Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.45–3, paragraph (a) is amended by adding areas in the entries for Ohio and West Virginia, in alphabetical order, to read as follows:

§ 301.45–3 Generally infested areas.

(a) * * *

Ohio

* * * * *

Belmont County. The entire county.

* * * * *

Coshocton County. The entire county.

* * * * *

Harrison County. The entire county.
Holmes County. The entire county.

* * * * *

Monroe County. The entire county.

* * * * *

Tuscarawas County. The entire county.

* * * * *

West Virginia

* * * * *

Doddridge County. The entire county.

* * * * *

Harrison County. The entire county.

* * * * *

Lewis County. The entire county.

* * * * *

Tyler County. The entire county.
Upshur County. The entire county.

* * * * *

Done in Washington, DC, this 1st day of July 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–17863 Filed 7–8–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV–96–985–4 FR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1997–98 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final 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 1997–98 marketing year. 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 this rule for the purpose of avoiding extreme fluctuations in supplies and prices, thus helping to maintain stability in the spearmint oil market.

DATES: This final rule becomes effective July 10, 1997 and applies to all spearmint oil handled from the beginning of the 1997–98 marketing year.

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; telephone: (503) 326–2043; Fax: (503) 326–7440; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–2491; 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 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–5698.

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 (Department) 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 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 establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1997–98 marketing year, which begins on June 1, 1997. This final 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.

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 1997–98 marketing year at its October 2, 1996, meeting, and reconfirmed its recommendation following review of additional information at its meeting held on November 14, 1996. The Committee recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil with one member opposing the motion because he favored the establishment of a higher salable quantity and allotment percentage. In a unanimous vote, the Committee recommended the establishment of a salable quantity and allotment percentage for Native spearmint oil.

This final rule establishes a salable quantity of 996,522 pounds and an allotment percentage of 55 percent for Scotch spearmint oil, and a salable quantity of 1,125,351 pounds and an allotment percentage of 56 percent for Native spearmint oil. This rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1997–98 marketing year, which begins on June 1, 1997. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

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 accounts for approximately 75 percent of the annual U.S. production of both classes of spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 80 percent was produced in the regulated production area in the Far West. International production characteristics have changed in recent years, however, with foreign Scotch spearmint oil production contributing significantly to world production. Although still a leader in production, the Far West's market share has decreased to approximately 65 percent of the world total. Thus, in recent marketing years, the Committee has taken a different approach in its method of addressing the historical fluctuations in supply and price. In conjunction with the goal of maintaining price and market stability, the Committee seeks a moderate growth rate in terms of total North American market share. The Committee's recommendation is intended to find a stable price level while keeping Far West Scotch spearmint oil in a competitive and viable position in the international market. To that end, the Committee is targeting a specific percentage of the North American market share for use in its salable quantity and allotment percentage calculations. For 1997–98, the Committee is targeting 73 percent of the North American market, compared to the nearly 65 percent targeted for the 1996–97 season. Preliminary figures indicate that the Far West Scotch spearmint oil market share in North America will reach approximately 60 percent in 1996–97, up from 55 percent in 1995–96.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years. With approximately 90 percent of U.S. production of Native spearmint oil located in the Far West, the method of calculating the Native spearmint oil salable quantity and allotment percentage primarily utilizes information on price and available supply as they are affected by the estimated trade demand for Far West Native spearmint oil.

The salable quantity and allotment percentage for each class of spearmint oil for the 1997–98 marketing year is based upon the Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1997—309,927 pounds. This figure is derived by subtracting the estimated 1996–97 marketing year trade demand of 900,000 pounds from the revised 1996–97 marketing year total available supply of 1,209,927 pounds.

(B) Estimated North American production (U.S. and Canada) for the 1997–98 marketing year—1,511,461 pounds. This figure is an estimate based on information provided to the Committee by producers and buyers.

(C) Percentage of North American market targeted—73 percent. This figure is an approximate average of the recommended target percentages made at each of the five regional producer meetings held throughout the Far West production area during the month of September, 1996.

(D) Total quantity of Scotch spearmint oil needed to reach targeted percentage—1,103,367 pounds. This figure is the product of the estimated 1997–98 North American production and the targeted percentage.

(E) Minimum amount desired to have on hand throughout the season—200,000 pounds. Producers at all of the five regional meetings had recommended this amount, which continues to reflect the Committee's commitment to regain market share by maintaining a minimum quantity on hand.

