

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 the 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 35 handlers of South Texas onions who are subject to regulation under the marketing order and 89 producers in the regulated area. Small agricultural service firms, which includes handlers, 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 having annual receipts of less than \$500,000. The majority of handlers and producers of South Texas onions may be classified as small entities.

At a public meeting on November 8, 1994, the South Texas Onion Committee (committee) unanimously recommended, under the authority of § 959.52(c) of the order, changing the termination date of the regulatory period for all varieties of regulated onions from June 15 to June 4. Currently, order regulations are in effect from March 1 through June 15 each year. The early and mid-season crop is produced in the Lower Rio Grande Valley (District 1), which generally accounts for about 80 percent of the total. The remaining crop, generally 20 percent, is produced in the Laredo-Winter Garden area of South Texas (District 2). These are the last regulated shipments to leave the production area each season.

In April 1994, based on a committee recommendation, the regulatory period was extended from May 20 to June 15

[59 FR 17265; April 12, 1994]. At that time, the committee believed that the application of quality control requirements over a longer time was necessary to enhance the South Texas onion industry's market research and promotion efforts, and protect its quality image. The committee also believed that District 2 handlers should pay assessments on more of their shipments for the research and promotion programs that benefit the entire industry.

After one season's experience, District 2 growers and handlers requested the committee to reconsider the regulatory extension. Although assessment funds are still needed and maintaining the quality of the shipments remains of great importance, experience appears to indicate that the strong competition from other growing areas outweighs these problems.

Shipments made from District 2 compete with onions produced in West Texas and other areas of the United States not regulated under Federal marketing orders. Onion prices are usually quite low during this period and these unregulated areas have a competitive advantage over District 2 because inspection costs for quality control purposes and administrative assessments are not incurred by shippers from these areas. Ending regulations on June 4, rather than June 15, apparently would relieve restrictions on District 2 shippers and help them become more competitive with shippers from these production areas without diminishing program objectives.

Section 8e provides that whenever certain specified commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity, subject to concurrence by the United States Trade Representative. The Act further provides that when two or more marketing orders covering the same commodity are concurrently in effect, imports will be subject to the requirements established for the commodity grown in the area with which the imported commodity is in most direct competition. Because this rule would change the regulatory period under the South Texas onion marketing order, corresponding changes would be needed in the onion import regulations. Such changes are to be addressed in a separate onion import rule.

Based on available information, the Administrator of the AMS has determined that this action would not

have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is proposed to be amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 959.322, the introductory text is revised to read as follows:

§ 959.322 Handling regulation.

During the period beginning March 1 and ending June 4, no handler shall handle any onions unless they comply with paragraphs (a) through (d), or (e), or (f) of this section. In addition, no handler may package or load onions on Sunday during the period March 1 through May 20.

* * * * *

Dated: February 12, 1996.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 96-3610 Filed 2-16-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 985

[Docket No. A0-79-2; FV95-985-4]

Spearmint Oil Produced in the Far West; Emergency Final Decision and Referendum Order on Proposed Amendment of Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This emergency final decision would amend the Federal marketing order for spearmint oil produced in the Far West (Order). The amendment was proposed by the Department of Agriculture (Department). The proposed amendment would remove from the regulated production area, the portions of California and Montana currently regulated under the Order.

DATES: A referendum shall be conducted from March 2 through March 15, 1996, for the purpose of determining whether the proposed amendment is favored by producers who were engaged in the production of spearmint oil in the production area during the representative period. The

representative period for the purpose of the referendum herein ordered is June 1, 1994, to May 31, 1995.

FOR FURTHER INFORMATION CONTACT: (1) Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, AMS, room 2526-S, P.O. Box 96456, Washington, DC 20090-6456; telephone, (202) 720-5127, or FAX: (202) 720-5698.

(2) Robert Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon, 97204; telephone: (503) 326-2725, or FAX: (503) 326-7440.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued October 4, 1995, and published in the Federal Register on October 11, 1995 (60 FR 52869); Correction to Notice of Hearing issued November 8, 1995, and published in the Federal Register on November 13, 1995 (60 FR 57144); and Notice of Order Filed on Proposed Rulemaking concerning the filing of post-hearing briefs issued November 30, 1995, and published in the Federal Register on December 5, 1995 (60 FR 62229).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

A public hearing was held on November 14, 1995, to consider a proposed amendment of Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West, hereinafter referred to collectively as the "Order". The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900).

The Notice of Hearing contained one proposal by the Department, which redefined the production area under the Order to exclude those portions of the area with no historic record of commercial production of spearmint oil.

After the conclusion of the hearing, the deadline for filing post-hearing briefs was set at December 22, 1995. Briefs and comments which were filed, are ruled upon elsewhere in this decision.

The material issues of record are as follows: (1) Should areas with no

historic record of commercial production of spearmint oil continue to be regulated under the Order? (2) Does the "production area" as defined in the Order constitute the smallest practicable area which should be regulated consistent with carrying out the policy of the Act? (3) Do existing circumstances warrant expediting the amendment process by omitting the recommended decision?

