of 2 cents is 1 cent more than the rate currently in effect. The primary reason for the increase for the upcoming crop year is the inclusion of funding for a generic paid advertising program.

The Board recommended that the major expenditures for the 1997–98 crop year should include $4,084,000 for information and research programs, $3,408,000 for paid generic advertising, $881,534 for salaries, $794,043 for international programs, $568,679 for production research, $95,400 for crop estimates, and $90,000 for travel. Alternative rates of assessment were considered during the budgeting process. Keeping the assessment rate at 1 cent was considered but not recommended because it would not generate the income necessary to administer the program. In order to fund the programs recommended by the Board for the 1997–98 season, it was determined that the assessment rate recommended by the Board, when applied to the preliminary crop estimate, would be necessary to generate sufficient revenue. Costs of various programs, desired and overall spending levels, and desired levels of monetary reserve were considered during the budgeting process.

Handlers' receipts of assessable almonds for the year were originally estimated at 681,600,000 pounds which would provide $10,224,000 in assessment income. The crop estimate was subsequently reduced to 652,800,000 pounds which if realized, would provide assessment revenue of $9,792,000. However, in either scenario, income derived from handler assessments, along with interest income, Market Access Program reimbursement, research conference revenue, miscellaneous income, and funds derived from the Board's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 1997–98 season could range between $1.00 and $1.50 per pound of almonds. Therefore, the estimated assessment revenue for the 1997–98 crop year as a percentage of total grower revenue could range between 1 and 1.5 percent.

While this rule will impose some additional costs on handlers, the costs would be minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers.

However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the May 9, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large California almond handlers. 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.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was issued by the Department on July 3, 1997, and published in the **Federal Register** on July 7, 1997 (62 FR 36233). Copies of the proposed rule were also mailed or sent via facsimile to all almond handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register.

A 15-day comment period was provided to allow interested persons to respond to the proposal. Fifteen days was deemed appropriate because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1997–98 crop year began on August 1, 1997, and the marketing order requires that the rate of assessment for the crop year apply to all assessable California almonds handled during the crop year; and (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other budget actions issued in past years. No comments to the proposed rule were received.

After consideration of all relevant material 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.

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 are already receiving 1997–98 crop almonds from growers, the crop year began August 1, and the assessment rate applies to all almonds received during the 1997–98 and subsequent seasons. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, A 15-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 981.343 [Amended]

2. Section 981.343 is amended by removing ''July 1, 1996,'' and adding in its place ''August 1, 1997,'', by removing ''$0.01 cent'' and adding in its place ''2 cents,'' and by adding as the last sentence ''Of the 2 cent assessment rate, 1 cent per assessable pound is available for handler credit-back.''

Dated: August 8, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–21525 Filed 8–13–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV97–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of Administrative Rules and Regulations Governing Issuance of Additional Allotment Base to New and Existing Producers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule reduces the number of regions established for issuing additional allotment bases to new producers from four to three, revises the procedure used for issuing additional allotment bases when no requests are received from a region for a class of spearmint oil, and eliminates obsolete language pertaining to the

issuance of additional allotment bases to existing producers during the 1992–93 and 1993–94 marketing years. 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 to ensure that a maximum number of new producers receive additional allotment base each year at a level determined by the Committee to be a minimum economic enterprise.

EFFECTIVE DATE: This final rule becomes effective August 15, 1997.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry or Gary D. Olson, 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–S, 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, D.C. 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have 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 Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The spearmint oil order is a volume control program that authorizes the regulation of spearmint oil produced in the Far West through annual allotment percentages and salable quantities for Class 1 (Scotch) and Class 3 (Native) spearmint oils. The salable quantity limits the quantity of each class of spearmint oil that may be marketed from each season's crop. Each producer is allotted a share of the salable quantity by applying the allotment percentage to that producer's allotment base for the applicable class of spearmint oil. Handlers may not purchase spearmint oil in excess of a producer's annual allotment, or from producers who have not been issued an allotment base under the order.