(F) Total supply required—1,303,367 pounds. This figure is derived by adding the minimum desired on hand amount to the total quantity required to meet the targeted percentage.

(G) Additional quantity required—993,440 pounds. This figure represents the actual amount of additional or new oil needed to meet the Committee's projections, and is computed by subtracting the estimated carry-in of 309,927 pounds from the total supply required of 1,303,367 pounds.

(H) Total allotment base for the 1997–98 marketing year—1,811,859 pounds.

(I) Computed allotment percentage—54.8 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(J) Recommended allotment percentage—55 percent. This is the Committee's recommendation based on the computed allotment percentage.

(K) The Committee's recommended salable quantity—996,522 pounds. This figure is the product of the recommended allotment percentage and the total 1997–98 allotment base.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1997—71,764 pounds. This figure is derived by subtracting the estimated 1996–97 marketing year trade demand of 1,162,500 pounds from the revised 1996–97 marketing year total available supply of 1,234,264 pounds.

(B) Estimated trade demand (domestic and export) for the 1997–98 marketing year—1,212,500 pounds. This figure represents an average of buyer estimates and the amounts recommended at the regional producer meetings.

(C) Salable quantity required from 1997 production—1,140,736 pounds. This figure is the difference between the estimated 1997–98 marketing year trade demand and the estimated carry-in on June 1, 1997.

(D) Total allotment base for the 1997–98 marketing year—2,009,556 pounds.

(E) Computed allotment percentage—56.8 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—56 percent. This is the

Committee's recommendation based on the computed allotment percentage.

(G) The Committee's recommended salable quantity—1,125,351 pounds. This figure is the product of the recommended allotment percentage and the total 1997–98 marketing year allotment base.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. 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.

The Committee's recommended Scotch spearmint oil salable quantity of 996,522 pounds and allotment percentage of 55 percent are based on anticipated supply, demand, and a targeted percentage of the North American market during the 1997–98 marketing year. The Committee's recommended Native spearmint oil salable quantity of 1,125,351 pounds and allotment percentage of 56 percent are based on anticipated supply and trade demand during the 1997–98 marketing year. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1997–98 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this action are expected to be offset by the benefits derived from a stable market, a greater market share, and possible improved returns. In conjunction with the issuance of this rule, the Committee's marketing policy statement for the 1997–98 marketing year has been reviewed by the Department. The Committee's marketing policy, a requirement whenever the Committee recommends volume regulations, fully meets the intent of section 985.50 of the order. During its discussion of potential 1997–98 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages allow for anticipated market needs. In making its recommendation, the Committee reviewed available information including historical sales and changes and trends in production and demand. This rule also provides spearmint oil producers with information on the amount of oil which should be produced for next season in order to meet anticipated market demand.

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, the AMS has prepared this final 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 order and approximately 250 producers of spearmint oil in the regulated production area. Of the 250 producers, approximately 135 producers hold Class 1 (Scotch) spearmint oil allotment base, and approximately 115 producers hold Class 3 (Native) spearmint oil allotment base. Small agricultural service firms are defined by the Small Business Administration (SBA)(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.

Based on the SBA's definition of small entities, the Committee estimates that none of the eight handlers regulated by the order would be considered small entities. All of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. Further, the Committee estimates that 17 of the 135 Scotch spearmint oil producers and 10 of the 115 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not 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. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil 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 oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. Most spearmint oil producing farms would fall into the SBA category of large businesses in order to remain economically viable due to the added costs associated with the production of spearmint oil.

This final 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 1997–98 marketing year. The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market. This action is authorized by the provisions of §§ 985.50, 985.51 and 985.52 of the order.

Small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the luxury of having other crops 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 incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years.

Alternatives to the proposal included not regulating the handling of spearmint oil during the 1997–98 marketing year, and recommending either higher or lower salable quantities and allotment percentages. The Committee reached its recommendation to establish salable quantities and allotment percentages for both classes of oil after careful consideration of available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of the nearly 1,300,000 pounds of spearmint oil reserves would have on the market. According to the Committee, higher or lower salable quantities and allotment percentages would not achieve the intended balance between market and price stability, and market share maintenance and growth.

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 final rule.

A proposed rule was published in the **Federal Register** (62 FR 942) on January 7, 1997. A 30-day comment period was provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. Copies of the rule were faxed and mailed to the Committee office, which in turn notified Committee members and spearmint oil producers and handlers of the proposed action. In addition, the Committee's meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. A copy of the proposal was also made available on the Internet by the U.S. Government Printing Office.

