

# Proposed Rules

Federal Register

Vol. 67, No. 47

Monday, March 11, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket No. FV-02-985-1 PR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2002-2003 Marketing Year

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2002-2003 marketing year, which begins on June 1, 2002. This rule invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 849,471 and 45 percent, respectively, and for Class 3 (Native) spearmint oil of 800,761 and 38 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 this rule for the purpose of avoiding extreme fluctuations in supplies and prices, to help maintain stability in the spearmint oil market.

**DATES:** Comments must be received by March 26, 2002.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed 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: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and

will be made 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:**

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; 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 proposal 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 proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish 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 2002-2003 marketing year, which begins on June 1, 2002. This proposed rule would 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 exempted therefrom. A 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 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.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 2002-2003 marketing year at its October 3, 2001, meeting. For Scotch spearmint oil, in a vote of six in favor, one opposed, and one abstention, the Committee recommended the establishment of a salable quantity and allotment percentage of 849,471 pounds and 45 percent, respectively. For Native spearmint oil, in a vote of seven in favor and one opposed, the Committee recommended the establishment of a salable quantity and allotment percentage of 800,761 pounds and 38 percent, respectively.

This proposed rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2002-2003 marketing year, which begins on June 1, 2002. 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 marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order currently accounts for approximately 55 percent of the annual U.S. production of Scotch spearmint oil

and over 90 percent of the annual U.S. production of Native 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 72 percent was produced in the regulated production area in the Far West. The Far West continued to produce an average of about 69 percent of the world's Scotch spearmint oil supply during the period from 1980 to 1990. International production characteristics have changed since 1990, however, with foreign Scotch spearmint oil production contributing significantly to world production. The Far West's market share as a percent of total world sales has averaged about 44 percent since 1990.

During the period between 1996 and 2000, the Committee employed a marketing strategy for Scotch spearmint oil that was intended to foster market stability and expand market share. This marketing strategy was an attempt to remain competitive on an international level by regaining a substantial amount of the Far West's historical share of the global market for this class of oil. In implementing this strategy, the Committee had been recommending the establishment of a salable quantity and allotment percentage for Scotch spearmint oil in excess of the estimated trade demand for each marketing year. In the development of its annual marketing policy statements during this period, the Committee's strategy considered general market conditions for each class of spearmint oil, including the Far West's world market share as it relates to the overall market stability of spearmint oil.

During its deliberations at the October 11, 2000, meeting, however, the Committee concluded that this marketing strategy for Scotch spearmint oil had not been entirely effective. Although sales had increased, the Far West's market share as a percentage of total world sales had not increased on average, and the market price for Scotch spearmint oil had continued to decline throughout this period. During the 1998–1999 and 1999–2000 marketing years, the price paid to producers for Scotch spearmint oil dropped to a low of \$7.00 per pound. Although the current price for Scotch oil has increased to between \$7.50 and \$8.00 per pound, the Committee continues to believe that such returns are generally below the cost of production for most producers, which, according to the Washington State University Cooperative Extension Service (WSU), is currently between \$13.87 and \$14.62 per pound.

For the 2001–2002 marketing year—the current marketing year—the Committee determined at its October 11, 2000, meeting, that it would attempt to stabilize prices at a reasonable level while still considering global market share. The Committee's transitional recommendation for Scotch spearmint oil for the 2001–2002 marketing year was, therefore, based on a desire to remain competitive on an international level while maintaining the supply of oil at a level that could enhance prices and help producers remain solvent. The 2001–2002 salable quantity is somewhat higher than the estimated trade demand. This shifted the Committee's Scotch spearmint oil market strategy from one considering primarily the Far West's share of the world market to an approach primarily considering current price, supply, and demand. This action made an adequate supply of Scotch spearmint oil available as evidenced by the substantial amount of oil carried into the marketing year.

Although still concerned with global spearmint oil market share, the Committee calculated the 2002–2003 Scotch spearmint oil salable quantity and allotment percentage by primarily utilizing information on price and available supply as they are affected by the estimated trade demand. The recommendation for 2002–2003 implements the Committee's stated intent of keeping adequate supplies available at all times, while trying to bring prices to growers to a level that will help them stay in business and still allow the industry to compete with less expensive oil produced outside the regulated area. The industry continues to be interested in expanding market share. The Committee's calculations are detailed below.