Section 985.53(d)(3) of the order provides for rules to be established by the Committee, with the approval of the Secretary, for distribution of additional allotment bases. Pursuant to the authority in that section, the Committee unanimously recommended revising section 985.153 of the order's rules and regulations at its meeting on March 18, 1997. Section 985.153 provides regulations for the issuance of additional allotment bases to new and existing producers. This final rule modifies portions of section 985.153 to reflect current conditions within the Far West spearmint oil industry relative to the annual issuance of additional allotment bases to both new and existing producers. This rule reduces the number of regions established for issuing additional allotment bases to new producers from four to three, revises the procedure used for issuing additional allotment bases when no requests are received from a region for a class of spearmint oil, and eliminates obsolete language pertaining to the issuance of additional allotment bases to existing producers during the 1992–93 and 1993–94 marketing years.

Section 985.53(d)(1) provides that, beginning with the 1982–83 marketing year, the Committee annually makes additional allotment bases available in an amount not greater than 1 percent of the total allotment base for each class of spearmint oil. The order specifies that, each year, 50 percent of the additional allotment bases be made available for new producers and 50 percent be made available for existing producers. A new producer is any person who has never been issued allotment base for a class of oil, and an existing producer is any person who has been issued allotment base for a class of oil. Provision is made in the order for new producers to apply to the Committee for the additional allotment base, which in turn is issued to applicants in each oil class by lottery. The additional allotment bases being made available to existing producers are distributed equally among all existing producers who apply.

The order was amended on June 26, 1996 (61 FR 32924), by redefining the production area to exclude those portions of the area with no historic record of commercial production of spearmint oil. The amendment thus removed the regulated portions of California and Montana, leaving the defined production area to mean the States of Washington, Oregon, and Idaho, and portions of the States of Nevada and Utah.

Based on the order prior to the amendment, section 985.153(c) established the regions for issuing additional allotment base as follows:

(A) Region 1—Those portions of Montana and Utah included in the production area.

(B) Region 2—The State of Oregon and those portions of Nevada and California included in the production area.

(C) Region 3—The State of Idaho.

(D) Region 4—The State of Washington.

During past additional allotment base lotteries, the name of one new producer per class of oil in each of the above four regions was drawn by Committee staff. The lottery usually resulted in four new Scotch spearmint oil producers receiving approximately 2,300 pounds of allotment base each, and four new Native spearmint oil producers receiving approximately 2,500 pounds of allotment base each.

This rule replaces the above four regions with the following three regions:

(A) Region 1—The State of Oregon and those portions of Utah and Nevada included in the production area.

(B) Region 2—The State of Idaho.

(C) Region 3—The State of Washington.

The Committee made this recommendation primarily because of

the removal of Montana and California from the production area, as well as its analysis of statistics relating to current spearmint oil production and the number of requests received each year for additional allotment base from the various states included in the production area. For example, Committee records show that the average number of applications by state for additional allotment base from 1986 to 1996 for Class 1 and Class 3 spearmint oil, respectively, is 63.2 and 73.2 percent for Washington, 26.7 and 21.5 percent for Idaho, 9.6 and 11.2 percent for Oregon, 1.4 and 2.6 percent for Utah, and 0.2 and 0.2 percent for Nevada. Records also show that the number of producers, as well as the allotment bases held by those producers, is greatest in Washington followed in decreasing order by Idaho, Oregon, Utah, and Nevada. This rule increases the potential of having a significant number of applicants from each region each year, thus bringing about equity in issuing the additional allotment base. It also increases the amount of allotment base that is issued to each new producer.

In reaching its recommendation to establish three regions the Committee also considered the importance of issuing as many blocks of additional allotment base as are possible at a level considered economically viable to each recipient. The Committee also resolved that each region should receive an equal number of these blocks. To establish a reasonable minimum economic enterprise required to produce each class of spearmint oil, the Committee relied on available statistical information and on the spearmint oil production experience of each member. Using this information and experience, the Committee concluded that producers require approximately 14 acres for Scotch spearmint oil production and approximately 13 acres for Native spearmint oil production to be economically viable. Using a 5-year average yield and a nominal allotment percentage of 55 as a basis, the Committee calculated that each new block of additional allotment base should be approximately 3,000 pounds for Scotch spearmint oil, and approximately 3,400 pounds for Native spearmint oil.

