

# Proposed Rules

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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-01-985-1 PR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2001-2002 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 2001-2002 marketing year, which begins on June 1, 2001. This rule invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 900,208 pounds and 48 percent, respectively, and for Class 3 (Native) spearmint oil of 938,944 pounds and 45 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, and thus help to maintain stability in the spearmint oil market.

**DATES:** Comments must be received by May 9, 2001.

**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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail: 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 (Department) 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 2001-2002 marketing year, which begins on June 1, 2001. This proposed 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 in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 2001-2002 marketing year at its October 11, 2000, meeting. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Class 1 (Scotch) spearmint oil of 900,208 pounds and 48 percent, respectively, and a salable quantity and allotment percentage for Class 3 (Native) spearmint oil of 938,944 pounds and 45 percent, respectively.

This proposed rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2001-2002 marketing year, which begins on June 1, 2001. 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 U.S. 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.

Since the 1996–97 marketing year, the Committee has 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 has 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 its marketing strategy for Scotch spearmint oil of the past few seasons has not been entirely effective. Although sales have increased, the Far West's market share as a percentage of total world sales has not increased on average, and the market price for Scotch spearmint oil has continued to decline throughout this period. During the last two marketing years, the price paid to producers for Scotch spearmint oil has dropped to a low of \$7.00 per pound. The Committee believes that such a price is generally below the cost of production for most producers.

Furthermore, due to the depressed market, many producers with allotment base have not planted Scotch spearmint in recent years. The order (7 CFR 985.53(e)) requires that producers must make a bona fide effort to produce their annual allotment, or failing to do so, have their allotment base reduced by an amount equivalent to the unproduced

portions. Currently, several producers are in danger of losing their allotment base if they do not have spearmint planted by the Spring of 2001. With prices near or below the cost of production, many producers also face the potential of going out of business. The Committee determined that its only responsible course of action was to adjust its marketing strategy in an attempt to stabilize prices at a reasonable level while still considering market share. Therefore, the Committee's recommendation for Scotch spearmint oil for the 2001–2002 marketing year is 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 thus help producers to remain solvent. The Committee believes that this recommendation would stabilize the market at a level that is sustainable for the majority of Scotch spearmint oil producers.

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 two 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 couple of years, the price has dropped to about \$9.00 per pound and \$7.00 per pound, respectively, for Native and Scotch spearmint oils despite the Committee's efforts to balance available supplies with demand. Based on comments made at the Committee's meeting, factors that could have contributed to the low prices include the relatively poor returns being realized from other essential oils, an abundant supply of spearmint oil, and the continuing overall weak farm situation.

The major conditions contributing to the Committee's current recommendation of 45 percent for the Native spearmint oil allotment percentage for the 2001–2002 marketing year include a surplus of oil and the resultant softening price being offered to growers. The surplus has a basis in a higher than anticipated carry-in on June 1, 2000, caused in part by a late-season increase in last year's salable quantity.

The Committee recommended that increase due to signals from the industry that there was demand for more oil—a demand that did not materialize as expected. 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 based its recommendation for the proposed salable quantity and allotment percentage for each class of spearmint oil for the 2001–2002 marketing year on the summary presented above, as well as the data outlined below.

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

(A) Estimated carry-in on June 1, 2001—735,517 pounds. This figure is derived by subtracting the estimated 2000–2001 marketing year trade demand of 900,000 pounds from the revised 2000–2001 marketing year total available supply of 1,635,517 pounds. The 2000–2001 marketing year trade demand is an updated figure based on sales to date, historical data, and input from spearmint oil producers and handlers. The 2000–2001 marketing year total available supply has been revised from the figure originally estimated by the Committee during its deliberations for the 2000–2001 marketing year salable quantities and allotment percentages due to updated production estimates and the available reserve pool oil on June 1, 2000.

(B) Total estimated allotment base for the 2001–2002 marketing year—1,875,433 pounds. This figure represents a one-percent increase over the revised 2000–2001 total allotment base. Section 985.53(d)(1) requires that the Committee make additional allotment bases available for each class of oil in the amount of no more than 1 percent of the total allotment base for that class of oil. The total allotment base for each marketing year is generally revised during each such marketing year since it is estimated several months earlier during the respective annual marketing policy meetings.

