

crops. Industry shipments totaled 2.8 million bags with a production value of \$25.4 million. The suspension for last season provided producers and handlers more flexibility in meeting the needs of their buyers.

The Committee believes that providing handlers the ability to pack and load on Sundays will continue to benefit the industry. Removal of the prohibitions provided producers with an additional window of opportunity to harvest and deliver their onions to handlers for sorting, grading, packaging, and loading. The continued use of this self-imposed restriction could have caused the South Texas area to lose its markets to other competing areas, because these areas can package and load onions on Sunday. Removing the Sunday packaging and loading prohibitions positively impacted both small and large handlers by helping them maintain markets.

This action is intended to improve producers' and handlers' returns by allowing them to package and load onions on Sunday if their operations were curtailed for some reason during the previous week. The ability to pack and load on Sunday has helped handlers fill unexpected rush orders made at the end of the normal packing week. There have been times when handlers were packing onions on Saturday night, and at 12:01 a.m. had to stop even though the packing had not yet been completed. This hindered handler operations and unduly delayed the packing and shipping of onions to meet buyer needs.

The Committee considered not removing the Sunday packing and loading prohibitions. However, not relaxing the regulation could have resulted in significant crop losses, as occurred last season, prior to the emergency suspension of the prohibition. Also, the cessation in harvesting activity last season resulted in increased unemployment among onion field workers and employees at handlers' facilities. In addition, reduced supplies could result in consumers paying higher prices for onions. The opportunity to pack and load onions seven days a week gives producers and handlers more time to harvest and prepare onions for market. This increased flexibility enables the industry to better meet buyer needs and compete more effectively with its competition.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically

reviewed to reduce information collection requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 6, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on February 24, 1998 (63 FR 9128). The interim final rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on April 27, 1998, and no comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 9128, February 24, 1998), will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

#### PART 959—ONIONS GROWN IN SOUTH TEXAS

Accordingly, the interim final rule amending 7 CFR part 959 which was published at 63 FR 9128 on February 24, 1998, is adopted as a final rule without change.

Dated: June 1, 1998.

**Sharon Bomer Lauritsen,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98-15016 Filed 6-4-98; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket No. FV98-985-2 FIR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1997-98 Marketing Year

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule increasing the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1997-98 marketing year. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. The Committee recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

**EFFECTIVE DATE:** June 8, 1998.

**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 97204-2807; telephone: (503) 326-2724; Fax: (503) 326-7440; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 720-2491; Fax: (202) 205-6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada, and Utah), hereinafter referred to as the

"order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule continues an increase in the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1997-98 marketing year, which ends on May 31, 1998. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The 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. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

This rule finalizes an interim final rule that increased the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers

during the 1997-98 marketing year, which ends on May 31, 1998. Thus, this rule finalizes the increase in the salable quantity from 1,125,351 pounds to 1,185,550 pounds and the allotment percentage from 56 percent to 59 percent for Native spearmint oil for the 1997-98 marketing year.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 1997-98 marketing year were recommended by the Committee at its October 2, 1996, meeting. The Committee recommended salable quantities of 996,522 pounds and 1,125,351 pounds, and allotment percentages of 55 percent and 56 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the January 7, 1997, issue of the **Federal Register** (62 FR 942). A final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1997-98 marketing year was published in the July 9, 1997, issue of the **Federal Register** (62 FR 36646).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, at its February 25, 1998, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 1997-98 marketing year be increased by 3 percent from 56 percent to 59 percent. This final rule increases the 1997-98 marketing year Native spearmint oil salable quantity of 1,125,351 pounds to 1,185,550 pounds.

The original total industry allotment base for Native spearmint oil for the 1997-98 marketing year was established at 2,009,556 pounds and was revised during the year to 2,006,630 pounds to reflect loss of 2,926 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 2,006,630 pounds is applied to the originally established allotment percentage of 56, the 1997-98 marketing year salable quantity of 1,125,351 pounds is effectively modified to 1,123,713 pounds.