The Committee used the following formula to establish a range of possible allotments for additional base: (Number of Acres x Average Yield per Acre = Production) ÷ Allotment Percentage = Allotment Base Required for Viability. For example, applying this formula to a theoretical 14-acre Scotch spearmint oil operation with a 5-year average yield of 126 pounds per acre and a nominal 55 percent allotment, each new producer would receive an allotment base of 3,207 pounds. To obtain the total additional allotment base available for new Scotch spearmint oil producers during the 1997–98 marketing year, the total allotment base of 1,811,556 was multiplied by 0.5 percent (50 percent of the additional allotment base). The result, 9,058 pounds, when divided equally among the three new regions, would provide three new Class 1 producers with 3,019 pounds of allotment base each.

Similarly, an example with a theoretical 13-acre Native spearmint oil operation, using a 5-year average yield of 151 pounds per acre and a nominal allotment percentage of 55, results in an allotment base of 3,569 pounds for each new producer. The total additional allotment base available for new Native spearmint oil producers during the 1997–98 marketing year, 10,048 pounds, was obtained by multiplying the total allotment base of 2,009,556 pounds by 0.5 percent. Thus, equal distribution among the three new regions would result in three new Class 3 producers each receiving 3,349 pounds of allotment base.

From such calculations the Committee determined that there should be three regions, that a reasonable minimum economic unit would currently be approximately 3,000 pounds for Scotch spearmint oil and approximately 3,400 pounds for Native spearmint oil, and that currently there should be one new producer per class per region drawn during the annual allotment base lottery. Based on the current total industry allotment bases, the Committee concluded that any more than one recipient per class of oil in a region would result in an inadequate level of allotment base being issued to each new producer.

The amount of allotment base to be issued to new Scotch spearmint oil producers is slightly higher than the approximate amount the Committee believes necessary for an economically viable production unit. The amount to be issued to new Native spearmint oil producers is only slightly lower than the Committee's guideline of 3,400 pounds. In both cases, the amount to be allocated to new producers is higher than under the previous four district system.

The Committee also recommended changing the procedure used to distribute unused additional allotment base for each class of oil in the event requests for such are not received from eligible new producers in one or more of the three proposed regions. Previously, if the Committee did not receive requests for additional allotment base for a class of oil from one or more regions, the unused allotment base was divided equally among the eligible new producers within the other regions receiving allotment base for that class of oil. That procedure occasionally resulted in a reduction in the number of additional allotment base recipients. To insure that a maximum number of new producers receive allotment base for each class of oil each year, the Committee recommended that, in the event no requests for additional allotment base for a class of oil are received from a region, the unused allotment base be issued to an eligible new producer whose name is drawn by lot from all remaining eligible new producers from all regions for that class of oil.

Finally, the Committee recommended that obsolete language in section 985.153(c)(2) pertaining to existing producers, but specific to the 1992–93 and 1993–94 marketing years, be removed. This language is specific to action taken on June 26, 1992 (57 FR 28569), to issue additional allotment base to existing producers with less than 3,000 pounds of allotment base to bring them up to a level not to exceed 3,000 pounds.

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 spearmint oil allotment base, and approximately 115 producers hold Class 3 spearmint oil allotment base. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose incomes from farming operations are not exclusively dependent on the production of spearmint oil. In the production of the spearmint plant, crop rotation is an essential cultural practice for weed, insect, and disease control. An average spearmint oil producing operation has acreage sufficient enough to ensure that the total acreage available for the production of the crop is approximately one-third spearmint and two-thirds rotational crops. Consequently, most spearmint oil producers have considerably more acreage available than is planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most such farms would fall into the category of large businesses.

Small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small producers 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. Records show that the order has contributed extensively to the stabilization of producer prices.