(C) Average salable quantity as recommended at the five production area meetings—888,955 pounds.

(D) Recommended allotment percentage—48 percent. This figure is based on the average of the salable quantity recommended at the five production area meetings divided by the total estimated allotment base. Committee records show that this is slightly above the average of the past

seven years' sales (891,815 pounds or 47.6 percent).

(E) The Committee's recommended salable quantity—900,208 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(F) Estimated available supply for the 2001–2002 marketing year—1,635,725 pounds. This figure is the sum of the recommended salable quantity and the estimated carry-in on June 1, 2001.

(G) Estimated trade demand for the 2001–2002 marketing year—875,000 pounds. This figure is based on estimates provided by producers and handlers at the five Scotch spearmint oil production area meetings held in September 2000. These estimates were derived using average sales figures for the past 20 years as well as input from handlers regarding current and projected demand for Far West spearmint oil.

(H) Estimated carry-out on May 31, 2002—760,725 pounds. This figure is the difference between the estimated available supply and the estimated trade demand for the 2001–2002 marketing year.

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

(A) Estimated carry-in on June 1, 2001—130,929 pounds. This figure is the difference between the estimated 2000–2001 marketing year trade demand of 990,000 pounds and the revised 2000–2001 marketing year total available supply of 1,120,929 pounds.

(B) Estimated trade demand for the 2001–2002 marketing year—1,000,000 pounds. This figure is based on the average of the estimates provided at the four Native spearmint oil production area meetings held in September 2000.

(C) Salable quantity required from the 2001–2002 marketing year production—864,071 pounds. This figure is the calculated difference between the estimated 2001–2002 marketing year trade demand and the estimated carry-in on June 1, 2001.

(D) Total estimated allotment base for the 2001–2002 marketing year—2,086,542 pounds. This figure represents a one percent increase over the revised 2000–2001 total allotment base.

(E) Computed allotment percentage—41.7 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—45 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 (46.4 percent), and input from producers and handlers.

(G) The Committee's recommended salable quantity—938,944 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2001–2002 marketing year—1,069,873 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 spearmint oil salable quantity of 900,208 pounds and allotment percentage of 48 percent are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and thereby helping the industry remain competitive on the international level. The Committee's recommended Native spearmint oil salable quantity of 938,944 pounds and allotment percentage of 45 percent are based on the anticipated supply and trade demand during the 2001–2002 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 2001–2002 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 2001–2002 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of section 985.50 of the order. During its discussion of potential 2001–2002 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 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.

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 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 116 producers of Class 1 (Scotch) spearmint oil and approximately 102 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 of less than \$500,000.

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 25 of the 116 Scotch spearmint oil producers and 7 of the 102 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. 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. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms would 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 2001–2002 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 sections 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 Committee discussed alternatives to the proposal 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 2001–2002 marketing year.

During the discussion on the 2001–2002 Scotch spearmint oil salable quantity and allotment percentage, one producer recommended that the Committee continue with the Scotch spearmint oil marketing strategy that it has used in the recent past. He recommended the establishment of an allotment percentage of 65 percent or higher, or alternatively, that there be no regulation established for Scotch spearmint oil during the 2001–2002 marketing year. The producer was of the opinion that the global nature of Scotch spearmint oil production negates the stabilizing benefits of the order, and therefore the order, in regards to Scotch spearmint oil, no longer effectuates the declared policy of the Act. He feels that a swing in policy from 65 percent to a 48 percent allotment percentage is radical and will not stabilize the market nor improve prices to producers.

With several individuals commenting during the meeting, however, most indicated support for a change in the marketing strategy for Scotch spearmint oil to an approach that takes into consideration current price, supply, and demand along with the Far West's share of the world market. It was noted that, although world production of Scotch spearmint oil has increased significantly, the provisions of the order in regards to this class of oil are still relevant since demand for high quality Far West oil remains relatively good. Blending of essential oils is more prevalent today than in the past. Consequently, the Committee believes that buyers will continue to seek out the quality Far West oil for the purpose of blending with the readily available lower quality oils. 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 900,208 pounds and 48 percent, respectively. The Committee is of the view that levels higher than 48 percent could cause further depression in prices, thus

potentially forcing some growers out of business.