Further, § 985.56(a) of the order authorizes producers who have produced more than their salable quantity of spearmint oil during a marketing year to transfer such excess to producers who have produced less than their salable quantity for the same marketing year. If all producers having such an excess transfer their excess oil to producers having a deficiency, all of the annual allotment is utilized. If, on the other hand, this option is not utilized to its full extent, some annual allotment is essentially lost and the effective salable quantity for that year is reduced by the amount of excess oil that was not transferred to fill deficiencies. During the 1997-98 marketing year, producers who were deficient by 3,957 pounds of Native spearmint oil chose not to have this deficiency filled by producers having excess oil. This also effectively reduced the already modified 1997-98 salable quantity by 3,957 pounds leaving a net quantity of 1,119,756 pounds.

This final rule finalizes the interim final rule that made an additional amount of Native spearmint oil available by increasing the salable quantity which releases such oil from the reserve pool. When applied to each individual producer, the 3 percent allotment percentage increase allows each producer to take up to 3 percent of their allotment base from their Native spearmint oil reserve. If a producer does not have any reserve pool oil, or has less than 3 percent of their allotment base in the reserve pool, the increase in allotment percentage will actually make less than such amount available to the market. Currently, producers receiving 6,201 pounds of additional allotment through this increase do not have any Native spearmint oil in reserve. Thus, rather than 60,199 additional pounds, this action effectively makes an additional 53,998 pounds of Native spearmint oil available to the market.

The following table summarizes the Committee recommendation:

#### **Native Spearmint Oil Recommendation**

(a) Estimated 1997-98 Allotment Base—2,009,556 pounds. This is the estimate that the 1997-98 Native spearmint oil salable quantity and allotment percentage was based on.

(b) Revised 1997-98 Allotment Base—2,006,630 pounds. This is 2,926 pounds less than the estimated allotment base. This base was lost because some producers failed to produce all of their previous year's allotment.

(c) Initial 1997-98 Allotment Percentage—56 percent.

(d) Initial 1997-98 Salable Quantity—1,125,351 pounds. This figure is 56 percent of 2,009,556 pounds.

(e) Initial Adjustment to the 1997-98 Salable Quantity—1,123,713 pounds. This figure reflects the salable quantity initially available after the beginning of the 1997-98 marketing year due to the 2,296 pound reduction in the industry allotment base to 2,006,630 pounds.

(f) Final Adjustment to the 1997-98 Salable Quantity—1,119,756 pounds. This figure reflects the salable quantity actually available during the 1997-98 marketing year after the 3,957 pound deficiency was subtracted from the initially adjusted salable quantity of 1,123,713 pounds.

(g) Increase in Allotment Percentage—3 percent. This percentage increase was recommended by the Committee at its February 25, 1998, meeting.

(h) Revised 1997-98 Allotment Percentage—59 percent. This figure is derived by adding the 3 percent increase to the initial 1997-98 allotment percentage of 56 percent.

(i) Calculated Revised 1997-98 Salable Quantity—1,185,638 pounds. This figure is 59 percent of the estimated 1997-98 allotment base of 2,009,556 pounds.

(j) Computed Increase in the 1997-98 Salable Quantity—60,287 pounds. This is the product of the estimated 1997-98 allotment base of 2,009,556 and the revised 1997-98 allotment percentage of 59 percent.

(k) Effective Increase in the 1997-98 Salable Quantity—53,998 pounds. This figure represents the amount of Native spearmint oil actually being made available by this action based on the adjustments described herein.