Based on the Small Business Administration's definition of small entities, the Committee estimates that none of the eight handlers regulated by the order would be considered small entities. All 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. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

Section 985.53 of the order provides that each year the Committee make available additional allotment bases for each class of oil in the amount of no more than 1 percent of the total allotment base for that class of oil. This affords an orderly method for new spearmint oil producers to enter into business and existing producers the ability to expand their operations as the spearmint oil market and individual conditions warrant. One-half of the 1 percent increase is issued annually by lot to eligible new producers for each class of oil. To be eligible, a producer must never have been issued allotment base for the class of spearmint oil such producer is making application for, and have the ability to produce such spearmint oil. The ability to produce spearmint oil is generally demonstrated when a producer has experience at farming, and owns or rents the equipment and land necessary to successfully produce spearmint oil.

This final rule reduces the number of regions established for the purpose of issuing annual additional allotment bases to new producers from four to three. It also changes the procedure used to issue additional allotment bases should no requests be received from eligible new producers in one or more of these three regions. This final rule also deletes obsolete provisions in section 985.153(c)(2) that pertain to the issuance of additional allotment base to existing producers during the 1992–93 and 1993–94 marketing years. The Committee recommended this rule for the purpose of ensuring equity in the distribution of additional allotment base following the order amendment that removed the regulated portions of California and Montana from the production area. Further, this rule will help to ensure that a maximum number of eligible new producers receive additional allotment base each year at a level determined by the Committee to be the minimum economic enterprise needed to produce each class of spearmint oil.

To establish a reasonable minimum economic enterprise required for the production of each class of spearmint oil, the Committee relied on available statistical information and on the spearmint oil production experience of each member. Using this information and experience, the Committee concluded that producers require approximately 14 acres for Scotch spearmint oil production and approximately 13 acres for Native spearmint oil production to be economically viable. Using a 5-year average yield and a nominal allotment percentage of 55 as a basis, the Committee calculated that each new block of additional allotment base should be approximately 3,000 pounds for Scotch spearmint oil, and approximately 3,400 pounds for Native spearmint oil.

The Committee used the following formula to establish a range of possible allotments for additional base: (Number of Acres × Average Yield per Acre=Production) ÷ Allotment Percentage = Allotment Base Required for Viability. For example, applying this formula to a theoretical 14-acre Scotch spearmint oil operation with a 5-year average yield of 126 pounds per acre and a nominal allotment percentage of 55, each new producer would receive an allotment base of 3,207 pounds. To obtain the total additional allotment base available for new Scotch spearmint oil producers during the 1997–98 marketing year, the Committee multiplied the total industry allotment base of 1,811,556 by 0.5 percent (50 percent of the additional allotment base). The result, 9,058 pounds, when divided equally among the three new regions, allots 3,019 pounds each for three new Class 1 producers.

Similarly, an example with a theoretical 13-acre Native spearmint oil operation, using a 5-year average yield of 151 pounds per acre and a nominal allotment of 55 percent, would result in an allotment base of 3,569 pounds for each new producer. To determine the actual total additional allotment base available for new Native spearmint oil producers during the 1997–98 marketing year, the Committee multiplied the total industry allotment base of 2,009,556 pounds by 0.5 percent. The result, 10,048 pounds, when equally distributed among the three new regions, ensures that three new Class 3 producers would receive 3,349 pounds of allotment base each.

From such calculations the Committee determined that there should be three regions, that a reasonable minimum economic unit would currently be approximately 3,000 pounds for Scotch spearmint oil and approximately 3,400 pounds for Native spearmint oil, and that currently there should be one new producer per class per region drawn during the annual allotment base lottery. Based on the current total industry allotment bases, the Committee concluded that any more than one recipient per class of oil in a region would result in an inadequate level of allotment base being issued to each new producer.

The amount of allotment base to be issued to new Scotch spearmint oil producers is slightly higher than the approximate amount the Committee

believes necessary for an economically viable production unit. The amount to be issued to new Native spearmint oil producers is only slightly lower than the Committee's guideline of 3,400 pounds. In both cases, the amount to be allocated to new producers will be higher than under the previous four district system.

