EXHIBIT
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Blumberg No. 5119

(2) What factors should the agency consider in selecting and prioritizing rules and reporting requirements for review?

(3) Are there regulations that are or have become unnecessary, ineffective, or ill advised and, if so, what are they? Are there rules that can simply be repealed without impairing the Department's regulatory programs and, if so, what are they?

(4) Are there rules or reporting requirements that have become outdated and, if so, how can they be modernized to accomplish their regulatory objectives better?

(5) Are there rules that are still necessary, but have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

(6) Does the Department currently collect information that it does not need or use effectively to achieve regulatory objectives?

(7) Are there regulations, reporting requirements, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve regulatory objectives in more efficient ways?

(8) Are there rules or reporting requirements that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or do away with existing regulatory or reporting requirements?

(9) How can the Department best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data the Department can use to evaluate the post-promulgation effects of regulations over time? We invite interested parties to provide data that may be in their possession that documents the costs, burdens, and benefits of existing requirements.

(10) Are there regulations that are working well that can be expanded or used as a model to fill gaps in other DOE regulatory programs?

The Department notes that this RFI is issued solely for information and program-planning purposes. Responses to this RFI do not bind DOE to any further actions related to the response. All submissions will be made publically available on. *http://www.regulations.gov.*

Issued in Washington, DC, on June 24, 2015

Steven P. Croley,

General Counsel.

[FR Doc. 2015–16383 Filed 7–1–15; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 986

[Docket No. AMS–FV–15–0023; FV15–986–1]

Pecans Grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas; Hearing on Proposed Marketing Agreement and Order No. 986

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed marketing agreement and order.

SUMMARY: Notice is hereby given of a public hearing to consider a proposed marketing agreement and order under the Agricultural Marketing Agreement Act of 1937 to cover pecans grown in the states of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas. The proposal was submitted on behalf of the pecan industry by the American Pecan Board, the proponent group which is comprised of pecan growers and handlers from across the proposed production area. The proposed order would provide authority to collect industry data and to conduct research and promotion activities. In addition, the order would provide authority for the industry to recommend grade, quality and size regulation, as well as pack and container regulation, subject to approval by the Department of Agriculture (USDA). The program would be financed by assessments on pecan handlers and would be locally administered, under USDA oversight, by a council of seventeen growers and shellers (handlers) nominated by the industry and appointed by USDA.

DATES: The hearing dates are:

1. July 20 through July 21, 2015, Las Cruces, New Mexico. If an additional hearing session is necessary at this location, the hearing will continue on July 22.

2. July 23 through July 24, 2015, Dallas, Texas. If an additional hearing session is necessary at this location, the hearing will continue on July 25.

3. July 27 through July 29, 2015, Tifton, Georgia. If an additional hearing session is necessary at this location, the hearing will continue on July 30, 2015.

All hearing sessions are scheduled to begin at 8:00 a.m. and will conclude at 5:00 p.m., or any other time as determined by the presiding administrative law judge with the exception of the hearing session potentially held on July 22 and 25, which will conclude at noon.

ADDRESSES: The hearing locations are: 1. New Mexico Farm and Ranch Heritage Museum, Rio Hondo Room and Auditorium, 4100 Dripping Springs Road, Las Cruces, New Mexico, 88011.

2. Hilton Double Tree, Azalea Room, 1981 North Central Expressway, Richardson, Texas 75080.

3. Hilton Garden Inn, Magnolia Room, 201 Boo Drive, Tifton, Georgia, 31793.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order and Agreement Division, Rulemaking Branch, Fruit and Vegetable Program, Agricultural Marketing Service (AMS), USDA, Post Office Box 1035, Moab, UT 84532, telephone: (202) 557–4783, fax: (435) 259–1502; or Michelle P. Sharrow, Marketing Order and Agreement Division, Rulemaking Branch, Fruit and Vegetable Program, 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 this proceeding by contacting Jeff Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." The proposed marketing order is authorized under section 8(c) of the Act. 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.

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 proposal on small businesses.

The marketing agreement and order 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 Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Background

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

A request for public hearing on the proposed program was submitted to USDA on May 22, 2015, by the American Pecan Board (Board), a proponent group established in 2013 to represent the interests of growers and handlers throughout the proposed fifteen-state production area. A subsequent, modified draft of the proposed regulatory text was submitted June 10, 2015.

The Board was established as a result of industry interest in establishing a Federal program to assist the industry in addressing a number of challenges, namely: A lack of organized representation of industry-wide interests in a single organization; a lack of accurate data to assist the industry in its analysis of production, demand and prices; a lack of coordinated domestic promotion or research; and a forecasted increase in production as a result of new plantings. The Board believes that these factors combined have resulted in the under-performance of the pecan industry vis a vis other nut industries.

