## **DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service** 

7 CFR Part 985

[FV94-985-4FIR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantities and Allotment Percentages for "Class 1" (Scotch) and "Class 3" (Native) Spearmint Oil for the 1994–95 Marketing Year

**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 two interim final rules increasing the quantities of "Class 1 (Scotch) and "Class 3" (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1994-95 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.

EFFECTIVE DATE: March 6, 1995.

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SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 [7 CFR part 985], regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah). This marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 USC 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 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule finalizes increases in the quantities of "Class 1" and "Class 3" spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1994–95 marketing year, which ends on May 31, 1995. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 8 spearmint oil handlers subject to regulation under the marketing order and approximately 260 producers of spearmint oil in the regulated production area. Of the 260 producers, approximately 160 producers hold "Class 1" (Scotch) spearmint oil allotment base, and approximately 145 producers hold "Class 3" (Native) spearmint oil allotment base. Small

agricultural service firms 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 whose annual receipts are less than \$500,000. A minority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order normally accounts for 75 percent of the annual U.S. production of spearmint oil.

annual U.S. production of spearmint oil. 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 allotment base for the applicable class of spearmint oil.

This final rule finalizes two interim final rules that increased the quantities of the Scotch and Native classes of spearmint oil that handlers may purchase from, or handle for, producers during the 1994–95 marketing year, which ends on May 31, 1995.

The initial salable quantities and allotment percentages for the Scotch and Native classes of spearmint oil for the 1994-95 marketing year were recommended by the Committee at its October 6, 1993, meeting. The Committee recommended salable quantities of 723,326 pounds and 897,388 pounds, and allotment percentages of 41 percent and 46 percent, respectively, for the Scotch and Native classes of spearmint oil. A proposed rule to implement the Committee's October 6, 1993, recommendation was published in the December 21, 1993, issue of the Federal Register [58 FR 67378]. Comments on the proposed rule were solicited from interested persons until January 20, 1994. No comments were received. Accordingly, based upon analysis of available information, a final rule