The Committee discussed allotment percentage levels for Native spearmint oil from a low of 43 percent to a high of 46 percent. With the current price for Native spearmint oil lower than the 20 year average, and demand fairly flat, the Committee, after considerable discussion, decided on 938,944 pounds and 45 percent as the most effective salable quantity and allotment percentage, respectively, for the 2001–2002 marketing year.

Further, 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.

The U.S. spearmint oil market is considered a mature agricultural operation. Aggregate demand for spearmint 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 is expected to expand slowly in line with population growth. Demand for spearmint oil at the farm level is derived from the demand for spearmint-flavored products at retail and the manufacturers of chewing gum, toothpaste, and mouthwash are by far the largest users of mint oil. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the "marketing margin." However, spearmint flavoring tends to be a very small component of the retail price for the products in which it is used.

Mint growers tend to respond to price signals. Consequently, there has been a cycle where larger grower stocks of unsold spearmint oil have depressed grower prices for a number of years, and then shortages and high prices occur in subsequent years.

The wide fluctuations in supply and prices that result from this cycle create liquidity problems for some growers, particularly those with a heavy debt load. Moreover, growers have been less able to weather these cycles in recent years because of the decline in prices of many alternative crops. Almost all spearmint growers diversify by growing other commodities. It is important that spearmint be rotated with other crops to avoid the development of disease problems.

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. From 1980 through 2000, production averaged 1,888,810 pounds. The standard deviation over this period was 480,911 pounds. This indicates that production can vary by over 480,000 pounds from year-to-year.

This variation in production has necessitated the use of a reserve pool to store product in large production years; these stocks are drawn down in short production years. In any given year, the total available supply of spearmint oil is composed of current production plus carryover stocks from the previous crop.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the Federal marketing order. This authority allows the industry to set a salable quantity and allotment percentage for each class of oil for the upcoming marketing year (June 1–May 31). The salable quantity for each class of oil is the total volume of that oil which growers may sell during the marketing year.

The allotment percentage for each class of oil is derived by dividing the salable quantity by the total allotment base. Each grower is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the grower's allotment base by the applicable allotment percentage.

By November 1 of each year, the Far West Spearmint Oil Administrative Committee (Committee) identifies any oil that individual growers have produced above the volume specified on their annual allotment certificates. This

excess oil is placed into a reserve pool administered by the Committee.

The reserve pool oil may not be sold during the current marketing year unless the Committee decides and the Department approves, that it is appropriate to open up the pool. There is a reserve pool for each class of oil. However, a grower's reserve oil can be used to fill deficiencies in production (which is less than the salable quantity) and excess production can be sold to fill other growers' deficiencies.

The marketing order attempts to minimize the price depressing effect that excess grower stocks have on unsold spearmint oil. The marketing order attempts to stabilize prices by having stocks available in short supply years when prices would increase dramatically, and limiting supply and establishing reserves in high production years when prices would fall dramatically.

It is the goal of the Committee to balance supply and demand with an appropriate carryout in order to maintain market stability. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus, and spearmint oil goes unsold.

To assess the impact that volume control has on the prices growers receive for their commodity, an econometric model has been developed projecting that the volume control mechanism used by the spearmint oil industry will result in decreased production. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low grower prices and a large volume of oil stored and carried over to the next crop year.

The price growers receive for harvesting their crops is largely determined by the level of production and carryin inventories. In years of oversupply and low prices, the season average grower price of spearmint oil has failed to cover the average variable cost of production. The estimated model provides a way to see what impacts volume control may have on grower prices. The econometric model is used to estimate grower prices with and without regulation. Without volume controls, the estimated season-average grower price would be approximately \$8.97 per pound and production is assumed to increase to 3,961,975 pounds. With volume controls, production would be limited to the salable quantity of 2,086,542 pounds and the grower price would be estimated at approximately \$10.43 per pound.

The Committee has estimated the total trade demand for spearmint oil to be

1,929,623 pounds for the 2002 crop year. Without volume controls, the volume supplied to the market would be approximately 3,961,975 pounds. This would result in a severe surplus situation for the spearmint oil market. This situation would not only negatively impact grower prices this year, but would dampen prospects for prices in future years because of the buildup in stocks. The econometric model shows that for every one-percent increase in carryin inventories, a decrease of 0.07 percent in grower prices occurs. The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the disastrous results of over-supplying these markets. The use of volume controls is believed to have little to no effect on consumer prices and will not result in fewer retail sales.

The use of volume controls is believed to have a positive impact on growers' revenues. With regulation, growers' revenues are estimated to be \$20,125,968. In this scenario, demand is estimated at 1,929,623 pounds and price at \$10.43 per pound. Without regulation, grower prices are estimated to be \$8.97 per pound and the total demand for spearmint oil would have to increase to 2,243,698 pounds for growers to be as well off as in the regulated scenario. However, even if demand were to increase to 2,243,698 pounds in response to the lower \$8.97 per pound price, over 1,700,000 pounds of spearmint oil would likely be placed in storage, putting tremendous downward pressure on price the next crop year.

The Committee further believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, National Agricultural Statistics Service records indicate 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. Excluding the most recent two 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 couple of years, the price has dropped to about \$9.00 per pound and \$7.00 per pound, respectively, for Native and Scotch spearmint oils despite the Committee's efforts to balance available supplies with demand.

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 over a million pounds of spearmint oil reserves would have on the market. According to the Committee, levels for the salable quantities and allotment percentages either higher or lower than those recommended would not achieve the intended goals of market and price stability.

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 Department 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 2001-2002 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 § 985.220 is added to read as follows:

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

#### § 985.220 Salable quantities and allotment percentages—2001-2002 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2001, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 900,208 pounds and an allotment percentage of 48 percent.

(b) Class 3 (Native) oil—a salable quantity of 938,944 pounds and an allotment percentage of 45 percent.

Dated: April 18, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01-10115 Filed 4-23-01; 8:45 am]

**BILLING CODE 3410-02-P**

#### DEPARTMENT OF TRANSPORTATION

##### Coast Guard

#### 33 CFR Part 117

[CGD13-00-029]

RIN 2115-AE87

#### Drawbridge Operations Regulations; Duwamish River, WA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** The Coast Guard is withdrawing the proposed rulemaking to amend the operating regulations of the dual bascule drawbridges on First Avenue South across the Duwamish River, mile 2.5, at Seattle, Washington. This rulemaking is being withdrawn because of the insufficient road traffic volume and congestion data provided by the bridge owner to justify the proposed change and because of objections made by navigational

interests. Three marine transport companies objected to the proposed addition of one hour to the existing afternoon closed period. The bridge currently is closed to vessels of less than 5000 gross tons for six hours each day Monday through Friday. These objectors are major commercial users of the Duwamish Waterway and all are engaged in various degrees with major shipping to Alaska from Seattle. One of these also observed that the dual drawspans are not operated simultaneously. Simultaneous operation could reduce the length of the operating cycle and therefore reduce the time that roadway traffic is obstructed by draw span operations.

**DATES:** The proposed rulemaking is withdrawn effective April 24, 2001.

#### FOR FURTHER INFORMATION CONTACT:

Austin Pratt, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, Thirteenth Coast Guard District, (206) 220-7282.

**SUPPLEMENTARY INFORMATION:** This notice withdraws the notice of proposed rulemaking for the amendment of drawbridge operations regulations, published in the **Federal Register**, August 18, 2000 (65 FR 50480, CGD13-00-029).

Dated: 10 April 2001.

**Erroll Brown,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District*

[FR Doc. 01-10138 Filed 4-23-01; 8:45 am]

**BILLING CODE 4910-15-U**

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[DA 01-860, MM Docket No. 01-83, RM-10085]

#### Digital Television Broadcast Service; Lexington, KY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by WLEX Communications, LLC, licensee of station WLEX-TV, NTSC channel 18, Lexington, Kentucky, requesting the substitution of DTV channel 39 for DTV channel 22. DTV Channel 39 can be allotted to Lexington, Kentucky, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (38-02-03 N. and 84-23-39 W.). As requested, we propose to allot DTV Channel 39 to Lexington with a