

begin, and this action should apply to the entire season's shipments; and (5) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

#### PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 922 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

#### § 922.306 [Suspended]

■ 2. In part 922, § 922.306 is suspended in its entirety through March 31, 2007.

Dated: March 30, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 06–3240 Filed 4–4–06; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 930

[Docket No. FV06–930–1 IFR]

#### Tart Cherries Grown in the States of Michigan, et al.; Change in Certain Provisions/Procedures Under the Handling Regulations for Tart Cherries

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule removes volume limitations on new product development, new market development and market expansion activities to facilitate such activities; allows handlers to receive diversion credit for the voluntary destruction of finished, marketable products that have deteriorated in condition to provide handlers more flexibility; adds a procedure to keep Cherry Industry Administrative Board (Board) representation in line with current district production levels; and revises grower application and mapping procedures under the grower diversion program to make the process less burdensome. These changes are

intended to improve the operation of the marketing order and to increase the demand for tart cherries and tart cherry products. The changes were unanimously recommended by the Board, the body that locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

**DATES:** This rule becomes effective April 6, 2006.

Comments received by June 5, 2006 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, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail:

[moabdocket.clerk@usda.gov](mailto:moabdocket.clerk@usda.gov). Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

#### FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan,

New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the “order.” The 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. 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 USDA 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 exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 930.162 will be changed to remove volume limitations on new product development, new market development, and market expansion activities utilized by handlers to earn diversion credits to meet restricted percentage regulation withholding requirements. Handler diversion is authorized under § 930.59 of the order and, when volume regulation is in effect, handlers may fulfill restricted percentage requirements by diverting cherries or cherry products rather than placing tart cherries in an inventory reserve. Volume regulation is intended to help the tart cherry industry stabilize supplies and prices in years of excess production. Volume regulation percentages are in effect for the 2005–2006 crop year (71 FR 1915, 1/12/2006).

Section 930.62 provides that the Board, with the approval of the Secretary, may exempt from the provisions of §§ 930.41 (Assessments), 930.44 (Quality control), 930.51 (Issuance of volume regulations), 930.53 (Modification, suspension, or termination of regulations), and 930.55 through 930.57 (Reserve regulations) cherries which are diverted in

accordance with § 930.59. Cherries that are diverted in accordance with § 930.59 must be used for new product development and new market development, used for experimental purposes, or used for any other purpose designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized.

Section 930.162 specifies procedures for obtaining approval for exempt uses which include new product development, new market development, and market expansion. Currently, these provisions specify volume limitations for these exempt uses. The limitations are specified in § 930.162(b)(1) which states that once total industry utilization for a new product exceeds 2 percent of the five year average production of tart cherries, the product shall no longer be considered under development and not be eligible for a new product development exemption. The maximum duration of any new product credit activity is three years from the first date of shipment.

Section 930.162(b)(2) regarding new market development and market expansion specifies the annual industry-wide maximum diversion credit volume at 10 million pounds RPE (Raw Product Equivalent) of cherry products for all expansion activities which is allocated pro rata among participating handlers.

When these limitations were added the Board believed that these markets should be developed slowly. However, it now believes that these limitations are a disincentive to new product, market development, and market expansion activities involving large quantities. If a handler's new product activity involves moving 8 million pounds of exempt tart cherries, and 2 percent of the 5-year average production is 5 million pounds, the handler would only receive 5 million pounds of diversion credit, not 8 million pounds. The Board now believes that this unnecessarily restricts these handler activities and that handlers should receive diversion credit for the full diversion amount to stimulate handler interest and facilitate new product development activities.

With respect to new market development and market expansion activities, if the same handler had a pro rata allocation representing 20 percent of the industry-wide 10 million pound limitation for all handlers participating in these activities, this handler only would receive diversion credit for 1.6 million pounds, not 8 million pounds. The Board believes that this provision should be removed to facilitate handler

interest in new market development and market expansion.

To facilitate these activities, the Board recommended that the volume limitations be removed from paragraphs (b)(1) and (b)(2) to foster further handler interest in new product, new market development, and market expansion activities. This is expected to result in an increase in demand for tart cherries and tart cherry products. The time limitation for new product development will remain in effect.

As previously stated in this document, handler diversion is authorized under § 930.59. Section 930.159 of the rules and regulations under the order allows handlers to divert cherries by destruction of the cherries at the handler's facility. At-plant diversion of cherries takes place prior to placing cherries into the processing line to ensure that the cherries diverted were not simply an undesirable or unmarketable product of processing. Handlers also can receive diversion credit for finished, marketable tart cherry products that were accidentally destroyed. Finished, marketable cherry products might be accidentally destroyed in a fire, explosion, or because of a freezer malfunction.

