



Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS-SC-24-0070; 25-J-0088]

Marketing Order for Onions Grown in South Texas (M.O. No. 959); Hearing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notification of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposals recommended by the South Texas Onion Committee (Committee) to amend Federal Marketing Order No. 959 (Order). The proposed amendments would lower the threshold for continuance referenda; expand research and promotion authority to include marketing promotion and paid advertising; add authority to accept voluntary contributions; and increase committee size by one seat to include a public member. The Agricultural Marketing Service (AMS) also proposes to make additional changes to the Order as may be necessary to conform to any amendatory changes that result from the hearing.

DATES: The hearing will be held February 3-4, 2026, from 9:00 a.m. to 5:00 p.m. Central Standard Time (CST) and, if deemed necessary by the presiding administrative law judge, will continue until any other such time or day as determined by the judge.

ADDRESSES: The hearing will be held at the Mission Event Center, 200 N. Shary Rd., Mission, TX 78572.

FOR FURTHER INFORMATION CONTACT: Christy Pankey, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: Christy.Pankey@usda.gov or Matthew.Pavone@usda.gov. Persons requiring a

sign language interpreter or special accommodations should contact Christian D. Nissen, Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, or *Christian.Nissen@usda.gov* a minimum of three days before the start of the hearing.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (the Act), and the applicable rules of practice and procedure governing amendments to marketing agreements and orders (7 CFR part 900). This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866 and 13563. Notice of this rulemaking action was provided to Tribal governments through the Department of Agriculture's (USDA) Office of Tribal Relations.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

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 USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. 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 no later than 20 days after the date of the entry of the ruling.

The South Texas Onion Committee (Committee) is established under provisions of the Federal Marketing Order No. 959 (Order) which regulates the handling of onions grown in South Texas. The Order stipulates that the Committee may recommend to the Secretary amendments to the Order, and subject to USDA's approval, shall establish rules and procedures as may be necessary to accomplish the purposes of the Act and the efficient administration of the Order.

On October 30, 2024, the Committee submitted to USDA four proposals that would: lower the threshold for continuance referenda from two-thirds to a simple majority; expand research and promotion authority to include marketing promotion and paid advertising; add authority to accept voluntary contributions; and increase committee size by one seat to include a public member. The Committee voted unanimously on the above proposed amendments at its August 19, 2024, and October 23, 2025, meeting.

After reviewing the proposals and other information submitted by the Committee, USDA has decided to schedule this matter for a public hearing. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals summarized below. These proposals submitted by the Committee have not received the approval of USDA.

Proposal 1 – Lower Threshold for Continuance Referendum

The Committee recommended lowering the continuance referendum threshold, which periodically measures whether continuation of the Order is favored by producers. If this threshold is not met during the referendum, § 959.84 (d) governs that USDA would consider termination. Under the current Order, USDA would consider termination if less than two-thirds of voting producers favor continuance. The Committee is

proposing to reduce the threshold to a simple majority, measured by both number and volume, for continuance. USDA would then consider termination if continuance is not favored by a majority of voting producers representing a majority of the volume instead of the current two-thirds threshold. The Committee recommended this proposal after determining that meeting the current two-thirds requirement has become increasingly difficult due to a decline in the number of producers and handlers in industry and believes that a simple majority should be sufficient to demonstrate support for continuing the Order. They further believe that lowering the threshold would better reflect current industry makeup and help strengthen the voice of small producers. This proposal would lower the voting threshold for continuance referenda from at least two-thirds to a simple majority. The amendment proposed is as follows:

- Revise § 959.84 (d) to lower the threshold for the continuance referendum from at least two-thirds to a simple majority, measured by both number and volume.

Proposal 2 – Add Marketing Promotion Authority, including Paid Advertising

Under the current Order, the Committee has authority to conduct production and market research, and development projects. The Committee is proposing to expand its authority to include both marketing promotion and paid advertising activities. The Committee believes this expansion would broaden brand recognition, increasing both sales and consumer demand. This proposal would expand research and development authority to include marketing promotion and paid advertising. The amendment proposed is as follows:

- Revise § 959.48 to add marketing promotion, including paid advertisement, and to provide that funds collected under the marketing order may be used to finance research and development and marketing promotion activities.

Proposal 3 – Add Contribution Authority

The Committee is proposing to add the authority to accept voluntary contributions to help fund research and promotional activities. Under the current Order, the Committee does not have this authority. The Committee believes that adding contribution authority would provide greater resources, in addition to assessments, for promotional activities, and promotional related research, which would positively impact producer returns. This proposal would add the authority to accept voluntary contributions free from any encumbrances or restrictions from the donor. The amendments proposed are as follows:

- Add § 959.44 to establish the authority to accept voluntary contributions.

Proposal 4 –Add a Public Member

The Committee recommended adding a public member and alternate seat, after determining that, due to the decline in the number of producers and handlers, Committee members are often the same from year to year, resulting in decreased participation and fewer new ideas. To address this, the Committee is proposing to increase the Committee size by one seat, to include a public member and their alternate. The Committee believes adding a public member will bring an outside perspective, generate new ideas, and provide input that can strengthen and improve the South Texas onion industry. This proposal would increase Committee size from 13 to 14 members and alternates. The amendment proposed is as follows:

- Add a public member seat to § 959.22. Corresponding changes would also amend §§ 959.26, 959.27, 959.31.