According to the Board, pecans are grown for-profit in fifteen states. A 2012 Census of Agriculture by the U.S. Department of Agriculture, National Agricultural Statistics Service indicates a total of 543,486 pecan acres in the U.S. While accurate data for the pecan industry is limited, the Board believes that the majority of these represent commercial production within the proposed production area. Industry grower organizations estimate that there are approximately 2,500 commercial growers, where "commercial" is defined by a minimum number of acres or product harvested for the business to be commercially viable. Therefore, the estimate of commercial growers does not include backyard production or "hobby farmers."

The number of handlers is estimated to be 250. Shellers, a sub-category of handlers, handle the majority of product sold into the domestic market. There are an estimated 50 commercial shellers currently operating, with 36 meeting the Small Business Administration's definition of small business entity. According to USDA, U.S. pecan production accounts for 80 percent of worldwide production. Pecans rank third in tree-nut consumption in the United States.

Proposed Marketing Order

The proposed marketing order would authorize data collection, research and promotion activities, and grade, size, quality, pack and container regulation. According to the request, the proposed program would increase demand, stabilize grower prices, create sustainable handler margins, and provide a consistent supply of quality pecans for consumers.

If implemented, an administrative council of 17 grower and handler industry representatives, including designated representation for small businesses, would be established. The program would be financed with assessments collected from handlers handling pecans grown within the proposed production area.

Presently, there is no single organization that represents both pecan grower and handler interests industry-wide. There are two state pecan commissions (Georgia and Texas), ten state producer organizations, one national grower association, and one national shellers' association. Promotion and research activities are currently conducted as funding is available by the independent organizations mentioned above, with little coordination among projects. U.S. grade standards are currently in effect on a voluntary basis. These include, "United States Standards for Grades of Pecans in the Shell" (1976) and "United States Standards for Grades of Shelled Pecans" (1969).

The proposal for an order has been widely discussed within the fifteen-state pecan production area for roughly two years. Since May of 2013, the Board has undertaken extensive outreach efforts to build industry support for the proposed program. According to the Board, 38 presentations have been given at grower and sheller conferences and board meetings, state conventions, and industry field days. In addition, the Board has participated in local pecan meetings throughout the rural areas of the proposed production area to increase awareness, seek input and gather support for the program. Five regional information sessions were held in 2014 with pecan stakeholders including the Southeastern Pecan Growers Association, National Pecan Shellers Association, Western Pecan Growers Association, Georgia Pecan Growers Association, and Texas Pecan Growers Association.

None of the recommendations or proposals discussed herein have received approval by the Secretary of Agriculture.

Testimony is invited at the hearing on the proposed marketing agreement and order (hereinafter referred to as the order) and all of its provisions, as well as any appropriate modifications or alternatives. USDA will make such changes as may be necessary to ensure that all provisions of any potential marketing agreement and marketing order that may result from this hearing conform with each other.

The public hearing is held for the purpose of:

(a) Receiving evidence about the economic and marketing conditions that relate to the proposed order and to appropriate modifications thereof;

(b) Determining whether the handling of pecans produced in the production area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce and foreign commerce;

(c) Determining whether there is a need for a marketing agreement and order for pecans;

(d) Determining the economic impact of the proposed order on the industry in the proposed production area and on the public affected by such program; and

(e) Determining whether the proposed order or any appropriate modification thereof would tend to effectuate the declared policy of the Act.

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 10 days prior to the beginning of the hearing.

From the time the notice of hearing is issued and until the issuance of a Secretary's 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 in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Fruit and Vegetable Program, AMS.

Procedural Matters Are Not Subject to the Above Prohibition and May Be Discussed at Any Time

Provisions of the proposed marketing agreement and order follow. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and are proposed by the USDA.

List of Subjects in 7 CFR Part 986

Marketing agreements, Pecans, Reporting and recordkeeping requirements.

The marketing agreement and order proposed by the American Pecan Board for a Federal Marketing Order for Pecans Grown in Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas would add a new part 986 to read as follows:

PART 986—PECANS GROWN IN THE STATES OF ALABAMA, ARKANSAS, ARIZONA, CALIFORNIA, FLORIDA, GEORGIA, KANSAS, LOUISIANA, MISSOURI, MISSISSIPPI, NORTH CAROLINA, NEW MEXICO, OKLAHOMA, SOUTH CAROLINA, AND TEXAS

Subpart A—Order Regulating Handling of Pecans

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Subpart B—[Reserved]

Authority: 7 U.S.C. 601–674

Subpart A—Order Regulating Handling of Pecans

Definitions

§ 986.1 Accumulator.

Accumulator means a person who compiles inshell pecans from other persons for the purpose of resale or transfer.

§ 986.2 Act.

Act means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

§ 986.3 Affiliation.

Affiliation. This term normally appears as "affiliate of", or "affiliated with," and means a person such as a grower or sheller who is: A grower or handler that directly, or indirectly through one or more intermediaries, owns or controls, or is controlled by, or is under common control with the grower or handler specified; or a grower or handler that directly, or indirectly through one or more intermediaries, is connected in a proprietary capacity, or shares the ownership or control of the specified grower or handler with one or more other growers or handlers. As used in this part, the term "control" (including the terms "controlling," "controlled by," and "under the common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a handler or a grower, whether through voting securities, membership in a cooperative, by contract or otherwise.

