint oil to the amount available for market during the remainder of the 1996–97 marketing year.

The Department, based on its analysis of available information, has determined that an allotment percentage of 61 percent should be established for Native spearmint oil for the 1996–97 marketing year. This percentage will provide an increased salable quantity of 1,213,692 and a new allotment percentage from 54 percent to 61 percent for Native spearmint oil for the 1996–97 marketing year.

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 Department has reviewed the Committee's revised marketing policy statement for the 1996–97 marketing year. The Committee's marketing policy statement has been reviewed under the provisions

as set forth in 7 CFR §985.50 and with other USDA guidelines.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, 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 8 spearmint oil handlers subject to regulation under the marketing order and approximately 250 producers of spearmint oil in the regulated production area. Of the 250 producers, approximately 135 producers hold Class 1 (Scotch) oil allotment base, and approximately 115 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.

This interim final rule increases the quantity of Native spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1996–97 marketing year. This rule was recommended by the Committee, the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, at its November 14, 1996, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 1996–97 marketing year be increased by 7 percent from 54 percent to 61 percent. The 1996–97 marketing year salable quantity of 1,074,902 pounds will therefore be increased to 1,213,692 pounds. 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.

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 for weed, insect, and disease control. A normal spearmint 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 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 production, most spearmint producing farms would fall into the category of large businesses.

Based on the Small Business Administration's definition of small entities, the Committee estimates that none of the eight handlers regulated by the order would be considered small entities as all are national and multinational corporations involved in the buying and selling of essential oils and the products of such essential oils. The Committee also estimates that 20 of

the 135 Scotch spearmint oil producers and 10 of the 115 Native spearmint oil producers would be classified as small entities. This is based on production information gathered from assessments. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

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 to increase 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 class 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 November 14, 1996, 84,476 pounds of Native spearmint oil was available for market. Demand for Native spearmint oil from December 1 to May 31 over the past five years has ranged from a high of 245,661 pounds in 1991–92 to a low of 92,658 pounds in 1992–93. The five year average is 157,531 pounds. Therefore, based on past history the industry would be unlikely to meet market demand without this change.

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 1996–97 marketing year, the Committee's recommendation and other available information, it is found that to revise section 985.215 (61 FR 11291) 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.

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 began on June 1, 1996; (2) The quantity of Native spearmint planted for the 1997–98 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 30-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 985.215 is amended by revising paragraph (b) to read as follows:

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

§985.215 Salable quantities and allotment percentages 1996–97 marketing year.

(b) Class 3 (Native) oil—a salable quantity of 1,213,692 pounds and an allotment percentage of 61 percent.

Dated: January 3, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–450 Filed 1–8–97; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Parts 997, 998, and 999

[Docket Nos. FV96–997–1 FR; FV96–998–4 FR and FV96–999–3 FR]

Peanuts Marketed in the United States; Changes in Handling and Disposition Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule relaxes, for 1996 and subsequent crop peanuts, several provisions regulating the handling and disposition of domestically and foreign-produced peanuts marketed in the United States. The rule eliminates several requirements covering the disposition of inedible peanuts. At the same time, it provides safeguard measures including amendments to the aflatoxin provisions to prevent inedible peanuts from entering human consumption outlets. The rule increases opportunities for reconditioning failing peanut lots and reduces inspection and handling costs to handlers and importers. The changes were recommended by the Peanut Administrative Committee (Committee), the administrative agency which oversees the quality assurance program under Peanut Marketing Agreement No. 146 (7 CFR Part 998, Agreement). By law, the same or similar regulations issued under the Agreement also must be issued under Part 997 regulating non-signatory peanut handlers, and Part 999.600 regulating peanut importers. This rule includes changes recommended by the Department to

help ensure effective safeguard measures. The changes should enable the industry to be more competitive in the changing international peanut market.

EFFECTIVE DATES: 1. Sections 997.20, 997.30, 997.40, 997.50, 997.51, 997.52, 997.53, 997.54, 998.100, and 998.200 are effective January 13, 1997. Section 999.600 is effective January 14, 1997.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, D.C. 20090–6456; telephone: (202) 720–2170, or fax: (202) 720–5698. 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 2525–S, Washington, D.C., 20090–6456; telephone: (202) 720–2491, fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Peanut Marketing Agreement No. 146 (7 CFR Part 998); the non-signatory handler peanut regulation (7 CFR Part 997); and the peanut import regulation published in the June 19, 1996, issue of the Federal Register (61 FR 31306, 7 CFR Part 999.600). These programs regulate the quality of domestically produced peanuts handled by Agreement signers and non-signers as well as imported peanuts. The first two Parts are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” Part 999 is effective under section 108B(f)(2) of the Agricultural Act of 1949, as amended (7 U.S.C. 1445c–3).

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Domestic peanut production in 1995 was 1.76 million tons, with a farm value of slightly over \$1 billion.

The objective of the two domestic programs and the import regulation is to ensure that only high quality and wholesome peanuts enter human consumption markets in the United

States. About 70 percent of domestic handlers, handling approximately 95 percent of the crop, have signed the Agreement. The remaining 30 percent are non-signatory handlers handling the remaining 5 percent of domestic production. The 1995 duty-free import quota was equal to approximately 2 percent of 1995 domestic production.

Under the three regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to inedible uses. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin content. Costs to administer the Agreement and to reimburse the Department for oversight of the non-signatory program are paid by an assessment levied on handlers in the respective programs.

The Committee, which is composed of producers and handlers of peanuts, meets at least annually to review the Agreement’s rules and regulations, which are effective on a continuous basis from one year to the next. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department assesses Committee recommendations, as well as information from other sources, prior to making any recommended changes to the regulations under the Agreement.

Public Law 101–220 amended section 608b of the Act in 1989 to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subject to the same quality and inspection requirements to the same extent and manner as are required under the Agreement. The non-signatory handler regulations have been amended several times thereafter and are published in 7 CFR part 997.

Similarly, recent amendments to the Agricultural Act of 1949 require that all foreign produced peanuts in the domestic market fully comply with all quality standards under the Agreement. Section 999.600—Specialty Crops; Import Regulations was added to 7 CFR part 999 on June 19, 1996 (61 FR 31306), to establish minimum quality, identification, certification and safeguard requirements for foreign-produced farmers stock, shelled and cleaned-in-shell peanuts presented for importation into the United States.

Thus, the changes to the Agreement’s regulations, as established in this final rule, also are established for the peanut non-signer and import regulations.

According to the Committee, the domestic peanut industry is undergoing a period of great change. The Committee bases its view, in part, on findings in a