During its deliberations, the Committee considered alternatives to this proposal. The first option discussed would have left section 985.153(c) unchanged. This was rejected because of the need to develop a more equitable method of issuing additional base in light of the order amendment that removed California and Montana from the production area. The Committee also discussed the possibility of eliminating the use of different regions in its additional allotment base issuance procedures. In such a scenario, available additional allotment base would be distributed equally to those new producers drawing the allotment regardless of their spearmint acreage location. However, this option was also rejected because the Committee determined that such a procedure has the statistical potential of adding more new producers to those states with a greater number of current producers than to the states with few producers.

The Committee made its recommendation after careful consideration of available information, including the aforementioned alternative recommendations, the order amendment that removed Montana and California from the production area, the minimum economic enterprise required for spearmint oil production, historical statistics relating to the locations of the producers applying for the annual additional allotment base, and other factors such as number of producers by state and the amount of allotment base held by such producers. Based on its review, the Committee believes that the action recommended is the best option available to ensure that the objectives sought will be achieved.

The information collection requirements contained in the section of the order's rules and regulations amended by this rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581–0065. This action does not impose any additional reporting or record keeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule was published in the **Federal Register** (62 FR 36236) on July 7, 1997. A 15-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 meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate in the discussion on these issues. A copy of the proposal was also made available on the Internet by the U.S. Government Printing Office. No comments were received.

Accordingly 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 declared 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 the Committee plans an August 15, 1997, distribution of additional allotment base to new and existing producers for the marketing year beginning on June 1, 1998. The Committee devised the August distribution date so that producers may make cultural and marketing plans in advance of the 1998–99 marketing year. Furthermore, this rule was recommended at a public meeting and all affected parties are aware of it. Also, a comment period of 15 days 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. In § 985.153, paragraph (c) is revised to read as follows:

§ 985.153 Issuance of additional allotment base to new and existing producers.

* * * * *

(c) *Issuance*—(1) New producers. (i) *Regions:* For the purpose of issuing additional allotment base to new producers, the production area is divided into the following regions:

(A) *Region 1.* The State of Oregon and those portions of Utah and Nevada included in the production area.

(B) *Region 2.* The State of Idaho.

(C) *Region 3.* The State of Washington.

(ii) Each year, the Committee shall determine the size of the minimum economic enterprise required to produce each class of oil. The Committee shall thereafter calculate the number of new producers who will receive allotment base under this section for each class of oil. An equal number of grants of the additional allotment base for each class of oil that is available to new producers each marketing year shall be issued to producers within each region. The Committee shall include that information in its announcements to new producers in each region informing them when to submit requests for allotment base. The Committee shall determine whether the new producers requesting additional base have ability to produce spearmint oil. The names of all eligible new producers in each region shall be placed in a lot for drawing. A separate drawing shall be held for each region. If, in any marketing year, there are no requests in a class of oil from eligible new producers in a region, such unused allotment base shall be issued to an eligible new producer whose name is selected by drawing from a lot containing the names of all remaining eligible new producers from all regions for that class of oil. The Committee shall immediately notify each new producer whose name was drawn and issue that producer an allotment base in the appropriate amount.

(2) *Existing producers.* (i) The Committee shall review all requests from existing producers for additional allotment base.

(ii) Each existing producer of a class of spearmint oil who requests additional allotment base and who has the ability to produce additional quantities of that class of spearmint oil, shall be eligible to receive a share of the additional allotment base for that class of oil. Additional allotment base to be issued by the Committee for a class of oil shall be distributed equally among the

eligible producers for that class of oil. The Committee shall immediately notify each producer who is to receive additional allotment base by issuing that producer an allotment base in the appropriate amount.