One comment was received from the U.S. Small Business Administration, Office of Advocacy, regarding the Department's initial regulatory flexibility analysis (IRFA). The SBA noted that a brief overview of the facts supported the Department's decision not to certify the proposal as not having a significant economic impact on a substantial number of small entities. Further, SBA was of the view that AMS should flesh out some of its assumptions and statements.

The assumptions and statements of concern to SBA include references to the fact that records show that the marketing order has contributed extensively to the stabilization of grower prices, which prior to 1980 experienced wide fluctuations from year to year. The commenter questioned whether current information suggested that the spearmint oil market would experience instability under today's market conditions without the order. Also, based upon the statement in the IRFA that the Committee reached its recommendation to establish salable quantities and allotment percentages after careful consideration of all available information, the commenter was of the view that the Committee seemed to be privy to information not contained in the proposed rule. SBA went on to raise questions concerning alternative allotment percentages and quantities of spearmint oil producers must have in order to survive.

As noted earlier in the regulatory flexibility analysis, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Although a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation. Furthermore, were salable quantity and allotment percentage regulations not issued, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as potentially suffer the significant, and likely negative economic impact that a release of the nearly 1,300,000 pounds of spearmint oil reserves would have on the market.

In accordance with § 985.50 of the order, the Committee is required to submit on an annual basis to the Secretary recommendations for volume regulations deemed necessary to meet market requirements and establish orderly market conditions. In determining a marketing policy, the Committee is required to consider certain factors including but not limited to (1) the estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity.

The information available to the Committee includes just such information as is contained in the marketing policy which is developed by the Committee. At the public meetings held prior to the Committee's recommendation for the 1997–98 marketing year salable quantities and allotment percentages, the marketing policy was considered and discussed. Further, discussion of the history of the marketing order and market conditions from 1980 to the present represents some of the background and experience that is brought to bear in arriving at a recommendation for regulation. In making its recommendation, the Committee looked at and considered current and prospective marketing conditions to determine whether the marketing policy considerations indicated a need for limiting the quantity of spearmint oil in a particular class.

Finally, the SBA questioned why the proposed rule did not contain reference to the number of new producers who will be allocated base of sufficient quantity so as to ensure their entry into the industry next season. The procedures for determining how new producers are selected and how additional allotment bases are distributed is provided for in §§ 985.53 and 985.153 of the order and its regulations and is separate from this action. Under these provisions, an additional ½ percent of the current total allotment base for each class of spearmint oil is annually allocated to new producers. For the 1997–98 marketing year, three new Class 1 producers were issued an equal proportion of the Scotch spearmint oil additional allotment base, and four new Class 3 producers were issued an equal proportion of the Native spearmint oil additional allotment base. This increased the total number of producers in the regulated production area by nearly three percent. As provided for in § 985.153, the Committee determined that the levels of issuance for the 1997–98 marketing year, approximately 3,000 pounds per new producer for Scotch spearmint oil and 2,500 pounds per new producer for Native spearmint oil, are at levels sufficient for a minimum economic enterprise to produce each class of spearmint oil.

Accordingly, based on the comment received, no changes are made to the rule as proposed.

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

It is further found 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 handlers need to be able to ship their spearmint oil for the 1997–98 season which began June 1, 1997. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed 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. A new section 985.216 is added to read as follows:

[**Note**: This section will not appear in the Code of Federal Regulations.]

§ 985.216 Salable quantities and allotment percentages—1997–98 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1997, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 996,522 pounds and an allotment percentage of 55 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,125,351 pounds and an allotment percentage of 56 percent.

Dated: July 2, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–17867 Filed 7–8–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1006

[DA–97–03]

Milk in the Upper Florida Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This document suspends indefinitely certain provisions of the Upper Florida Federal milk marketing order. The suspension removes the standard that a cooperative association operating a plant have at least 50 percent of the producer milk of its members received at pool distributing plants to retain its pool plant status. Florida Dairy Farmers Association, a cooperative association representing producers whose milk is pooled on the 3 Florida orders, requested the suspension. The suspension is necessary to prevent the uneconomical and inefficient movements of milk.

EFFECTIVE DATE: September 1, 1997.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address: Nicholas__Memoli@USDA.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued April 21, 1997; published April 24, 1997 (62 FR 19939).

The Department is issuing this final 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 a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a 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 its 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.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds