

# Proposed Rules

Federal Register

Vol. 65, No. 33

Thursday, February 17, 2000

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-00-985-2 PR]

#### 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 Producers

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would: (1) Reduce the number of regions established for issuing additional allotment base to new producers from three regions to two regions; and (2) revise the procedure used for determining the distribution of additional allotment base to new producers. 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 provide a more equitable distribution of allotment base to new producers.

**DATES:** Comments must be received by April 17, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, D.C. 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.

**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, room 369, 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, D.C. 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. This rule is not intended to have retroactive effect. 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 the 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)(1) requires the Committee to annually make additional allotment base available in an amount not greater than 1 percent of the total allotment base for each class of spearmint oil. The order specifies that 50 percent of the additional allotment base 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 annually available additional allotment base, which in turn is issued to applicants in each oil class by lottery. The additional allotment base being made available to existing producers is distributed equally among all existing producers who apply.

Section 985.53(d)(3) of the order provides authority for the establishment of rules governing the annual distribution of additional allotment base. Pursuant to the authority in that section, the Committee unanimously recommended revising § 985.153 of the order's rules and regulations at its meeting on October 6, 1999. Section 985.153 provides regulations for the issuance of additional allotment base to new and existing producers. Specifically, the Committee's

recommendation proposes modification of § 985.153(c)(1) to provide a more equitable distribution of allotment base to new producers. This proposed rule would: (1) Reduce the number of regions established for issuing additional allotment base to new producers from three regions to two regions; and (2) revise the procedure used for determining the distribution of additional allotment base to new producers to take into account the reduced number of regions.

Section 985.153(c) currently establishes the regions for issuing additional allotment base as follows:

(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.

Under the provisions currently in effect, the names of all eligible new producers are placed in separate lots per class of oil and region. Names are then drawn based on the amount of additional allotment base available and the Committee's determination of the

minimum economic enterprise required to produce each class of oil. These procedures currently result in three new Scotch spearmint oil producers (one from each region) receiving approximately 3,100 pounds of allotment base each, and three new Native spearmint oil producers (one from each region) receiving approximately 3,400 pounds of allotment base each.

This proposed rule would replace the current three regions with the following two regions:

(A) Region A—The State of Washington.

(B) Region B—All areas of the production area outside the State of Washington.

Additionally, the proposal would modify the current method used to draw names by specifying that the names of all eligible new producers would be placed in separate lots based on two regions rather than three regions. For each class of oil, separate drawings would be held from a list of all applicants from Region A, from a list of all applicants from Region B, and from

a list of all remaining applicants from Regions A and B combined. 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 would be issued to two eligible new producers whose names are selected by drawing from a lot containing the names of all remaining eligible new producers from the other region for that class of oil. Thus, three new producers of each class of oil would receive base, as currently occurs given the amount of additional base available and the minimum economic enterprise needed for oil production.

The Committee made this recommendation after 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. The following tables show the number of actual applications for additional Scotch and Native spearmint oil base over the most recent ten year period:

APPLICATIONS FOR ADDITIONAL SCOTCH SPEARMINT OIL BASE

	WA	ID	OR	UT	NV
1991 .....	99	42	17	3	0
1992 .....	90	47	16	3	0
1993 .....	40	21	4	1	0
1994 .....	27	22	5	1	0
1995 .....	42	21	3	0	0
1996 .....	31	19	3	0	0
1997 .....	35	16	2	0	0
1998 .....	32	26	1	0	0
1999 .....	25	22	0	1	0
2000 .....	21	9	0	0	0

APPLICATIONS FOR ADDITIONAL NATIVE SPEARMINT OIL BASE

	WA	ID	OR	UT	NV
1991 .....	112	27	16	5	0
1992 .....	100	49	19	5	0
1993 .....	47	28	5	2	0
1994 .....	44	24	8	3	0
1995 .....	56	21	8	2	0
1996 .....	44	19	3	0	0
1997 .....	43	19	2	1	0
1998 .....	39	23	2	0	0
1999 .....	31	23	0	0	1
2000 .....	26	15	2	0	0

As shown in the above tables, there has consistently been few applications received from new producers in the States of Oregon, Utah, and Nevada, while the number of applications from new producers in Washington, followed to a lesser extent by the number of applications from new producers in Idaho, has consistently been much

higher. Committee records also show that the number of producers, as well as the amount of allotment base held by those producers, is greatest in Washington followed in decreasing order by Idaho, Oregon, Utah, and Nevada. Therefore, reducing the number of regions from 3 to 2, and changing the procedures used in distributing the base

would result in a more equitable distribution of allotment base to new producers. The recommended changes would also make the additional allotment base available to new producers from the States which have historically requested the most base.

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 119 producers of Class 1 (Scotch) spearmint oil and approximately 105 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 have been defined as those whose annual receipts are less than \$500,000.

