Serissa foetida from the People's Republic of China must also meet the following conditions:

(A) *Propagative cuttings.* The propagative materials used to produce the artificially dwarfed (penjing) plants may enter an approved greenhouse only as seeds, tissue cultures, unrooted cuttings, or rooted cuttings with no growing media. Rooted cuttings may not be established or grown in soil at any time. Rooted cuttings may be established in a greenhouse or outside the greenhouse on raised benches (46 cm in height) in pots containing only APHIS approved growing media.

(B) *Inspection and treatment.* When any cuttings are introduced into the greenhouse, they must be free of growing media, inspected, and found free of plant pests and then treated with a pesticide dip approved by the Animal and Plant Quarantine Service of the People's Republic of China that will control mites, scale insects, whiteflies, thrips, and fungi. The artificially dwarfed (penjing) plants must be propagated from mother plants that have been visually inspected by an APHIS inspector or an inspector of the Animal and Plant Quarantine Service of the People's Republic of China and found free of the following pests:

(*1*) For *Buxus sinica: Guignardia miribelii, Macrophoma ehretia, Meliola buxicola*, and *Puccinia buxi.*

(*2*) For *Ehretia microphylla: Macrophoma ehretia, Phakopsora ehretiae, Pseudocercosporella ehretiae, Pseudocercospora ehretiae-thyrsiflora, Uncinula ehretiae, Uredo ehretiae*, and *Uredo garanbiensis.*

(*3*) For *Podocarpus macrophyllus: Pestalosphaeria jinggangensis, Pestalotia diospyri, Phellinus noxius*, and *Sphaerella podocarpi.*

(*4*) For *Sageretia thea: Aecidium sageretiae.*

(*5*) For *Serissa foetida: Melampsora serissicola.*

(C) *Growing.* The artificially dwarfed (penjing) plants must be grown in an approved greenhouse for at least 6 months immediately prior to export.

(D) *Additional treatments.* While in the greenhouse, plants must be treated with appropriate pesticides at least once every 10 days or as needed for three months before shipping to maintain a pest-free condition.

* * * * *

Done in Washington, DC, this 13th day of January 2004.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–1066 Filed 1–15–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV03–959–4 FR]

Onions Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule decreases the assessment rate established for the South Texas Onion Committee (Committee) for the 2003–04 and subsequent fiscal periods from $0.085 to $0.03 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning August 1, 2003, and continue until amended, suspended, or terminated. 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 USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2003–04 and subsequent fiscal periods from $0.085 to $0.03 per 50-pound equivalent of onions handled.

The South Texas onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–03 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 5, 2003, and unanimously recommended 2003–04 expenditures of $124,661 and an assessment rate of $0.03 per 50-pound equivalent of onions. In comparison, last year's budgeted expenditures were $325,400. The assessment rate of $0.03 is $0.055 lower than the rate currently in effect. The decrease in the assessment rate and budget is primarily due to the discontinuation of funding for production research projects and a lower marketing and promotion budget. The reduced assessment rate and budget lowers handler costs by about $220,000 and keeps the Committee's operating reserve at an acceptable level.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $74,661 for personnel and office expenses, $30,000 for compliance, and $20,000 for promotion expenses. Budgeted expenses for these items in 2002–03 were $72,002, $35,000, and $170,500, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Onion shipments for the fiscal period are estimated at 4 million 50-pound equivalents, which should provide $120,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $256,982) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, 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 the 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 approximately 78 producers of onions in the production area and approximately 37 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2002–03 marketing year, the industry's 37 handlers shipped onions produced on 12,740 acres with the average and median volume handled being 114,454 and 91,792 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 37 handlers were estimated to be $73 million, with average and median revenues being $1.97 million and $1.58 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that 36 of the 37 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. All of the 78 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed $750,000.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.085 to $0.03 per 50-pound equivalent of onions handled. The Committee unanimously recommended 2003–04 expenditures of $124,661 and an assessment rate of $0.03 per 50-pound equivalent. The assessment rate of $0.03 is $0.055 lower than the current rate. The quantity of assessable onions for the 2003–04 fiscal period is estimated at 4 million 50-pound equivalents. Thus, the $0.03 rate should provide $120,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be more than adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $74,661 for personnel and office expenses, $30,000 for compliance, and $20,000 for promotion expenses. Budgeted expenses for these items in 2002–03 were $72,002, $35,000, and $170,500, respectively. In addition, the Committee budgeted $47,900 for production research in 2002–03.

The Committee reviewed and unanimously recommended 2003–04 expenditures of $124,661, which included increases in administrative expenses and decreases in the compliance and promotion expenses. The Committee did not approve any production research program expenses for 2003–04. In 2002–03, the Committee budgeted $47,900 for production research. Prior to arriving at this budget, the Committee considered information from various sources, including the Research and Market Development Subcommittee. Numerous alternative expenditure levels were discussed based upon the relative value of various promotion projects to the onion industry. The assessment rate of $0.03 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 4 million 50-pound equivalents for the 2003–04 fiscal period.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2003–04 fiscal period could range between $9.05 and $19.05 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2003–04 fiscal period as a percentage of total grower revenue could range between .16 and .33 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, 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 on all issues. Like all Committee meetings, the June 5, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no 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 requirements and duplication by industry and public sector agencies.

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

A proposed rule concerning this action was published in the **Federal Register** on November 21, 2003 (68 FR 65643). Copies of the proposed rule were also mailed to all onion handlers on November 24, 2003. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending December 22, 2003, was provided for interested persons to respond to the proposal. One comment in support of the proposal was received. The commenter expressed support for the decreased assessment rate due to the current economic condition surrounding the agricultural industry.

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.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee, the comment received, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–04 fiscal period began August 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period. This action decreases the assessment rate for assessable onions beginning with the 2003–04 fiscal period. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and one comment in support of the assessment decrease was received.

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

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2003, an assessment rate of $0.03 per 50-pound equivalent is established for South Texas onions.

Dated: January 12, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–1005 Filed 1–15–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV04–982–1 IFR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim Final and Final Free and Restricted Percentages for the 2003–2004 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes interim final and final free and restricted percentages for domestic inshell hazelnuts for the 2003–2004 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The interim final free and restricted percentages are 6.8393 percent and 93.1607 percent, respectively, and the final free and restricted percentages are 8.2303 percent and 91.7697 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts that may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was unanimously recommended by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

DATES: *Effective Date:* This interim final rule is effective January 20, 2004. This interim final rule applies to all 2003–2004 marketing year restricted hazelnuts until they are properly disposed of in accordance with marketing order requirements. *Comments:* Comments received by March 16, 2004 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in