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural service firms, which include handlers regulated under the Order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than \$5,000,000. Small agricultural producers are defined as those with annual receipts of less than \$500,000.

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 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 the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendment to the Order would have on small businesses.

During the 1994-95 marketing year from June 1, 1994, through May 31, 1995, approximately 8 handlers were regulated under the Order. In addition, there are about 260 growers of spearmint in the regulated area. The Act requires the application of uniform rules on regulated handlers. A minority of handlers and producers covered under the Order are small businesses. The Order itself is tailored to the size and nature of these small businesses. Marketing orders, and amendments thereto, are unique in that they are normally brought about through group action of entities on their own behalf. Thus, both the RFA and the Act are compatible with respect to small entities.

The proposed amendment to the Order would delete portions of the production area currently covered by the Order which have no historic record of commercial production of spearmint oil. This change would provide that the

Order cover the smallest regional production area practicable, consistent with program objectives. The proposed amendment should not have a significant economic impact on handlers or producers.

The amendment proposed herein has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. If adopted, the proposed amendment would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendment.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of 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 requesting 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 the date of the entry of the ruling.

Findings and Conclusions

The following findings and conclusions are based on evidence presented at the hearing and the record thereof:

(1) Should areas with no historic record of commercial production of spearmint oil continue to be regulated under the Order?

The Order regulates Far West spearmint oil through the establishment of annual allotment percentages and salable quantities. The objective of such regulation is to balance supplies with market demand, thereby reducing price fluctuations and improving returns to producers. The Order, and regulations issued thereunder, apply only to spearmint oil produced in the defined "production area". The Order currently defines the production area as all the area within the States of Washington, Idaho, Oregon; that portion of California and Nevada north of the 37th parallel; and that portion of Montana and Utah west of the 111th meridian. This definition was established when the Order came into effect on April 14, 1980 (45 F.R. 25039), and was based on the

record of a hearing held in October 1979.

At the time the Order became effective, the production area as defined was found to be the smallest regional production area practicable to effectuate the declared policy of the Act. This included all the areas in the Far West and northwestern United States having the potential of commercially producing quality spearmint oil.

Witnesses who testified at this amendment hearing included Department employees, a representative of the Spearmint Oil Administrative Committee (committee), a grower from Nevada, an official with the Montana Department of Agriculture, and representatives of the Montana Mint Growers' Association. All witnesses supported the proposal to no longer regulate portions of California and Montana under the Order.

The record supports excluding these two areas from coverage primarily because there has been no historic record of commercial production of spearmint oil in those areas. Record evidence shows that in 1994, there were 1,500 acres of spearmint harvested in Idaho, 10,500 acres in Washington, 1,700 acres in Oregon, and 160 acres in Utah and Nevada combined. No harvested acreage was recorded for those parts of California and Montana included under the Order. Likewise, evidence shows that spearmint oil was produced in all States regulated under the Order with the exception of California and Montana. There has been no recorded commercial production of spearmint oil in California or Montana since the inception of the Order. Testimony at the hearing also indicated that there is no evidence of current commercial production in those states.

2. Does the "production area" as defined in the Order constitute the smallest practicable area which should be regulated consistent with carrying out the policy of the Act?

The evidence of record is that the Order has been successful in establishing orderly marketing conditions for Far West spearmint oil. Specifically, the establishment of the Order has reduced price volatility and ensured market stability. In the 13 years preceding the Order's promulgation, prices for spearmint oil fluctuated between \$4.16 and \$11.62 per pound. From 1982 to 1992, while the Order was in effect, prices ranged between \$11.29 and \$14.03 per pound.

Inclusion in the production area requires a demonstration that the areas covered have similar crop and marketing conditions. When the Order was promulgated, the finding for

including California and Montana in the production area was based on evidence that production and marketing conditions in those areas would be similar to those of other spearmint-producing States. This has proven to be incorrect. The record indicates that land in California and Montana suitable for the production of spearmint oil is limited, and weather conditions are a deterrent to consistent spearmint production. Amending the Order by removing California and Montana, would result in the Order covering the smallest regional production area practicable to effectuate the declared policy of the Act.

For the above reasons, it is concluded that the production area should be redefined to exclude California and Montana. Accordingly, the production area as defined in this amendment is found to be the smallest practicable area which should be regulated consistent with carrying out the policy of the Act.

Modification of Proposed Amendment

As a modification to the proposal, testimony was submitted for the record in support of the proposed amendment that further proposed the production area not be reduced again by amendment for at least 5 years. The intent of the modification was to provide sufficient time to gather and analyze data on the impact of removing California and Montana from Order coverage. As submitted for the record, the 5-year period would provide stability for the industry before any other amendments to reduce the production area are considered.

However, a prohibition on amending the Order's definition of production area for 5 years would unduly limit the Secretary's discretion and authority to administer the Order consistent with the terms of the Act. Therefore, this modification is denied.

One grower from Nevada testified that the hearing should be reopened to consider excluding Nevada from the production area. According to his testimony, there are only 37 acres of commercial spearmint production in the State of Nevada. As such, the witness concluded that Nevada is not a significant producer of spearmint oil and should be excluded from Order coverage.