§ 986.4 Blowouts.

Blowouts mean lightweight or underdeveloped inshell pecan nuts that are considered of lesser quality and market value.

§ 986.5 To certify.

To certify means the issuance of a certification of inspection of pecans by the inspection service.

§ 986.6 Confidential data or information.

Confidential data or information submitted to the Council consists of data or information constituting a trade secret or disclosure of the trade position, financial condition, or business operations of a particular entity or its customers.

§ 986.7 Container.

Container means a box, bag, crate, carton, package (including retail packaging), or any other type of receptacle used in the packaging or handling of pecans.

§ 986.8 Council.

Council means the American Pecan Council established pursuant to § 986.45, American Pecan Council.

§ 986.9 Crack or cracks.

Crack means to break, crack, or otherwise compromise the outer shell of a pecan so as to expose the kernel inside to air outside the shell. *Cracks* refer to an accumulated group or container of pecans that have been cracked in harvesting or handling.

§ 986.10 Custom harvester.

Custom harvester means a person who harvests inshell pecans for a fee.

§ 986.11 Department or USDA.

Department or *USDA* means the United States Department of Agriculture.

§ 986.12 Disappearance.

Disappearance means the difference between the sum of grower-cleaned production and handler-cleaned production (whether from improved orchards or native and seedling groves) and the sum of available supply of merchantable pecans and merchantable equivalent of shelled pecans.

§ 986.13 Farm Service Agency.

The Farm Service Agency or FSA means that agency of the U.S. Department of Agriculture.

§ 986.14 Fiscal year.

Fiscal year means the twelve months from October 1st to September 30th, both inclusive, or any other such period deemed appropriate by the Council and approved by the Secretary.

§ 986.15 Grade and size.

Grade and size means any of the officially established grades of pecans and any of the officially established sizes of pecans as set forth in the United States standards for inshell and shelled pecans or amendments thereto, or modifications thereof, or other variations of grade and size based thereon recommended by the Council and approved by the Secretary.

§ 986.16 Grower.

Grower is synonymous with producer and means any person engaged within the production area in a proprietary capacity in the production of pecans if such person: Owns an orchard and harvests its pecans for sale (even if a custom harvester is used); or is a lessee of a pecan orchard and has the right to sell the harvest (even if the lessee must remit a percentage of the crop or rent to a lessor); *Provided,* That the term grower shall only include those who produce a minimum of 50,000 pounds of inshell pecans during a representative period (average of four years) or who own a minimum of 30 pecan acres according to the FSA, including acres calculated by the FSA based on pecan tree density. In the absence of any FSA delineation of pecan acreage, the regular definition of an acre will apply. The Council may recommend changes to this definition subject to the approval of the Secretary.

§ 986.17 Grower-cleaned production.

Grower-cleaned production means production harvested and processed through a cleaning plant to determine volumes of improved pecans, native and seedling pecans, and substandard pecans to transfer to a handler for sale.

§ 986.18 Handler.

Handler means any person who handles inshell or shelled pecans in any manner described in § 986.19.

§ 986.19 To handle.

To handle means to receive, shell, crack, accumulate, warehouse, roast, pack, sell, consign, transport, export, or ship (except as a common or contract carrier of pecans owned by another person), or in any other way to put inshell or shelled pecans into any and all markets in the stream of commerce either within the area of production or from such area to any point outside thereof. The term "to handle" shall not include: Sales and deliveries within the area of production by growers to handlers; grower warehousing; custom handling (except for selling, consigning or exporting) or other similar activities paid for on a fee-for-service basis by a grower who retains the ownership of the pecans; or transfers between handlers.

§ 986.20 Handler inventory.

Handler inventory means all pecans, shelled or inshell, as of any date and wherever located within the production area, then held by a handler for their account.

§ 986.21 Handler-cleaned production.

Handler-cleaned production is production that is received, purchased or consigned from the grower by a handler prior to processing through a cleaning plant, and then subsequently processed through a cleaning plant so as to determine volumes of improved pecans, native and seedling pecans, and substandard pecans.

§ 986.22 Hican.

Hican means a tree resulting from a cross between a pecan and some other type of hickory (members of the genus Carya) or the nut from such a hybrid tree.

§ 986.23 Inshell pecans.

Inshell pecans are nuts whose kernel is maintained inside the shell.

§ 986.24 Inspection service.

Inspection service means the Federal-State Inspection Service or any other inspection service authorized by the Secretary.

§ 986.25 Inter-handler transfer.

Inter-handler transfer means the movement of inshell pecans from one handler to another inside the production area for the purposes of additional handling. Any assessments or requirements under this part with respect to inshell pecans so transferred may be assumed by the receiving handler.

§ 986.26 Merchantable pecans.