Handlers sometimes voluntarily destroy finished, marketable cherry products if the cherry products sustain a loss of condition that renders them unacceptable for use in normal market channels (free tonnage outlets). To permit handlers to recover some of their costs incurred in acquiring, processing, and storing such cherries, the Board unanimously recommended that the at-plant diversion procedures be broadened so handlers can receive diversion credit for the voluntary destruction of such cherries. The handler would not have to purchase additional cherries to meet his/her restricted percentage obligation, but could simply use the diversion credit received for the voluntarily destroyed product.

To receive diversion credit under this added option, the Board recommended that the cherry products meet similar criteria as accidentally destroyed marketable product. That is, such cherry products must: (1) Be owned by the handler at the time of the voluntary destruction; (2) be a marketable product at the time of processing; (3) be included in the handler's end of year handler plan; and (4) have been assigned a Raw Product Equivalent (RPE) by the handler to determine the volume of cherries. In addition, the condition and the voluntary destruction as well as the disposition of the finished

tart cherry product must be verified by a USDA inspector or a Board agent or employee.

Handlers wishing to obtain diversion certificates for finished tart cherry products that are voluntarily destroyed must apply for such diversion certificates and sign an agreement that disposition of the destroyed product will take place under the supervision of USDA's Processed Products Branch inspectors or Board inspectors. This will allow the Board to verify that the finished product was marketable, but sustained a loss of condition, and that it was disposed of properly.

Once diversion is satisfactorily accomplished, handlers will receive diversion certificates from the Board stating the weight of cherries diverted. Such diversion certificates can be used to satisfy a handler's restricted percentage obligations.

In years with volume regulation, restricted obligations also can be met with diversion credits earned through in-orchard diversion. This action changes the procedures for grower mapping under the grower diversion program. Currently, under § 930.158 growers must file maps every year if they intend to participate in the voluntary grower diversion program. Growers applying for diversion must sign a grower diversion application which states that the grower agrees to comply with the regulations established for a tart cherry diversion program. Each map shall contain the grower's name and number assigned by the Board, the grower's address, block name or number when appropriate, location of the orchard or orchards and other information which may be necessary to accomplish the desired diversion. The Board has recommended that the original map and application have an ongoing, continuing effect. Annual resubmissions of either the map or application would no longer be required. Growers will only submit an application and map if they are participating in the grower diversion program for the first time. Growers would need only to submit a new orchard map if he/she added a new block of trees or changed the orchard layout differently from the map previously submitted to the Board. If a grower decides not to participate in the program for a year he/she needs to inform the Board that he/she is not participating. This action will slightly decrease reporting burdens on growers participating in the grower diversion program.

Growers who do not file new maps/applications with the Board would continue to be eligible for in-orchard

tank diversion activities. Growers may use in-orchard tank diversion when marketable cherries in part of the orchard have sustained damage or are of lower quality. Such cherries can be picked and placed in harvesting tanks until a compliance officer can come to the orchard to probe the tanks for volume measurement and observe the destruction of the cherries on the grower's premises. Each tank holds about one thousand pounds and each grower can have no fewer than 10 tanks for diversion. This keeps the cost of inspections to a minimum and decreases the compliance officer's time from traveling from location to location to observe a small amount of in-orchard tank diversion.

This action also revises provisions to § 930.120 for reallocating Board representation. Currently, § 930.20 allocates producer and handler representation on the Board based upon average production of each district in the production area. When the production level in a district reaches various specified thresholds, the number of representatives from that district either increases or decreases. For instance, districts with production up to and including 10 million pounds shall have one member; districts with production greater than 10 million and up to and including 40 million pounds shall have 2 members; and districts with production greater than 40 million pounds and up to and including 80 million pounds shall have 3 members; and districts with production greater than 80 million pounds shall have 4 members.

The Board recommended that in the event that a district's three-year average production decreases to a level requiring a reduction in membership on the Board, representation of the district shall be determined by: (1) Agreement of the elected members and alternate members of the specific district; or (2) if an agreement cannot be reached, the members and alternates having the shortest amount of time remaining in their current term of office would be removed from the Board. However, the Board's recommendation requires modification.

Because the Secretary of Agriculture (Secretary) has sole authority to remove and select persons who can serve on the Board, it would not be appropriate to give direct responsibility to current Board members of a specific district to determine who is removed from the Board when production levels decrease. Accordingly, when a district is faced with losing Board representation, the regulations will require the members of the specific district to make a

recommendation to the Board as to who should be removed from the Board, and the Board to then submit its recommendation to the Secretary for approval.