In making this latest recommendation, the Committee considered all available information on supply and demand. The 1997-98 marketing year began on June 1, 1997. Handlers have indicated that with this action, the available supply of both Scotch and Native spearmint oils appears adequate to meet anticipated demand through May 31, 1998. Without the increase, the Committee believes the industry would not have been able to meet market needs. As of February 25, 1998, approximately 89,000 pounds of Native spearmint oil was available for market. Average demand for Native spearmint oil from March 1 to May 31 over the past 17 years has been 108,029 pounds. Therefore, based on past history the industry may not have been able to meet market demand without this increase. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 1997-98 marketing

year, it had anticipated that the year would end with an ample available supply. This action has the effect of adding 53,998 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the period February 25 through May 31, 1998, up to approximately 144,000 pounds.

The Department, based on its analysis of available information, has determined that the 1997-98 salable quantity and allotment percentage for Native spearmint oil for the 1997-98 marketing year should be increased to 1,185,638 and 59 percent, respectively.

This rule relaxes the regulation of Native spearmint oil and will allow growers to meet market needs and improved returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 1997-98 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, fully meets the intent of § 985.50 of the order. During its discussion of revising the 1997-98 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The increase in the Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 9 spearmint oil handlers subject to regulation under the marketing order and approximately 200 producers of spearmint oil in the regulated production area. Of the 200 producers, approximately 125 producers hold Class 1 (Scotch) spearmint oil allotment base, and approximately 110 producers hold Class 3 (Native) spearmint oil allotment base. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than \$500,000.

Based on the SBA's definition of small entities, the Committee estimates that two of the nine handlers regulated by the order would 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 29 of the 124 Scotch spearmint oil producers and 14 of the 110 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil

producing farms would fall into the category of large businesses.

Small spearmint oil producers represent a minority of farming operations and are more vulnerable to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the resources 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 of stronger incomes from alternate crops which could support the operation for a period of time. Despite the advantage of larger producers, increasing the Native salable quantity and allotment percentage will help both large and small producers by improving returns. In addition, this change may potentially benefit the small producer more than large producers. This is because the change ensures that small producers are more likely to maintain a profitable cash flow and meet annual expenses.

Alternatives to this rule included not increasing the available supply of Native spearmint oil, which could potentially hurt small producers. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the level recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs. As of February 25, 1998, approximately 88,000 pounds of Native spearmint oil were available for market. Average demand for Native spearmint oil from March 1 to May 31 over the past 17 years has been 108,029 pounds. Therefore, based on past history the industry may not have been able to meet market demand without this change. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 1997-98 marketing year, it had anticipated that the year would end with an ample available supply. This revision has the effect of adding 53,998 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the period February 25 through May 31, 1998, up to 144,158 pounds.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action will

not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Finally, 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. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

The interim final rule regarding this action was issued on April 24, 1998, and published in the **Federal Register** (63 FR 23373, April 29, 1998), with an effective date of April 30, 1998. That rule amended § 985.216 of the rules and regulations in effect under the order and provided a 20-day comment period which ended May 19, 1998. No comments were received.

After consideration of all relevant matter presented, including that contained in the prior proposed, interim final, and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1997-98 marketing year, the Committee's recommendation and other available information, it is found that to revise § 985.216 (62 FR 36650) to change the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule applies to spearmint produced during the 1997-98 marketing year, which ends May 31, 1998. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 20-day comment period was provided in the interim final rule and no comments were received.

#### List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

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

Accordingly, the interim final rule amending 7 CFR part 985 which was published at 63 FR 23371 on April 29, 1998, is adopted as a final rule without change.

Dated: June 1, 1998

**Sharon Bomer Lauritsen,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98-15002 Filed 6-4-98; 8:45 am]

BILLING CODE 3410-02-P

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. 97-063-2]

#### Tuberculosis in Cattle and Bison; State Designation; Hawaii

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Hawaii from an accredited-free (suspended) State to an accredited-free State. We have determined that Hawaii meets the criteria for designation as an accredited-free State.

**DATES:** Interim rule effective June 1, 1998. Consideration will be given only to comments received on or before August 4, 1998.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97-063-2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-063-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joseph VanTiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road