One post-hearing brief and one comment were submitted in support of removing Nevada from regulation under the Order. There was no other information provided by those in the spearmint industry to support this action.

Record evidence shows that Nevada, unlike California and Montana,

currently has commercial production of spearmint oil, and there has been production of spearmint oil in that State every year since the inception of the Order. Record evidence indicates that producing acreage in Nevada has been as high as 230 acres.

The evidence supports excluding from Order coverage only those areas with no history of commercial production of spearmint oil. There was no other evidence presented at the hearing as to whether there is a "significant" level of production that should justify an area's inclusion under the Order, nor any evidence as to what that threshold level should be. Also, no evidence was presented to show that the marketing of spearmint oil grown in Nevada does not impact or compete with the marketing of spearmint oil grown in other areas covered by the Order.

For these reasons, the proposal to exclude Nevada from the production area is denied.

This decision calls for a referendum to be conducted among producers of spearmint oil to determine if they support the proposed amendment to remove California and Montana from the Order's production area. If a sufficient number of producers support the amendment, the Order will continue in its amended form. To become effective, the amendment must be approved by a two-thirds majority, either by number of voters favoring it or by volume of production represented in the referendum. If the amendment is not approved by producers, the Secretary would consider terminating the Order.

As previously discussed, the Act requires that the Order must cover the smallest regional production area practicable. Based on the record evidence it is found that the production area as proposed to be amended constitutes the smallest practicable area.

3. Do existing circumstances warrant expediting the amendment process by omitting a recommended decision in this proceeding?

Witnesses who testified at the hearing strongly supported expedited handling of this formal rulemaking proceeding. The record indicates that there has been uncertainty within the spearmint oil industry for some time with respect to the possible redefinition of the Order's production area. Record evidence shows that such uncertainty has the potential of hampering the ability of individual producers and handlers to make sound economic decisions concerning their operations. The proposed amendment could affect planting, contracting, lending and other important economic decisions of those in the industry. There

was no evidence provided in opposition to expediting this proceeding.

Only through omission of a recommended decision in this proceeding is it possible to have the outcome of the amendment and the future of the Order determined prior to the next marketing year, which begins June 1, 1996. As stated on the record, this is very important to producers and handlers of spearmint oil who need to plan their marketing and production strategies for next year.

It is therefore found that good cause exists for omission of a recommended decision in accordance with § 900.12(d) of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900).

Rulings on Briefs Filed by Interested Persons

Four briefs and comments were filed in this proceeding. None opposed the proposed amendment.

One brief and one comment were filed after the filing deadline. However, they did not introduce issues which were different from those covered at the hearing or in the other briefs and comments.

The comments and briefs were carefully considered, along with evidence in the record, in making the findings and reaching the conclusions contained herein. To the extent that any suggested findings or conclusions contained in any of the briefs or arguments are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of facts found and stated in connection with this decision.

Marketing Order

Annexed hereto and made a part hereof is a document entitled, "Order Amending the Order Regulating the Handling of Spearmint Oil Produced in the Far West." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. *It is hereby ordered*, That this entire decision, be published in the Federal Register.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of spearmint oil produced in the Far West is approved or favored by producers, as defined under the terms of

the order, who during the representative period were engaged in the production of spearmint oil in the Far West.

The representative period for the conduct of such referendum is hereby determined to be June 1, 1994, through May 31, 1995.

The agents of the Secretary to conduct such referendum are hereby designated to be Gary D. Olson and Robert J. Curry, Marketing Order Administration Branch, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue Room 369 Portland, Oregon 97204, telephone (503) 326-2724; or FAX (503) 326-7440.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. chapter 35], the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0065 for spearmint oil. It has been estimated that it will take an average of 10 minutes for each of the approximately 260 producers of Far West Spearmint to cast a ballot. Participation is voluntary. Ballots postmarked after February 24, 1996, will not be included in the vote tabulation.

List of Subjects in 7 CFR Part 985

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

Dated: February 13, 1996.
Michael V. Dunn,
Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Order Regulating the Handling of Spearmint Oil Produced in the Far West¹

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held on the proposed amendment to the Marketing Agreement and Order No. 985 (7 CFR Part

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

985), regulating the handling of spearmint oil produced in the Far West.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as hereby proposed to be amended, regulates the handling of spearmint oil produced in the Far West in the same manner as, and is applicable only to persons in the respective classes of oil specified in the marketing order upon which hearings have been held;

(3) The order, as hereby proposed to be amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as hereby proposed to be amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of spearmint oil grown in the production area; and

(5) All handling of spearmint oil produced in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of spearmint oil produced in the Far West shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be 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 985.5 is revised as follows:

§ 985.5 Production area.

Production area means all the area within the States of Washington, Idaho, Oregon, and that portion of Nevada north of the 37th parallel and that portion of Utah west of the 111th meridian. The area shall be divided into the following districts:

- (a) District 1. State of Washington.
- (b) District 2. The State of Idaho and that portion of the States of Nevada and Utah included in the production area.
- (c) District 3. The State of Oregon.

[FR Doc. 96-3653 Filed 2-16-96; 8:45 am]

BILLING CODE 3410-02-P