In the event a district's three-year average production increases such that it warrants additional seats on the Board, the seats shall be allocated following the criteria in § 930.20(b)(5), and nominated and selected following the procedures specified in §§ 930.23 and 930.24.

In addition, § 930.158(a) will be revised to delete obsolete dates that are currently in that section.

#### **The Regulatory Flexibility Act and Effects on Small Businesses**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (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 approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$6,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. A majority of the producers and handlers of tart cherries under the order are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 2000/2001 through 2004/2005, approximately 93.4 percent of the U.S. tart cherry crop, or 216.8 million pounds, was processed annually. Of the 216.8 million pounds of tart cherries processed, 59 percent was frozen, 28 percent was canned, and 13 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the

United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 36,950 acres in 2004/2005. This represents a 26 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 73 percent of the total and produces about 70 percent of the U.S. tart cherry crop each year.

This rule removes volume limitations on market expansion activities used by handlers in earning diversion credits to meet their restricted volume obligations; allows handlers to earn diversion credits when they voluntarily destroy finished marketable products that have been damaged or deteriorated in condition in some manner to provide the handlers more flexibility; revises grower application/mapping procedures under the grower division program to make the procedures less burdensome; and adds a procedure regarding the reallocation of Board representation to reflect current district production levels. These changes to the marketing order are authorized under §§ 930.62, 930.59, 930.58, and 930.20, respectively.

It is expected that the benefits resulting from this rulemaking will impact both small and large handlers positively by helping them increase market demand and by improving the operation of the marketing order. It also will benefit producers by making the in-orchard diversion application/mapping procedures less burdensome and improve the operation of the program.

Regarding alternatives, the Board discussed leaving the provisions unchanged, but determined that the changes were a more viable course of action. The program improvements expected to result because of these changes will positively impact producers and handlers under the marketing order, regardless of size.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

USDA has determined that this action will have a small impact on the reporting and recordkeeping requirements imposed under the tart cherry marketing order. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104-13), the information collection and recordkeeping requirements under the

tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581-0177. This rule, which changes procedures for growers submitting applications and maps, will result in a slight decrease in reporting and recordkeeping requirements on growers who participate in the voluntary diversion program. In addition, a slight increase in reporting and recordkeeping requirements for handlers who voluntarily destroy tart cherry products would be within the current information collection burden approved by OMB.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

This rule invites comments on administrative changes to the tart cherry marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board 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 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** (5 U.S.C. 553) because: (1) Removing the volume limitations on market expansion activities relieves restrictions on handlers and is intended to increase market demand for tart cherries; (2) adding authority for the voluntary destruction of finished tart cherry products that have deteriorated in condition provides an additional opportunity for handlers to receive

diversion credit in fulfilling their restricted obligations during the 2005–2006 crop year, and relieves restrictions on handlers; (3) adding language to remove members and alternates from the Board provides a procedure for keeping Board membership in line with current industry production levels; (4) revising the application and mapping procedures will decrease reporting burden on growers and improve the operation of the grower diversion program; (5) these actions were recommended in public meetings and growers and handlers are aware of these actions; and (6) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

#### **PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN**

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 930.120 is revised to read as follows:

#### **§ 930.120 Board membership.**

When the production level from a district falls below the thresholds stated in § 930.20(b)(5), members of the specific district will make a recommendation to the Board as to who should be removed from the Board and the Board shall submit a recommendation to the Secretary for approval. If the recommendation is not made by the Board within a reasonable time, the Secretary may select the member and alternate to be removed.

\* \* \* \* \*

■ 3. In § 930.158, paragraph (b) introductory text is revised to read as follows:

#### **§ 930.158 Grower diversion and grower diversion certificates.**

\* \* \* \* \*

(b) *Application and mapping for diversion.* Any grower desiring to divert cherries using methods other than in-orchard tank shall submit a map of the orchard or orchards to be diverted, along with a completed Grower Diversion Application, to the Board by April 15 of