In addition to the proposed amendments submitted by the Committee, AMS proposes to make any such conforming changes to the Order as may be necessary to

conform to any amendment that may result from the proposals, or to correct minor inconsistencies and typographical errors.

USDA will oversee this formal rulemaking proceeding. The issuance of this notice of public hearing is the first of several steps in the amendatory rulemaking process, including the issuance of a Recommended Decision, public comment period, Secretary's Decision, and if the prior steps prove favorable, a producer referendum.

At the hearing, interested persons may provide testimony in support of or in opposition to the proposed amendments. Interested persons are invited to testify and provide information on the possible regulatory impacts of the proposed amendments on small businesses.

Interested persons will also be provided the opportunity to file briefs in support of or in opposition to the proposed amendments after the hearing, as well as file exceptions to any Recommended Decision that may be issued. Finally, any proposed amendments may be required to be approved in a producer referendum before they can be implemented.

USDA will hold the public hearing for the purposes of: (i) receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the Order; (ii) determining whether there is a need for the proposed amendments to the Order; (iii) determining if there are alternatives to the proposed amendments or duplicates of the proposed amendments; and (iv) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

In accordance with 7 CFR 900.4(d), the hearing will be held in person, with limited virtual testimony permitted at USDA's discretion. Interested persons must submit a written request to participate virtually to *Christian.Nissen@usda.gov* at least three days prior to the beginning of the hearing.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing. Four copies of prepared testimony for presentation at the hearing should also be made available. To the extent practicable, eight additional copies of evidentiary exhibits and testimony prepared as an exhibit should be made available to USDA representatives on the day of appearance at the hearing. Any requests for preparation of USDA data for this rulemaking hearing should be made at least 3 days prior to the beginning of the hearing.

From the time the notice of hearing is issued until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees who are or may reasonably be expected to be involved in the decisional process of the proceeding in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Specialty Crops Program, AMS. Procedural matters are not subject to the above prohibition and may be discussed at any time.

USDA may make other such changes to the Order as necessary to conform with amendments that may result from the hearing or correct minor inconsistencies and typographical errors.

Testimony is invited on the recommended proposals to 7 CFR part 959, or appropriate alternatives or modifications to such proposals, as follows:

List of Subjects in 7 CFR Part 959

Onions, Marketing agreements, Reporting and recordkeeping requirements.

PART 959 – ONIONS GROWN IN SOUTH TEXAS

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

Authority: 7 U.S.C. 601-674.

2. Revise § 959.22 to read as follows:

§ 959.22 Establishment and membership.

The South Texas Onion Committee, consisting of fourteen members, eight of whom shall be producers and five of whom shall be handlers, and one of whom shall be a public member, is hereby established. For each member of the Committee there shall be an alternate. Producer members, and their alternates shall not have a proprietary interest in or be employees of a handler organization. The public member and alternate shall not have a proprietary interest in a producer or handler organization.

3. In § 959.26, revise the introductory text to read as follows:

§ 959.26 Selection.

The Secretary shall select members and respective alternates from districts established pursuant to § 959.24 or § 959.25, with the exception of the public member and alternate member, who shall be residents of Texas but may reside outside the production area and shall be selected by the Secretary in his or her discretion. Selections shall be made as follows:

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4. In § 959.27, add paragraph (f) to read as follows:

§ 959.27 Nomination.

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(f) The producer and handler members of the committee shall nominate the public member and alternate. Eligible producers and handlers may suggest nominees for the public member and alternate at meetings held to nominate members and alternates. Nominations for the public member and alternate shall be made in accordance with the procedures set forth in paragraph (c).

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5. Revise § 959.31 to read as follows:

§ 959.31 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence or when designated to do so by the member for whom he is an alternate. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or his alternate or the committee (in that order) may designate another alternate from the same district and the same group (handler or grower) to serve in such member's place and stead. Only the public member's alternate is authorized to serve in the place and stead of the public member. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified. The committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

6. Add § 959.44 to read as follows:

§ 959.44 Contributions.

The Committee may accept voluntary contributions. Such contributions may only be accepted if they are free from any encumbrances or restrictions on their use and the Committee shall retain control of their use. The Committee may receive contributions from within and outside of the production area.

7. Revise § 959.48 to read as follows:

§ 959.48 Research and development.

The committee, with approval of the Secretary, may establish or provide for the establishment of production research, marketing research, development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of onions. The expenses of such projects shall be paid from funds collected pursuant to this part.

8. Revise § 959.84 (d) to read as follows:

§ 959.84 Termination.

* * * * *

(d) The Secretary shall conduct a referendum within six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether continuance is favored by producers. The Secretary would consider termination of this part if continuance is not favored by a majority of growers who, during a representative period determined by the Secretary, have been engaged in the production of onions in the production area.

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Erin Morris,

Administrator,

Agricultural Marketing Service.

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