

PROPOSED AMENDMENT TO CFR PART §959
Continuation/Termination Language
Justification of Proposal

Proposed Language:

Revise § 959.84 Termination to instead read:

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 less than fifty percent of the growers voting in the referendum and growers of less than fifty percent of the volume of onions represented in the referendum favor continuance.

1. What is the purpose of the proposal?

To reflect the wishes of the industry in future referenda upon which continuation of the Order are being considered, as opposed to the current requirement for a super-majority (2/3rds) to vote in favor of maintaining.

The $\frac{2}{3}$ is what was recommended and the Committee was unaware they could suggest a different threshold amount for referenda. We are now aware not only that other language can be used but that other programs also use a threshold of 50% for support of continuation, including the Walla Walla (WA) onion marketing order. As such, this proposal seeks to implement a new threshold.

The Committee has discussed the desire to adjust the threshold since the first continuation referendum in 2020. In 2023, upon the final outcome of the second referendum, the Committee began in earnest the discussion of making changes to the order. In May 2023 during a South Texas Onion Committee meeting, the Committee discussed why the 2/3rd was originally in place and the need to move to a simple majority. In the year that followed, language was considered which eventually led to this proposal.

During conversations at a May 2024 meeting, the Committee considered various options for reaching a "simple majority" such as whether the threshold should be 50% + 1 or whether it should be by volume only. Ultimately the motion was made to move forward with this proposal as simply "greater than 50%."

2. What problem is the proposal designated to address? Explain/Quantify.

Every 6 years, the STOC holds a continuation referendum. The current Termination clause language stipulates that 2/3rd of the industry is required to vote in favor of keeping the order. During the last 2 continuation referendums, the industry majority (50%) voted to keep the order but because the order did not reach 2/3rd support, ultimately a new referendum was called in each instance with increased voter turnout. During these increased turnouts, the voting parties reached the 2/3rd threshold and voted in favor of maintain the order. However, this call to increase voter participation has called into question the validity of the marketing order. Knowing that a majority of the industry has always supported the industry and that voter turnout in general across the country continue to remain low, the Committee suggests that adjusting the regulation to accommodate the simple majority of the industry's wishes would better serve all parties. With fewer growers and handlers in than industry than during the orders original creation in the 1960's, a few missed votes (i.e. lack of voter turn-out) can determine the outcome. This proposal aligns the order's requirements with the realities of

today's industry.

3. What are the current requirements or industry practices relative to the proposal?

The Continuation Referendum currently requires a 2/3rd vote in favor of keeping the order.

The requirement was established in 2007, using generic language pulled from another marketing order. However, the impact was not understood until recently when the last two continuation referendums experienced difficulty with the passage. Growers simply remain unfamiliar with the referendum process, and the importance of voting. The 50% threshold allows for an outcome preferred by industry and which more closely aligns with the expected participation during voting periods.

Since 2007, the industry has also changed dramatically. There are fewer growers, fewer handlers, less acreage- which means there are fewer voters overall. During the second vote of the most recent referendum, the Committee performed many activities such as direct-to-door mailers, email blasts, and held multiple outreach efforts including virtual and in-person meetings in both Districts. This was all done to notify producers and handlers of the upcoming referendum, to answer questions, and to provide assistance where potentially needed – but primarily to encourage the participation in the vote. This did get the participation about the 2/3rd level, but it required a tremendous amount of hours, resources, and cost to the Committee (and to USDA). With fewer voters, getting to the 2/3rd for participation let alone support can be harder which is yet another reason the Committee would like to see the 50% support level.

Accounting for a simple majority (>50%) rather than a supermajority (> 2/3rd) not only better reflects the current make-up of the Texas onion industry, but it also offers a benefit to the smaller growers. By requiring only a simple majority, it gives the smaller growers a bigger voice in the decision to continue or terminate the order moving forward.

4. What are the expected impacts on producers, handlers, and consumers?

The impact is expected to improve the outlook of the producers and handlers towards the STOC & USDA by positioning future referendum votes to pass or fail by view of the simple majority during the first vote – the USDA graciously allowed a redo of the referenda because they believed that the order was supported but did not have a good turnout

5. How would the proposal tend to improve returns to producers? Quantify.

With a lower threshold for referenda there is a higher chance that the marketing order will continue which is a benefit to producers. Without the Marketing order there could be detrimental consequences to the industry.

6. What are the expected effects on small businesses?

Maintaining a marketing order has a positive effect for small businesses. The order provides a promotional tool that benefits all of the industry – producers and handlers of all sizes. This is especially important for small businesses who often lack the skill-sets and resources (such as money) to develop these tools for themselves. Further, the order creates a brand and brand-recognition in the marketplace that distinguishes Texas producers from the other 10 states in the U.S. and the many other foreign producers who provide fresh onions in the American marketplace. Small producers and handlers would simply be unable to perform such a task without the marketing order.

Losing the order would mean small producers would have to “fend” for themselves in

establish both a market presence and in developing and deploying promotional tools to increase their own recognition. Without industry recognition and having to take on such a task for themselves, the small producers could see a loss of market share in a very short period of time.

This happened with Texas grapefruit. When the TVCC voted to stop marketing in Canada, within a 5 year period the number of grapefruit shipments dropped from several hundred to less than 20 truckloads. This is devastating as it means the supply of fruit becomes excessive in the domestic market, which ultimately drives down the final return (aka profit) of the small producer.

7. Would the proposal increase or decrease costs to producers, handlers, committee and/or USDA? Explain/Quantify.

The proposal would not impact costs to producers in terms of either an increase or a decrease.

8. How would the proposal be implemented?

If the amendment is successful, during the next continuation referendum a vote of 50% would be needed in favor of maintaining the order. With the next referendum due in 2026, time is of the essence in moving forward with this proposal.

If the proposal is not in place by 2026, then it would be applied to the 2032 continuation referendum.

9. How would compliance with the proposal be affected? Explain/Quantify.

If the amendment is successful, during the next continuation referendum a vote of 50% would be needed in favor of maintaining the order.

**Sample Language for adding “Contributions”
to existing Federal Marketing Orders**

The Secretary can terminate the provisions if they find that the majority of the growers favor the termination, but the majority of the growers must have produced more than 50% of the onions in the current marketing season within the productions for fresh shipment. The termination will become effective the first day of the following month after the Secretary’s announcement. The growers have a huge role in determining the continuation of the provisions. There is a measurable requirement for growers to qualify as a majority for termination purposes, but that can delay the decision to terminate and the actual termination date.