(a) *Inshell. Merchantable inshell* pecans mean all inshell pecans meeting the minimum grade regulations that may be effective pursuant to § 986.69, Authorities regulating handling.

(b) *Shelled. Merchantable shelled* pecans means all shelled pecans meeting the minimum grade regulations that may be effective pursuant to § 986.69, Authorities regulating handling.

§ 986.27 Pack.

Pack means to clean, grade, or otherwise prepare pecans for market as inshell or shelled pecans.

§ 986.28 Pecans.

(a) *Pecans* means and includes any and all varieties or subvarieties of Genus: *Carya,* Species: *illinoensis,* expressed also as *Carya illinoinensis (syn. C. illinoenses)* including all varieties thereof, excluding hicans, that are produced in the production area and are classified as:

(1) *Native or seedling* pecans harvested from non-grafted or naturally propagated tree varieties:

(2) *Improved pecans* harvested from grafted tree varieties bred or selected for superior traits of nut size, ease of shelling, production characteristics, and resistance to certain insects and diseases, including but not limited to: Desirable, Elliot, Forkert, Sumner, Creek, Excel, Gloria Grande, Kiowa, Moreland, Sioux, Mahan, Mandan, Moneymaker, Morrill, Cunard, Zinner, Byrd, McMillan, Stuart, Pawnee, Eastern and Western Schley, Wichita, Success, Cape Fear, Choctaw, Cheyenne, Lakota, Kanza, Caddo, and Oconee; and

(3) *Substandard pecans* that are blowouts, cracks, stick-tights, and other inferior quality pecans, whether native or improved, that, with further handling, can be cleaned and eventually sold into the stream of commerce.

(b) The Council, with the approval of the Secretary, may recognize new or delete obsolete varieties or sub-varieties for each category.

§ 986.29 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 986.30 Production area.

Production area means the following fifteen pecan-producing states within the United States: Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Mississippi, Missouri, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas.

§ 986.31 Proprietary capacity.

Proprietary capacity means the capacity or interest of a grower or handler that, either directly or through one or more intermediaries or affiliates, is a property owner together with all the appurtenant rights of an owner including the right to vote the interest in that capacity as an individual, a shareholder, member of a cooperative, partner, trustee or in any other capacity with respect to any other business unit.

§ 986.32 Regions.

(a) *Regions* within the production area shall consist of the following:

(1) *Eastern Region*, consisting of: Alabama, Florida, Georgia, North Carolina, South Carolina

(2) *Central Region*, consisting of: Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Texas

(3) *Western Region*, consisting of: Arizona, California, New Mexico

(b) With the approval of the Secretary, the boundaries of any ~~district~~ region may be changed pursuant to § 986.58, Reapportionment and redistricting.

§ 986.33 Representative period.

Representative period is the previous four fiscal years for which a grower's annual average production is calculated, or any other period recommended by the Council and approved by the Secretary.

§ 986.34 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may be, authorized to perform the duties of the Secretary of Agriculture of the United States.

§ 986.35 Sheller.

Sheller refers to any person who converts inshell pecans to shelled pecans and sells the output in any and all markets in the stream of commerce, both within and outside of the production area; *Provided*, That the term sheller shall only include those who shell more than 1 million pounds of inshell pecans in a fiscal year. The Council may recommend changes to this definition subject to the approval of the Secretary.

§ 986.36 Shelled pecans.

Shelled pecans are pecans whose shells have been removed leaving only edible kernels, kernel pieces or pecan meal. *Shelled pecans* are synonymous with *pecan meats*.

§ 986.37 Stick-tights.

Stick-tights means pecans whose outer shuck has adhered to the shell causing their value to decrease or be discounted.

§ 986.38 Trade supply.

Trade supply means the quantity of merchantable inshell or shelled pecans that growers will supply to handlers during a fiscal year for sale in the United States and abroad.

§ 986.39 Unassessed inventory.

Unassessed inventory means inshell pecans held by growers or handlers for which no assessment has been paid to the Council.

§ 986.40 Varieties.

Varieties mean and include all cultivars, classifications, or subdivisions of pecans.

§ 986.41 Warehousing.

Warehousing means to hold unassessed inventory.

§ 986.42 Weight.

Weight means pounds of inshell pecans, received by handler within each fiscal year; *Provided*, That for shelled pecans the actual weight shall be multiplied by two to obtain an inshell weight.

Administrative Body

§ 986.45 American Pecan Council.

The American Pecan Council is hereby established consisting of 17 members selected by the Secretary, each of whom shall have an alternate member nominated ~~and selected in the same way~~ and with the same qualifications as the member. The 17 members shall include nine (9) grower seats, six (6) sheller seats, and two (2) at-large seats allocated to one accumulator and one public member. The grower and sheller nominees and their alternates shall be growers and shellers at the time of their nomination and for the duration of their tenure. Grower and sheller members and their alternates shall be selected by the Secretary from nominees submitted by the Council. The two at-large seats shall be nominated by the Council and appointed by the Secretary.