Despite the recent downward trend in the price of both classes of spearmint oil, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. According to the National Agricultural Statistics Service, for example, the average price paid for both classes of spearmint oil ranged from about \$4.00 per pound to about \$12.50 per pound during the period between 1968 and 1980. Excluding the most recent three marketing years, prices since the order's inception have generally stabilized at about \$11.00 per pound for Native spearmint oil and at about \$13.00 per pound for Scotch spearmint oil. Over the last few years, the price has dropped to between \$8.00 and \$11.00 per pound and \$9.00 and \$10.00 per pound, respectively, for Scotch and Native

spearmint oils despite the Committee's efforts to balance available supplies with demand. Based on comments made at the Committee's meeting, factors that are currently contributing to depressed prices include the general uncertainty being experienced through the U.S. economy and the continuing overall weak farm situation, as well as an abundant global supply of spearmint oil.

Conditions similar to those affecting the Scotch spearmint oil market contributed to the Committee's current recommendation for a salable quantity of 800,761 pounds and an allotment percentage of 38 percent for Native spearmint oil for the 2002–2003 marketing year. The supply and demand characteristics of the current Native spearmint oil market are keeping the price flat at about \$9.00 per pound—a level the Committee considers too low for the majority of producers to maintain viability. The WSU study indicates that the cost of producing Native spearmint oil currently ranges from \$10.26 to \$10.92 per pound. Thus, with over 90 percent of the world production currently located in the Far West, the Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand. The Committee's stated intent is to make adequate supplies available to meet market needs and improve producer prices.

The Committee based its recommendation for the proposed salable quantity and allotment percentage for each class of spearmint oil for the 2002–2003 marketing year on the information discussed above, as well as the data outlined below.

#### **(1) Class 1 (Scotch) Spearmint Oil**

(A) Estimated carry-in on June 1, 2002—260,181 pounds. This figure is the difference between the estimated 2001–2002 marketing year trade demand of 860,000 pounds and the revised 2001–2002 marketing year total available supply of 1,120,181 pounds. The 2001–2002 marketing year total available supply was revised due to differences in the carry-in estimated on October 11, 2000, and the actual carry-in on June 1, 2001, as well as producer deficiencies on June 1, 2001. A producer is deficient when the producer is unable to produce oil equal to his or her salable quantity and is unable to fill this deficiency from reserve pool oil or excess oil from another producer. When prices are below the producer's costs of

production, they reduce acres and produce less oil.

(B) Estimated trade demand for the 2002–2003 marketing year—875,000 pounds. This figure represents the Committee's estimate based on the average of the estimates provided by producers at five Scotch spearmint oil production area meetings held in September 2001, as well as estimates provided by handlers and others at the meeting. Handler trade demand estimates for the 2002–2003 marketing year ranged from 675,000 to 900,000 pounds. The last five year average sales were 936,000 pounds.

(C) Salable quantity required from the 2002–2003 marketing year production—614,819 pounds. This figure is the difference between the estimated 2002–2003 marketing year trade demand (875,000 pounds) and the estimated carry-in on June 1, 2002 (260,181 pounds).

(D) Total estimated allotment base for the 2002–2003 marketing year—1,887,713 pounds. This figure represents a one-percent increase over the revised 2001–2002 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost based on the provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—32.6 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—45 percent. This recommendation is based on the Committee's determination that a decrease from the current season's allotment percentage of 48 percent to the computed 32.6 percent would be too drastic a reduction in a single year. The recommended level of 45 percent is also only slightly below the 5-year average sales, and if sales in 2002–2003 are average or better, the carry-out would be reduced.

(G) The Committee's recommended salable quantity—849,471 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2002–2003 marketing year—1,109,652 pounds. This figure is the sum of the 2002–2003 recommended salable quantity (849,471 pounds) and the estimated carry-in on June 1, 2002 (260,181 pounds).

## (2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 2002—198,583 pounds. This figure is the difference between the estimated

2001–2002 marketing year trade demand of 929,000 pounds and the revised 2001–2002 marketing year total available supply of 1,127,583 pounds.

(B) Estimated trade demand for the 2002–2003 marketing year—960,000 pounds. This figure is based on input from producers at the four Native spearmint oil production area meetings held in September 2001, from handlers, and from Committee members and other meeting participants at the October 3, 2001, meeting. The average estimated trade demand at the four production area meetings was 975,000 pounds.