Based on the SBA's definition of small entities, the Committee estimates that 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 119 Scotch spearmint oil producers and 7 of the 105 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.

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. The order has contributed to the stabilization of producer prices.

Section 985.53 of the order provides that each year the Committee make available additional allotment base 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 proposed rule would: (1) Reduce the number of regions established for issuing additional allotment base to new producers from three regions to two regions; and (2) revise the procedure used for determining the distribution of additional allotment base to new producers to take into account the reduced number of regions. The Committee recommended this rule to provide for a more equitable

distribution of allotment base to new producers.

During its deliberations, the Committee considered alternatives to this proposal. The first option discussed would have left § 985.153(c) unchanged. This was rejected because of the need to develop a more equitable method of issuing additional base given the light application record from some of the States within the production area. The Committee also discussed eliminating the use of different regions in its additional allotment base issuance procedure and having one drawing for the calculated number of recipients per class of oil for the entire production area. This option was also rejected because it would not ensure geographic distribution of the additional base.

The Committee made its recommendation after careful consideration of available information, including the aforementioned alternative recommendations, 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 proposed to be 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 would 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 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 in the discussion on these issues. Interested persons are also 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 the following web site: <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 60-day comment period is provided to allow interested persons to respond to this proposal. 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. 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 A.* The State of Washington.

(B) *Region B.* All areas of the production area outside 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. 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 from each region shall be placed in separate lots per class of oil. For each class of oil, separate drawings shall be held from a list of all applicants from Region A, from a list of all applicants from Region

B, and from a list of all remaining applicants from Regions A and B combined. 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 two eligible new producers whose names are selected by drawing from a lot containing the names of all remaining eligible new producers from the other region 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.

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Dated: February 11, 2000.

**Eric M. Forman,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–3743 Filed 2–16–00; 8:45 am]

BILLING CODE 3410–02–P

#### NUCLEAR REGULATORY COMMISSION

##### 10 CFR Ch. I

#### Public Workshop on Performance-Based Regulatory Approaches

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Workshop.

**SUMMARY:** On Monday, January 24, 2000 (65 FR 3615), the Nuclear Regulatory Commission (NRC) issued a **Federal Register** Notice (FRN) titled, “High-Level Guidelines for Performance-Based Activities.” In that notice the NRC requested comments on its proposed high-level guidelines for developing performance-based activities, and noticed a public workshop to obtain stakeholder input. An agenda for that workshop has subsequently been developed and is provided herein. In addition, because of minor editorial and formatting errors, a corrected version of the January 24, 2000 FRN is reproduced here.

**FOR FURTHER INFORMATION CONTACT:** N. Prasad Kadambi, (301) 415–5896, Internet: [nrp@nrc.gov](mailto:nrp@nrc.gov) of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

#### SUPPLEMENTARY INFORMATION:

##### Background

In the Staff Requirements Memorandum (SRM) to SECY–99–176, “Plans for Pursuing Performance-Based Initiatives,” issued on September 13, 1999, the Commission directed the staff

to develop high-level guidelines to identify and assess the viability of candidate performance-based activities. Among other things, the Commission directed the staff to develop the guidelines with input from stakeholders and program offices, and to include discussion on how risk information might assist in the development of performance-based initiatives.

This FRN focuses on the staff’s efforts to develop high-level guidelines for performance-based initiatives applicable to all NRC licensees. The development and use of these guidelines will be coordinated (including public meetings and workshops) with the efforts to risk-inform 10 CFR part 50 and other regulations.

#### Public Meeting

The staff plans to hold a public meeting to obtain feedback on the proposed high-level guidelines for performance-based activities. The public meeting is scheduled for March 1, 2000, between 9 a.m. and 4 p.m., in the auditorium at the NRC headquarters (Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, 20852). The public should be aware that another meeting concerning efforts to risk-inform 10 CFR part 50 is scheduled on February 24, 2000. That meeting, focused on reactors, will also consider performance-based revisions to 10 CFR Part 50 based on the high-level guidelines discussed in this FRN.

The meeting being noticed here will focus on the application of high-level guidelines to all regulatory activities (of which 10 CFR part 50 would be a part) so as to make them more performance-based. This meeting is scheduled to occur about 3 weeks prior to the expiration of the comment period mentioned above. This will allow for an exchange of views among stakeholders and the NRC staff. This interaction should be beneficial to the meeting participants in the development of written public comments.

This meeting is open to the general public to observe or to participate by making remarks. To register for attendance or to present prepared remarks, please contact N. Prasad Kadambi, USNRC, telephone: (301) 415–5896; facsimile: (301) 415–5160; internet: [npk@nrc.gov](mailto:npk@nrc.gov).

#### Discussion

The high-level guidelines identified in this FRN are intended to be applied to future regulatory initiatives. As the effort to risk-inform regulatory activities (for example, in the reactors and materials areas) is performed, the high-level guidelines will be used to identify