(a) Each region shall be allocated the following member seats:

(1) *Eastern Region:* three (3) growers and two (2) shellers

(2) *Central Region:* three (3) growers and two (2) shellers

(3) *Western Region:* three (3) growers and two (2) shellers

(b) Within each region, the grower and sheller seats shall be defined as follows:

(1) *Grower seats:* Each region shall have a grower Seat 1 and Seat 2 allocated to growers whose acreage is equal to or exceeds 176 pecan acres. Each region shall also have a grower Seat 3 allocated to a grower whose acreage ~~does not exceed 175~~ is less than 176 pecan acres.

(2) *Sheller seats:* Each region shall have a sheller Seat 1 allocated to a sheller who handles more than 12.5 million pounds of inshell pecans in the fiscal year preceding nomination, and a sheller Seat 2 allocated to a sheller who handles less than or equal to 12.5 million pounds of inshell pecans in the fiscal year preceding nomination.

(c) The Council may recommend, subject to the approval of the Secretary, revisions to the above requirements for grower and sheller seats to accommodate changes within the industry.

§ 986.46 Council nominations and voting.

Nomination of Council members and alternate members shall follow the procedure set forth in this section, or as may be changed as recommended by the Council and approved by the Secretary. All nominees must meet the requirements set forth in §§ 986.45,

votes on

vote for the grower nominee candidates

American Pecan Council, and 986.48, Eligibility, or as otherwise identified by the Secretary, to serve on the Council.

(a) *Initial members.* Nominations for initial Council members and alternate members shall be conducted by the Secretary by either holding meetings of shellers and growers, by mail, or by email, and shall be submitted on approved nomination forms. Eligibility to cast nomination ballots, accounting of nomination ballot results, and identification of member and alternate nominees shall follow the procedures set forth in this section, or by any other criteria deemed necessary by the Secretary. The Secretary shall select and appoint the initial members and alternate members of the Council.

(b) *Successor members.* Subsequent nominations of Council members and alternate members shall be conducted as follows:

(1) *Call for nominations.* (i) Nominations for the grower member seats for each region shall be received from growers in that region on approved forms containing the information stipulated in this section.

(ii) If a grower is engaged in producing pecans in more than one region, such grower shall nominate in the region in which they grow the largest volume of their production.

(iii) Nominations for the sheller member seats for each region shall be received from shellers in that region on approved forms containing the information stipulated in this section.

(iv) If a sheller is engaged in handling in more than one region, such sheller shall nominate in the region in which they shelled the largest volume in the preceding fiscal year.

(2) *Voting for nominees.* (i) Only growers, through duly authorized officers or employees of growers, if applicable, may participate in the nomination of grower member nominees and their alternates. Each grower shall be entitled to cast only one nomination ballot for each of the three grower seats in their region.

(ii) If a grower is engaged in producing pecans in more than one region, such grower shall cast their nomination ballot in the region in which they grow the largest volume of their production. Notwithstanding this stipulation, such grower may vote their volume produced in any or all of the three regions.

(iii) Only shellers, through duly authorized officers or employees of shellers, if applicable, may participate in the nomination of the sheller member nominees and their alternates. Each sheller shall be entitled to cast only one nomination ballot for each of the two sheller seats in their region.

(iv) If a sheller is engaged in handling in more than one region, such sheller shall cast their nomination ballot in the region in which they shelled the largest volume in the preceding fiscal year. Notwithstanding this stipulation, such sheller may vote their volume handled in all three regions.

(v) If a person is both a grower and a sheller of pecans, such person may not participate in both grower and sheller nominations. Such person must elect to participate either as a grower or a sheller.

(3) *Nomination procedure for grower seats.* (i) The Council shall mail to all growers who are on record with the Council within the respective regions a grower nomination ballot indicating the nominees for each of the three grower member seats, along with voting instructions. Growers may cast ballots on the proper ballot form either at meetings of growers, by mail, or by email as designated by the Council. For ballots to be considered, they must be submitted on the proper forms with all required information, including signatures.

(ii) On the ballot, growers shall indicate their ~~nomination~~ for the grower seats and also indicate their average annual volume of inshell pecan production for the preceding four fiscal years. (pounds of inshell pecans)

(iii) *Seat 1* (growers with equal to or more than 176 acres of pecans). The nominee for this seat in each region shall be the grower receiving the highest volume of production votes from the respective region, and the grower receiving the second highest volume of production votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(iv) *Seat 2* (growers with equal to or more than 176 acres of pecans). The nominee for this seat in each region shall be the grower receiving the highest number of votes from their respective region, and the grower receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(v) *Seat 3* (grower with ~~475 or fewer~~ less than 176 acres of pecans). The nominee for this seat in each region shall be the grower receiving the highest number of votes from the respective region, and the grower receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(4) *Nomination procedure for sheller seats.* (i) The Council shall mail to all shellers who are on record with the Council within the respective regions the sheller ballot indicating the nominees for each of the two sheller member seats in their respective regions, along with voting instructions. Shellers may cast ballots on approved ballot forms either at meetings of shellers, by mail, or by email as designated by the Council. For ballots to be considered, they must be submitted on the approved forms with all required information, including signatures.