(C) Salable quantity required from the 2002–2003 marketing year production—761,417 pounds. This figure is the difference between the estimated 2002–2003 marketing year trade demand (960,000 pounds) and the estimated carry-in on June 1, 2002 (198,583 pounds).

(D) Total estimated allotment base for the 2002–2003 marketing year—2,107,267 pounds. This figure represents a one percent increase over the revised 2001–2002 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost based on the provisions of § 985.53(e). The revision normally involves a minimal amount of spearmint oil.

(E) Computed allotment percentage—36.1 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—38 percent. This is the Committee's recommendation based on the computed allotment percentage, the average of the computed allotment percentage figures from the four production area meetings (38.1 percent), and input from producers and handlers at the October 3, 2001, meeting.

(G) The Committee's recommended salable quantity—800,761 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2002–2003 marketing year—999,344 pounds. This figure is the sum of the 2002–2003 recommended salable quantity (800,761 pounds) and the estimated carry-in on June 1, 2002 (198,583 pounds).

The salable quantity is the total quantity of each class of spearmint 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 and Native spearmint oil salable quantities and allotment percentages of 849,471 pounds and 45 percent and 800,761 and 38 percent, respectively, are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices and the anticipated supply and trade demand during the 2002–2003 marketing year. The proposed 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 2002–2003 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 proposed regulation, if adopted, would be similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this proposed rule, the Committee's marketing policy statement for the 2002–2003 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of § 985.50 of the order. During its discussion of potential 2002–2003 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 USDA'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 would allow for anticipated market needs. In determining anticipated market needs, consideration by the

Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil which should be produced for next season in order to meet anticipated market demand.

#### Initial Regulatory Flexibility Analysis

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 7 spearmint oil handlers subject to regulation under the order, and approximately 118 producers of Class 1 (Scotch) spearmint oil and approximately 107 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) 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 \$750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 30 of the 118 Scotch spearmint oil producers and 19 of the 107 Native spearmint oil producers could 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. A typical spearmint oil-producing operation has enough acreage for rotation such that

the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. An average spearmint oil-producing farm has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2002–2003 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows growers to plan their mint planting and harvesting to meet expected market needs. 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 as extensively diversified as larger ones 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.

Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for

spearmint-flavored products at retail such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of large production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the marketing order, can create liquidity problems for some producers. The marketing order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the decline in prices of many of the alternative crops they grow. As noted earlier, almost all spearmint oil producers diversify by growing other crops.

Instability in the spearmint oil subsector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by buyers.

The significant variability is illustrated by the fact that between 1980 and 2000, production tended to vary by 25 percent above and below the average production level of 1,888,810 pounds. The 25 percent figure (469,321 pounds) is the standard deviation around the average production level. Production in the shortest crop year was about 48 percent of the 21-year average and the largest crop was approximately 163 percent. A key consequence is that in years of oversupply and low prices, the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service).

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for

each class of oil is the total volume of that oil which producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil for the applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil which may not be sold during the current marketing year unless the Secretary approves a Committee recommendation to make a portion of the pool available. However, limited quantities of reserve oil are typically sold to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies.

In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carry-out. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool grown in large production years and stocks are drawn down in short crop years.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would

likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the available supply for both classes of oil at 2,108,996 pounds, and that the expected carry-in will be 458,764 pounds. Therefore, with volume control, sales by producers for the 2002–2003 marketing year should be limited to 1,650,232 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended salable percentages, upon which 2002–2003 producer allotments are based, are 45 percent for Scotch and 38 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a \$1.66 decline in average grower price per pound (from both classes of spearmint oil) resulting from the higher quantities produced and marketed without volume control. Northwest grower prices for both classes of spearmint oil for 1999 and 2000 averaged \$9.13, based on National Agricultural Statistics Service data. The severe surplus situation for the spearmint oil market that would exist without volume controls in 2002–2003 would also likely dampen prospects for improved grower prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to this rule including higher and lower levels for the salable quantities and allotment percentages for both classes of oil, as well as not regulating the handling of spearmint oil during the 2002–2003 marketing year. The Committee also noted that the operation of the marketing order provides valuable statistical information on domestic and foreign markets to producers and other industry factors.