* * * * *

Dated: August 8, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–21524 Filed 8–13–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1748–96; AG Order No. 2104–97]

RIN 1115–AE27

Executive Office for Immigration Review; Periods of Lawful Temporary Resident Status and Lawful Permanent Resident Status to Establish Seven Years of Lawful Domicile

AGENCY: Immigration and Naturalization Service (INS), Executive Office for Immigration Review (EOIR), Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without change an interim rule published in the **Federal Register** by the Immigration and Naturalization Service and the Executive Office for Immigration Review on November 25, 1996, which amended Department of Justice regulations that limit discretion to grant an application for relief under section 212(c) of the Immigration and Nationality Act (the Act) by expanding the class of aliens eligible for section 212(c) relief. Although Congress recently limited the availability of section 212(c) relief, certain classes of aliens remain eligible. This rule allows a 212(c) eligible alien who has adjusted to lawful permanent resident status, pursuant to sections 245A or 210 of the Act, to use the combined period of his or her status as a lawful temporary resident and lawful permanent resident to establish seven (7) years of lawful domicile in the United States for purposes of eligibility for section 212(c) relief. This rule will provide uniformity between the regulation and case law.

DATES: This final rule is effective August 14, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470; David M. Dixon, Chief Appellate Counsel, Immigration and Naturalization Service, Suite 309, 5113 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 756–6257.

SUPPLEMENTARY INFORMATION: Two recent enactments affect the availability of relief under section 212(c). The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) restricts the classes of alien criminals eligible for section 212(c) relief. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 repeals and replaces section 212(c), but only for proceedings commenced on or after April 1, 1997. This rule only affects the cases not covered by these new restrictions, i.e., those commenced before April 1, 1997, and not barred by AEDPA.

Under recent 212(c) case law, an alien who has acquired lawful permanent resident status under section 245A of the Act may accrue the seven (7) years of lawful domicile required for purposes of section 212(c) relief from the date of his or her application for temporary resident status. See *Robles* v. *INS*, 58 F.3d 1355 (9th Cir. 1995); *Avelar-Cruz* v. *INS*, 58 F.3d 338 (7th Cir. 1995); *Castellon-Contreras* v. *INS*, 45 F.3d 149 (7th Cir. 1995). The current regulation allows an alien to apply for section 212(c) relief only if he or she has established at least seven consecutive years of lawful permanent resident status immediately prior to filing the application. See 8 CFR 212.3(f)(2). The Board of Immigration Appeals (BIA) has determined that, in cases arising in the Ninth Circuit, an alien may use the period of temporary resident status to establish the requisite seven years. See *In re Carlos Cazares-Alvarez*, Interim Decision 3262 (BIA 1996). However, in cases arising in circuits without such a temporary resident status rule, the BIA has determined that the current regulation requires seven years of lawful permanent resident status. See *In re Hector Ponce de Leon-Ruiz*, Interim Decision 3261 (BIA 1996). The BIA has referred these cases to the Attorney General pursuant to 8 CFR 3.1(h)(1)(ii) to resolve the issue. The issue raised in *White* v. *INS*, 75 F.3d 213 (5th Cir. 1996) (whether 8 CFR 212.3(f)(2) is consistent with 8 U.S.C. 1182(c) and therefore is entitled to deference), has been addressed and rendered moot by section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009 (September 30, 1996) (repealing section 212(c) and substituting other relief), effective April 1, 1997, codified at section 240A of the Immigration and Nationality Act as amended. The *White* court computed the years of lawful unrelinquished domicile (including the years of lawful temporary resident status) rather than lawful permanent residence in determining eligibility for relief.

The Service published an interim rule with request for comments in the **Federal Register** on November 25, 1996, at 61 FR 59824. The interim rule permitted an alien to demonstrate lawful domicile for section 212(c) relief purposes by combining his or her status as a lawful temporary resident and as a lawful permanent resident under sections 245A or 210 of the Act. Since no comments were received, the Service and EOIR are adopting the interim rule as final without changes.

Effective Date

Since there are no changes between the interim rule and this final rule, the Service believes that ''good cause'' exists to implement this rule effective upon date of publication in the **Federal Register.**

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b) has reviewed this regulation and, by approving it, certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. The affected parties are individuals not small entities, and the impact of the regulation is not an economic one.

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local, and tribunal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and