(ii) *Seat 1* (shellers handling more than 12.5 million lbs. of inshell pecans in the preceding fiscal year). The nominee for this seat in each region shall be assigned to the sheller receiving the highest number of votes from the respective region, and the sheller receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(iii) *Seat 2* (shellers handling equal to or less than 12.5 million lbs. of inshell pecans in the preceding fiscal year). The nominee for this seat in each region shall be assigned to the sheller receiving the highest number of votes from the respective region, and the sheller receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(5) *Reports to the Secretary.* Nominations in the foregoing manner received by the Council shall be reported to the Secretary on or before 15 of each July of any year in which nominations are held, together with a certified summary of the results of the nominations and other information deemed by the Council to be pertinent or requested by the Secretary. From those nominations, the Secretary shall select the fifteen grower and sheller members of the Council and an alternate for each member. If the Council fails to report nominations to the Secretary in the manner herein specified, the Secretary may select the members without nomination. If nominations for the public and accumulator at-large members are not submitted by September 15th of any year in which their nomination is due, the Secretary may select such members without nomination.

(6) *At-large members.* The grower and sheller members of the Council shall select one public member and one accumulator member and respective alternates for consideration, selection and appointment by the Secretary. The

public member and alternate public member may not have any financial interest, individually or corporately, or affiliation with persons vested in the pecan industry. The accumulator member and alternate accumulator member must meet the criteria set forth in § 986.1, Accumulator, and may reside or maintain a place of business in any region.

(7) *Nomination forms.* The Council may distribute nomination forms at meetings, by mail, by email, or by any other form of distribution recommended by the Council and approved by the Secretary.

(i) *Grower nomination forms.* Each nomination form submitted by a grower shall include the following information:

(A) The name of the nominated grower

(B) The name and signature of the nominating grower

(C) Two additional names and respective signatures of growers in support of the nomination

(D) Any other such information recommended by the Council and approved by the Secretary

(ii) *Sheller nomination forms.* Each nomination form submitted by a sheller shall include the following:

(A) The name of the nominated sheller

(B) The name and signature of the nominating sheller

(C) One additional name and signature of a sheller in support of the nomination

(D) Any other such information recommended by the Council and approved by the Secretary

(8) *Changes to the nomination and voting procedures.* The Council may recommend, subject to the approval of the Secretary, a change to these procedures should the Council determine that a revision is necessary.

§ 986.47 Alternate members.

(a) Each member of the Council shall have an alternate member to be nominated in the same manner as the member.

(b) An alternate for a member of the Council shall act in the place and stead of such member in their absence or in the event of their death, removal, resignation, or disqualification, until the next nomination and elections take place for the Council or the vacancy has been filled pursuant to § 986.48, Eligibility.

(c) In the event any member of the Council and their alternate are both unable to attend a meeting of the Council, any alternate for any other member representing the same group as the absent member may serve in the place of the absent member.

§ 986.48 Eligibility.

(a) Each grower member and alternate shall be, at the time of selection and during the term of office, a grower or an officer, or employee, of a grower in the region and in the classification for which nominated.

(b) Each sheller member and alternate shall be, at the time of selection and during the term of office, a sheller or an officer or employee of a sheller in the region and in the classification for which nominated.

(c) A grower can be a nominee for only one grower member seat. If a grower is nominated for two grower member seats, he or she shall select the seat in which he or she desires to run, and the grower ballot shall reflect that selection.

(d) Any member or alternate member who at the time of selection was employed by or affiliated with the person who is nominated shall, upon termination of that relationship, become disqualified to serve further as a member and that position shall be deemed vacant.

(e) No person nominated to serve as a public member or alternate public member shall have a financial interest in any pecan grower or handling operation.

§ 986.49 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the Council shall, prior to such selection, qualify by advising the Secretary that if selected, such person agrees to serve in the position for which that nomination has been made.

§ 986.50 Term of office.

(a) Selected members and alternate members of the Council shall serve for terms of four years: *Provided,* That at the end of the first four (4) year term and in the nomination and selection of the second Council only, four of grower member and alternate seats and three of the sheller member and alternate seats shall be seated for terms of two years so that approximately half of the memberships' and alternates' terms expire every two years thereafter. Member and alternate seats assigned two-year terms for the seating of the second Council only shall be as follows:

(1) Grower member Seat 2 in all regions shall be assigned a two-year term;

(2) Grower member Seat 3 in all regions shall, by drawing, identify one member seat to be assigned a two-year term; and,

(3) Sheller Seat 2 in all regions shall be assigned a two-year term.

