



Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS-SC-25-0815]

Onions Grown in South Texas; Temporary Suspension of Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule temporarily suspends the continuance referendum requirement under the Federal marketing order for South Texas onions. The continuance referendum scheduled for 2026 overlaps with the formal rulemaking process to amend the marketing order that the Agricultural Marketing Service (AMS) commenced via a notice of hearing published on January 23, 2026. This suspension delays the enforcement of the continuance referendum requirement to give precedence to the formal rulemaking process, which may include a producer referendum. In addition, if the marketing order is amended, this temporary suspension provides industry time to operate under the amended marketing order before the next scheduled continuance referendum.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 7 CFR 959.84(d) is stayed through January 1, 2032. Comments received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], 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, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237. Comments can also be submitted to the Docket Clerk electronically by email: MarketingOrderComment@usda.gov or via the internet at: <https://www.regulations.gov>. Comments should reference the document number and the

date and page number of this issue of the *Federal Register*. Comments submitted in response to this rule will be included in the record and will be made available to the public and can be viewed on at: <https://www.regulations.gov>. Please be advised that public comments are posted to [regulations.gov](https://www.regulations.gov) without change.

FOR FURTHER INFORMATION CONTACT: Taylor Johnson, Marketing Specialist, or Matthew Pavone, Branch Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, or email: MarketingOrderComment@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (the Act), and Marketing Order No. 959 (7 CFR part 959) (the Order), which regulates the handling of onions grown in South Texas. The South Texas Onion Committee (Committee) locally administers the Order and is comprised of producers and handlers of onions operating within the production area.

This action is exempt from the Office of Management and Budget (OMB) review process required by Executive Order 12866. This rule amends existing Marketing Order No. 959, as amended (7 CFR part 959), which regulates the handling of onions grown in South Texas, and is necessary for the continued operation of Marketing Order No. 959. Additionally, this action is exempt from the requirements of Executive Order 14192, “Unleashing Prosperity Through Deregulation,” pursuant to section 5(c).

This rule has been reviewed under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” which requires Federal agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more

Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule is 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 U.S. Department of Agriculture (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 no later than 20 days after the date of the entry of the ruling.

This rule temporarily suspends the continuance referendum requirement under § 959.84(d). On October 30, 2024, the Committee recommended amending the marketing order through formal rulemaking and, in a separate request on November 18, 2025, recommended the suspension of the continuance referendum scheduled to occur in 2026. The Committee unanimously voted to postpone the continuance referendum as it believes conducting two referenda within a few months of each other could create unnecessary confusion amongst voting producers. In addition, the Committee desires postponement to allow industry time to evaluate the proposed amendments, if implemented, prior to the next continuance referendum.

Section 959.84(b) states that the Secretary shall terminate or suspend the operation of any or all provisions of the Order, whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act. Section 959.84(d) specifies the Secretary shall conduct a referendum every six years to ascertain whether continuance of the Order is favored by producers. AMS last conducted a continuance referendum in 2020. By this requirement, the timing of the next continuance referendum is scheduled to occur in 2026. AMS identifies this period as the same period when the formal rulemaking proceeding will occur, which includes a public hearing and may include a producer referendum. In view of the anticipated time necessary to complete the formal rulemaking action and the likelihood of an amendatory referendum being conducted within several months of the scheduled continuance referendum, AMS determined that the continuance referendum requirement should be temporarily suspended to minimize confusion among voters. Secondly, AMS determined that conducting a continuance referendum during the same period when the formal rulemaking is expected to occur would not allow the industry time to fully consider the impact of potentially new amendments to the Order. For this reason, the continuance referendum requirement would not tend to effectuate the declared policy of the Act for that period of time, and therefore, AMS has determined not to conduct the continuance referendum at the time required by the Order.

Alternatively, AMS considered the possibility to conduct a continuance referendum immediately after the conclusion of the formal rulemaking. However, this timing would still result in multiple referenda occurring within the same several month period, which may cause voter confusion, and producers would have limited time to evaluate any potential results of the amendatory process before voting on the continuance of the Order. To address these concerns, AMS determined that the temporary suspension of the continuance referendum requirement should extend until January 1, 2032, which is

on course with the original structure of the timeframe under the Order as discussed in § 959.84(d). This temporary suspension would provide industry and the Committee time to assess the benefits of any potential amendments resulting from the formal rulemaking prior to the next continuance referendum, it would prevent voter confusion, and it would maintain the structure of the continuance timetable in the Order.

