

December 8, 2021

Ms. Abigail Campos and Mr. Christian D. Nissen  
Southeast Marketing Field Office  
Market Development Division  
Specialty Crops Program  
Agricultural Marketing Service  
U.S. Department of Agriculture

*Submitted via Regulations.gov*

RE: AMS-SC-21-0003, “Onions Grown in South Texas and Imported Onions; Termination of Marketing Order 959 and Change in Import Requirements.”

Ms. Campos and Mr. Nissen:

We appreciate this opportunity to provide comments<sup>1</sup> to the Agricultural Marketing Service (AMS) regarding your proposed rule to terminate the federal marketing order regulating the handling of onions grown in South Texas (Marketing Order 959).<sup>2</sup>

In 2020, a referendum on continuing the marketing order was conducted as required by law. The result was unambiguous. South Texas onion producers did not provide the necessary support for the order. As explained by AMS:

In the referendum, held Sept. 21 through Oct. 13, 2020, 57% of south Texas onion producers, representing 53% of the volume produced by those voting, favored continuing the marketing order. For the marketing order to continue, two-thirds or more of producers voting, or producers representing the production of two-thirds or more of the volume produced, needed to vote in favor of continuance.<sup>3</sup>

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<sup>1</sup> The views we have expressed in this comment are our own and should not be construed as representing any official position of The Heritage Foundation.

<sup>2</sup> U.S. Department of Agriculture, “Onions Grown in South Texas and Imported Onions; Termination of Marketing Order 959 and Change in Import Requirements,” *Federal Register*, Proposed Rule, Vol. 86, No. 148 (August 5, 2021), pp. 42748-42751, <https://www.federalregister.gov/documents/2021/08/05/2021-16495/onions-grown-in-south-texas-and-imported-onions-termination-of-marketing-order-959-and-change-in> (accessed December 8, 2021) and U.S. Department of Agriculture, “Onions Grown in South Texas and Imported Onions; Termination of Marketing Order 959 and Change in Import Requirements,” *Federal Register*, Proposed Rule, Vol. 86, No. 213 (November 8, 2021), p. 61718, <https://www.federalregister.gov/documents/2021/11/08/2021-24301/onions-grown-in-south-texas-and-imported-onions-termination-of-marketing-order-959-and-change-in> (accessed December 8, 2021).

<sup>3</sup> “USDA Announces Suspension of South Texas Onion Marketing Order Provisions,” U.S. Department of Agriculture, March 9, 2021, <https://www.ams.usda.gov/content/usda-announces-suspension-south-texas-onion-marketing-order-provisions> (accessed December 8, 2021).

In March 2021, AMS explained very clearly what its next steps were going to be:

USDA will work with the South Texas Onion Committee to begin the process of terminating program operations. Assessment collection and all other provisions will cease immediately. Rulemaking and comment proceedings will take place in the coming months to remove the marketing order from the Code of Federal Regulations.<sup>4</sup>

AMS was correct then about the next steps, correct when it proposed to terminate the order in the proposed rule published on August 5, 2021,<sup>5</sup> and is still correct to take these actions. It is a bit concerning that AMS is delaying what it is supposed to be doing (such as by reopening the comment period).

There is a specific referendum process every six years for South Texas onion producers so that they can be the ones who decide whether this marketing order should continue. The producers subject to the marketing order have made their voices heard: the marketing order should be terminated.

The Secretary of Agriculture should not second-guess and ignore the voice of these farmers. If he does so, the entire referendum process becomes pointless and it would provide further support that marketing orders serve as a means for powerful special interests to collude with the federal government to achieve objectives that they otherwise could not achieve through voluntary means.

Further, as AMS is well-aware, a comment process is not a vote and collecting numerous comments from those dissatisfied with the decision by South Texas onion producers does not provide a justification for ignoring the actual referendum process. Producers allowed to vote in the referendum had a chance to be heard. Producers and others who were not eligible to vote should not have more say than those who are the actual producers subject to the marketing order.

Some commenters are suggesting that eligible onion producers should somehow get a second chance to vote or the vote should just be ignored, not because there was any flaw in the process, but because they claim that it was difficult for onion producers to vote during the pandemic. This argument is absurd on its face. Even if voting were more difficult, the difficulty cuts both ways since those who did not want the order to continue also faced the same circumstances.

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<sup>4</sup> “USDA Announces Suspension of South Texas Onion Marketing Order Provisions,” U.S. Department of Agriculture, March 9, 2021, <https://www.ams.usda.gov/content/usda-announces-suspension-south-texas-onion-marketing-order-provisions> (accessed December 8, 2021).

<sup>5</sup> U.S. Department of Agriculture, “Onions Grown in South Texas and Imported Onions; Termination of Marketing Order 959 and Change in Import Requirements,” *Federal Register*, Proposed Rule, Vol. 86, No. 148 (August 5, 2021), pp. 42748-42751, <https://www.federalregister.gov/documents/2021/08/05/2021-16495/onions-grown-in-south-texas-and-imported-onions-termination-of-marketing-order-959-and-change-in> (accessed December 8, 2021)

But that is just part of the absurdity of the argument. Should AMS ignore every referendum during the pandemic? Should the USDA not issue any regulations because people allegedly may not be able to submit comments during the pandemic? Should we ignore all elections that occur during the pandemic? In many ways, this argument is insulting to South Texas onion producers, suggesting that they are incapable of the simple task of voting in a referendum process that they know occurs every six years. Finally, we seriously doubt that those upset about the results would be complaining if the results went the way they wanted.

### **Conclusion**

AMS should do what it has planned all along: to terminate the marketing order based on the results from a properly conducted referendum. AMS should not ignore the voice of South Texas onion producers.

Sincerely,

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