(b) Council members and alternates may serve up to two consecutive, four-year terms of office. Subject to paragraph (c) of this section, in no event shall any member or alternate serve more than eight consecutive years on the Council as either a member or an alternate. However, if selected, an alternate having served up to two consecutive terms may immediately serve as a member for two consecutive terms without any interruption in service. The same is true for a member who, after serving for up to two consecutive terms, may serve as an alternate if nominated without any interruption in service. A person having served the maximum number of terms as set forth above may not serve again as a member or an alternate for at least twelve consecutive months. For purposes of determining when a member or alternate has served two consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office.

(c) Each member and alternate member shall continue to serve until a successor is selected and has qualified.

(d) A term of office shall begin as set forth in the by-laws or as directed by the Secretary each year for all members.

(e) The Council may recommend, subject to approval of the Secretary, revisions to the start day for the term of office, the number of years in a term, and the number of terms a member or an alternate can serve.

§ 986.51 Vacancy.

Any vacancy on the Council occurring by the failure of any person selected to the Council to qualify as a member or alternate member due to a change in status making the member ineligible to serve, or due to death, removal, or resignation, shall be filled, by a majority vote of the Council for the unexpired portion of the term. However, that person shall fulfill all the qualifications set forth in this part as required for the member whose office that person is to fill. The qualifications of any person to fill a vacancy on the Council shall be certified in writing to the Secretary. The Secretary shall notify the Council if the Secretary determines that any such person is not qualified.

§ 986.52 Council expenses.

The members and their alternates of the Council shall serve without compensation, but shall be reimbursed for the reasonable and necessary expenses incurred by them in the performance of their duties under this part.

§ 986.53 Powers.

The Council shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make bylaws, rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 986.54 Duties.

The duties of the Council shall be as follows:

(a) To act as intermediary between the Secretary and any handler or grower;

(b) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall at any time be subject to the examination of the Secretary;

(c) To furnish to the Secretary a complete report of all meetings and such other available information as he or she may request;

(d) To appoint such employees as it may deem necessary and to determine the salaries, define the duties, and fix the bonds of such employees;

(e) To cause the books of the Council to be audited by one or more competent public accountants at least once for each fiscal year and at such other times as the Council deems necessary or as the Secretary may request, and to file with the Secretary three copies of all audit reports made;

(f) To investigate the growing, shipping and marketing conditions with respect to pecans and to assemble data in connection therewith;

(g) To investigate compliance with the provisions of this part; and,

(h) To recommend by-laws, rules and regulations for the purpose of administering this part.

§ 986.55 Procedure.

(a) The members of the Council shall select a chairman from their membership, and shall select such other officers and adopt such rules for the conduct of Council business as they deem advisable.

(b) The Council may provide for meetings by telephone, or other means of communication, and any vote cast at such a meeting shall be confirmed promptly in writing. The Council shall give the Secretary the same notice of its meetings as is given to members of the Council.

(c) *Quorum.* A quorum of the Council shall be any twelve voting Council members. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the Council; *Provided,* That:

(1) Actions of the Council with respect to the following issues shall require a two-thirds (12 members) concurring vote of the Council members~~; and must be approved at an in-person meeting;~~

(i) Establishment of or changes to by-laws;

(ii) Appointment or administrative issues relating to the program's manager or chief executive officer;

(iii) Budget;

(iv) Assessments;

(v) Compliance and audits;

(vi) Redistricting of region and reapportionment or reallocation of Council membership;

(vii) Modifying definitions of grower and sheller.

(viii) Research or promotion activities under § 986.68;

(ix) Grade, quality and size regulation under §§ 986.69(a)(1) and (2);

(x) Pack and container regulation under § 986.69(a)(3); and,

(2) Actions of the Council with respect to the securing of commercial bank loans for the purpose of financing start-up costs of the Council and its activities or securing financial assistance in emergency situations shall require a unanimous vote of all members present at an in-person meeting; *Provided,* That in the event of an emergency that warrants immediate attention sooner than a face-to-face meeting is possible, a vote for financing may be taken. In such event, the Council's first preference is a videoconference and second preference is phone conference, both followed by written confirmation of the members attending the meeting.

§ 986.56 Right of the Secretary.

The members and alternates for members and any agent or employee appointed or employed by the Council shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 986.57 Funds and other property.

(a) All funds received pursuant to any of the provisions of this part shall be used solely for the purposes specified in this part, and the Secretary may require the Council and its members to account for all receipts and disbursements.

(b) Upon the death, resignation, removal, disqualification, or expiration of the term of office of any member or employee, all books, records, funds, and other property in their possession belonging to the Council shall be delivered to their successor in office or to the Council, and such assignments and other instruments shall be executed as may be necessary to vest in such successor or in the Council full title to all the books, records, funds, and other property in the possession or under the control of such member or employee pursuant to this subpart.

§ 986.58 Reapportionment and redistricting.