This rule temporarily suspends the continuance referendum requirement under § 959.84(d). The next scheduled continuance referendum will be conducted in 2032.

Although this rule is immediately effective, a 30-day comment period is provided to allow interested persons to respond to this interim rule. AMS will consider all written comments received prior to the issuance of a final rule.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this rule on small entities. Accordingly, AMS prepared this regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses that are subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of typically small entities acting on their own behalf.

There are approximately 65 producers of onions operating within the regulated production area. In addition, there are approximately 25 onion handlers subject to regulation under the Order. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural producers as those having annual receipts equal to or less than \$3,750,000 (North American Industry Classification System (NAICS) code 111219, Other Vegetable (except Potato) and Melon Farming). Small agricultural service firms are defined as those having annual receipts of equal to or less

than \$34,000,000 million (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

Based on data from the National Agricultural Statistics Service (NASS) and the Committee, the average price producers received for South Texas onions during the 2024 season was approximately \$15.75 per 50-pound container or equivalent, with total shipments of around 3.46 million 50-pound containers or equivalents. Using the average price producers received and shipment information, the number of producers, and assuming a normal distribution, the majority of producers have estimated average annual receipts significantly less than \$3.75 million ($\15.75 multiplied by 3.46 million 50-pound containers or equivalents equals $\$54,495,000$, divided by 65 producers equals $\$838,385$ per producer).

In addition, based on data from USDA Market News and production records from the Committee, the average price for South Texas onions during the 2024 season was approximately \$17.11 per 50-pound container or equivalent with total shipments of around 3.46 million 50-pound containers or equivalents shipped. Using the average price and shipment data, handlers have average annual receipts below \$34 million and could be considered small businesses under SBA's definition ($\$17.11$ multiplied by 3.46 million 50-pound containers or equivalents equals $\$59,200,600$, divided by 25 equals $\$2.37$ million). Therefore, the majority of handlers and producers of South Texas onions may be classified as small entities.

On November 18, 2025, the Committee recommended that AMS postpone the scheduled continuance referendum to avoid the referendum period overlapping with formal rulemaking to amend the Order and any potential confusion it would otherwise cause producers. After considering the Committee's request, AMS determined that the scheduled continuance referendum should be suspended while AMS conducts formal rulemaking to amend the Order and, if effectuated, while the industry operates under such

amended Order.

Section 959.84(b) authorizes the Secretary to terminate or suspend the operation of any or all provisions of the Order, whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

This interim rule temporarily suspends the continuance referendum requirement under § 959.84(d) of the Federal marketing order regulating the handling of onions grown in South Texas. The next scheduled continuance referendum will be conducted in 2032. AMS will consider all comments received prior to publication of a final rule in the *Federal Register*.

The Committee's meetings are widely publicized throughout the production area. The onion industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. The meeting on November 18, 2025, at which the Committee decided to request that AMS postpone the continuance referendum, was open to the public and any interested parties were able to express views on this issue. In addition, interested persons are invited to submit comments on this interim rule.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this interim rule. Should any changes become necessary, they would be submitted to OMB for approval.

This interim 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 requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use

of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that § 959.84(d) does not tend to effectuate the declared policy of the Act for the period specified herein and should be stayed through January 1, 2032.

A 30-day comment period is provided to allow interested persons to respond to this rule. All written comments timely received will be considered before a final determination is made on this interim rule.

Good Cause Analysis

Pursuant to section 553(b)(B) of the Administrative Procedure Act, notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”

AMS finds that good cause exists for this action and considers it to be impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect. This rule should be implemented as soon as possible since the continuance referendum period is scheduled to occur during this same timeframe as the formal rulemaking process, which has already commenced. The Committee discussed this overlap at public meetings and unanimously recommended a suspension of the continuance referendum due to the potential confusion among voting producers. This rule provides a comment period and any comments received will be considered prior to finalization of this rule.

For the reasons stated above, AMS also finds that good cause exists for the interim rule to be effective upon publication in the *Federal Register*.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 959 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.

§ 959.84 [Amended]

2. Amend § 959.84 by staying paragraph (d) from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through January 1, 2032.

Erin Morris,
Administrator,
Agricultural Marketing Service.

[FR Doc. 2026-10378 Filed: 5/22/2026 8:45 am; Publication Date: 5/26/2026]