The Committee discussed and rejected the idea of not regulating Scotch spearmint oil, because of the severe price-depressing effects that would occur without volume control.

The Committee also considered alternative regulation levels for Scotch

spearmint oil. The Committee explored maintaining the Scotch spearmint oil allotment percentage at the same level as the current year (48 percent) or increasing the percentage, allowing even more product into the market. These options were discussed at length by the Committee, producers, and handlers in attendance at the meeting. Both options were rejected because current supplies are very abundant and resultant prices are considered too low for general producer viability.

Finally, the Committee discussed recommending a level of regulation as low as a 32.6 percent allotment percentage. As noted earlier, the Committee determined that a drop in the allotment percentage for Scotch spearmint oil from 48 percent during the current year to 32.6 percent would likely be too extreme an adjustment in one marketing year. The Committee opted for a much smaller decline of 3 percentage points, to a salable percentage of 45 percent. The recommended salable quantity is 849,971 pounds.

One Committee member, however, voted against the recommended Scotch spearmint oil salable quantity and allotment percentage in support of a lower level. In consideration of the current, relatively depressed price for Scotch spearmint oil, he felt a more restrictive level of regulation would help to enhance returns to producers.

The general consensus of the individuals commenting during the meeting indicated strong support for a shift in Scotch spearmint oil marketing strategy from one considering primarily the Far West's share of the world market to an approach primarily considering current price, supply, and demand. The Committee's belief that the Scotch spearmint oil market can be improved and stabilized is reflected in its recommendation to establish the salable quantity and allotment percentage at 849,471 pounds and 45 percent, respectively.

The Committee discussed alternative allotment percentage levels for the other class of spearmint oil (Native) ranging from a low of about 35 percent to a high of about 41 percent. With the current price for Native spearmint oil lower than the 20-year average, and demand fairly flat, the Committee, after considerable discussion, determined that 800,761 pounds and 38 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2002–2003 marketing year.

The one dissenting member stated that 38 percent is too great a change from the current season's allotment

percentage of 45 percent, and that demand generally supports more supply than would be released at 38 percent. After a great deal of discussion, the Committee recommended the lower percentage as a means of balancing supplies with market needs. If more supplies are needed during the marketing year, the percentage could be increased.

The Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all 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 would achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2002–2003 would decline substantially below current levels.

As stated earlier, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year-to-year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from about \$4.00 per pound to about \$12.50 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980. Excluding the most recent three marketing years, prices since the order's inception have generally stabilized at about \$13.00 per pound for Scotch spearmint oil and about \$11.00 per pound for Native spearmint oil.

Over the last three years, however, large production and carry-in inventories have contributed to declining prices, despite the Committee's efforts to balance available supplies with demand. Over the last

three years, prices have ranged from \$8.00 to \$11.00 per pound for Scotch spearmint oil and between \$9.00 to \$10.00 per pound for Native spearmint oil.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability, and price improvement.

As stated earlier, 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. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0065. Accordingly, this action would 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 USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

The Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. In addition, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. Fifteen days is deemed appropriate because this rule would need to be effective as soon as possible to provide producers sufficient time prior to the beginning of the 2002–2003 marketing year to adjust their cultural and marketing plans accordingly. All written comments received within the comment period will be considered before a final determination is made on this matter.

## 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 proposed to be amended as follows:

### **PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST**

1. The authority citation for 7 CFR part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 985.221 is added to read as follows:

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

#### **§ 985.221 Salable quantities and allotment percentages—2002–2003 marketing year.**

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2002, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 849,471 pounds and an allotment percentage of 45 percent.

(b) Class 3 (Native) oil—a salable quantity of 800,761 pounds and an allotment percentage of 38 percent.

Dated: March 5, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–5686 Filed 3–8–02; 8:45 am]

**BILLING CODE 3410–02–P**

## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 60**

**[Docket No. PRM–60–2 and 60–2A]**

#### **The States of Nevada and Minnesota; Denial of Petition for Rulemaking**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–60–2 and 60–2A) submitted by the States of Nevada and Minnesota dealing with disposal of high-level radioactive waste (HLW). In PRM–60–2, the petitioners requested that the NRC adopt a regulation governing the implementation of certain generally applicable environmental standards for HLW that had been proposed by the U.S. Environmental