each crop year. The application includes a statement which must be signed by the grower which states that the grower agrees to comply with the regulations established for a tart cherry diversion program. Each map shall contain the grower's name and number assigned by the Board, the grower's address, block name or number when appropriate, location of orchard or orchards and other information which may be necessary to accomplish the desired diversion. On or before July 1, the grower should inform the Board of such grower's intention to divert in-orchard and what type of diversion will be used. The four types of diversion are random row diversion, whole block diversion, partial block diversion and in-orchard tank diversion. A grower who informs the Board about the type of diversion he or she wishes to use by July 1 can elect to use any diversion method or combination of diversion methods. Only in-orchard tank diversion methods may be used if the Board is not so informed by July 1. Trees that are four years or younger do not qualify for diversion. Annual resubmissions of either the map or application will no longer be required. Growers will only submit a new application and map if they are participating in the grower diversion program for the first time. Growers will need only to submit a new orchard map if he/she adds a new block of trees to the orchard or changes the orchard layout differently from the map previously submitted to the Board. If a grower decides not to participate in the program for a year they need to inform the Board that they are not participating.

\* \* \* \* \*

■ 4. In § 930.159, paragraphs (a) and (d) are revised to read as follows:

#### **§ 930.159 Handler diversion.**

(a) *Methods of diversion.* Handlers may divert cherries by redeeming grower diversion certificates, by destroying cherries at handlers' facilities (at-plant), by diverting cherry products accidentally or voluntarily destroyed, by donating cherries or cherry products to charitable organizations or by using cherries or cherry products for exempt purposes under § 930.162, including export to countries other than Canada, and Mexico. Once diversion has taken place, handlers will receive diversion certificates stating the weight of cherries diverted. Diversion credit may be used to fulfill any restricted percentage requirement in full or in part. Any information of a confidential and/or proprietary nature included in this

application would be held in confidence pursuant to § 930.73 of the order.

\* \* \* \* \*

(d) *Diversion of finished products.* Handlers may be granted diversion credit for finished tart cherry products that are accidentally destroyed or voluntarily destroyed by the handler. To receive diversion credit under this option the cherry products must be owned by the handler at the time of accidental or voluntary destruction, be a marketable product at the time of processing, be included in the handler's end of the year handler plan, and have been assigned a Raw Product Equivalent (RPE) by the handler to determine the volume of cherries. In addition, the accidental or voluntary destruction and disposition of the product must be verified by either a USDA inspector or Board agent or employee who witnesses the disposition of the accidentally or voluntarily destroyed product. Products will be considered as accidentally destroyed if they sustain damage which renders them unacceptable in normal market channels. Products which are voluntarily destroyed must have deteriorated in condition to such an extent that they are not acceptable for use in normal market channels.

\* \* \* \* \*

■ 5. In § 930.162, paragraphs (b)(1) and (b)(2) are revised to read as follows:

**§ 930.162 Exemptions.**

\* \* \* \* \*

(b) \* \* \*

(1) *New product development.* This term includes the development of new tart cherry products or of foods or other products in which tart cherries or tart cherry products are incorporated which are not presently being produced on a commercial basis. New product development can also include the production or processing of a tart cherry product using a technique not presently being utilized commercially in the tart cherry industry; an end product of the processing of raw tart cherries done by the industry at pack time either for resale or for re-manufacturing which has not been manufactured previously by the industry; or a processed, value-added item that includes tart cherry products as an ingredient which has never been marketed to consumers either by a handler within the industry or by a food manufacturer. In addition, the maximum duration of any credit activity is three years from the first date of shipment.

(2) *New market development and market expansion.* This includes the development of markets for tart cherry products which are not commercially

established markets and which are not competitive with commercial outlets presently utilized by the tart cherry industry (including the development of new export markets): *Provided*, That these markets are a geographic area into which tart cherries or products derived from them have not been previously sold. The term "market expansion", includes activities that incrementally expand the sale of either tart cherries or the products in which tart cherries are an ingredient, such as, but not limited to: Expansions of the geographic areas into which tart cherries or tart cherry products are marketed; product line extensions; significant improvements to or revisions of existing products; packaging innovations; segmentation of markets along geographic, demographic, or other definable characteristics; and product repositionings.

\* \* \* \* \*

Dated: March 30, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 06-3238 Filed 4-4-06; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket No. FV06-985-1 FR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2006-2007 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2006-2007 marketing year, which begins on June 1, 2006. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 878,205 pounds and 45 percent, respectively, and for Class 3 (Native) spearmint oil of 1,007,886 pounds and 46 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and

prices to help maintain stability in the spearmint oil market.

**DATES:** *Effective Date:* This final rule becomes effective June 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724; Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491; Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under 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 establishes the quantity of spearmint oil produced in the Far West, by class, which may be purchased from or handled for producers by handlers during the 2006-2007 marketing year, which begins on June 1, 2006. 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 USDA a petition stating that the order, any provision of the order, or any