The Council may recommend, subject to approval of the Secretary, reestablishment of regions, reapportionment of members among regions, and may revise the groups eligible for representation on the Council. In recommending any such changes, the following shall be considered:

(a) Shifts in acreage within regions and within the production area during recent years;

(b) The importance of new production in its relation to existing regions;

(c) The equitable relationship between Council apportionment and regions;

(d) Changes in industry structure and/or the percentage of crop represented by various industry entities; and,

(e) Other relevant factors.

Expenses, Assessments and Marketing Policy

§ 986.60 Budget.

As soon as practicable before the beginning of each fiscal year, and as may be necessary thereafter, the Council shall prepare a budget of income and expenditures necessary for the administration of this part. The Council may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The Council shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 986.61 Assessments.

(a) Each handler who first handles inshell pecans shall pay assessments to the Council. Assessments collected each fiscal year shall defray expenses which the Secretary finds reasonable and likely to be incurred by the Council during that fiscal year. Each handler's share of assessments paid to the Council shall be equal to the ratio between the total quantity of inshell pecans handled by them as the first handler thereof during the applicable fiscal year, and the total quantity of inshell pecans handled by

all regulated handlers in the production area during the same fiscal year. The payment of assessments for the maintenance and functioning of the Council may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative. Handlers may avail themselves of an inter-handler transfer, as provided for in § 986.62, Inter-handler transfers.

(b) Based upon a recommendation of the Council or other available data, the Secretary shall fix three base rates of assessment for inshell pecans handled during each fiscal year. Such base rates shall include one rate of assessment for any or all varieties of pecans classified as native and seedling; one rate of assessment for any or all varieties of pecans classified as improved; and one rate of assessment for any pecans classified as substandard.

(c) Upon implementation of this part and subject to the approval of the Secretary, initial assessment rates per classification shall be set within the following prescribed ranges: Native and seedling classified pecans shall be assessed at one-cent to two-cents per pound; improved classified pecans shall be assessed at two-cents to three-cents per pound; and, substandard classified pecans shall be assessed at one-cent to two-cents per pound. These assessment ranges shall be in effect for the initial four years of the order.

(d) Subsequent assessment rates shall not exceed two percent of the aggregate of all prices in each classification across the production area based on Council data, or the average of USDA reported average price received by growers for each classification, in the preceding fiscal year as recommended by the Council and approved by the Secretary. After four years from the implementation of this part, the Council may recommend, subject to the approval of the Secretary, revisions to this calculation or assessment ranges.

(e) The Council, with the approval of the Secretary, may revise the assessment rates if it determines, based on information including crop size and value, that the action is necessary, and if the revision does not exceed the assessment limitation specified in this section and is made prior to the final billing of the assessment.

(f) In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year, before sufficient operating income is available from assessments, the Council may accept the payment of assessments in advance and may also borrow money for such purposes; *Provided*, That no loan may amount to more than 50% of projected assessment revenue projected for the year in which the loan is secured and the loan must be repaid within five years.

(g) If a handler does not pay assessments within the time prescribed by the Council, the assessment may be increased by a late payment charge and/or an interest rate charge at amounts prescribed by the Council with approval of the Secretary.

(h) On August 31st of each year, every handler warehousing inshell pecans shall be identified as the first handler of those pecans and shall be required to pay the assessed rate on the category of pecans in their possession on that date. The terms of this paragraph may be revised subject to the recommendation of the Council and approval by the Secretary.

(i) On August 31st of each year, all inventories warehoused by growers from the current fiscal year shall cease to be eligible for inter-handler transfer treatment. Instead, such inventory will require the first handler that handles such inventory to pay the assessment thereon in accordance with the prevailing assessment rates at the time of transfer from the grower to the said handler. The terms of this paragraph may be revised subject to the recommendation of the Council and approval by the Secretary. (h) and

§ 986.62 Inter-handler transfers.

Any handler inside the production area, except as provided for in § 986.61(i), Assessments, may transfer inshell pecans to another handler inside the production area for additional handling, and any assessments or other marketing order requirements with respect to pecans so transferred may be assumed by the receiving handler. The Council, with the approval of the Secretary, may establish methods and procedures, including necessary reports, to maintain accurate records for such transfers. All inter-handler transfers will be documented by forms or electronic transfer receipts approved by the Council, and all forms or electronic transfer receipts used for inter-handler transfers shall require that copies be sent to the selling party, the receiving party, and the Council. Such forms must state which handler has the assessment responsibilities.

§ 986.63 Contributions.

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

§ 986.64 Accounting.

(a) Assessments collected in excess of expenses incurred shall be accounted for in accordance with one of the following:

(1) Excess funds not retained in a reserve, as provided in paragraph (a)(2) of this section shall be refunded proportionately to the persons from whom they were collected; or

(2) The Council, with the approval of the Secretary, may carry over excess funds into subsequent fiscal periods as reserves: *Provided*, That funds already in reserves do not equal approximately three fiscal years' expenses. Such reserve funds may be used:

(i) To defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any fiscal period when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and,

(iv) To cover necessary expenses of liquidation in the event of termination of this part.

(b) Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(c) All funds received by the Council pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided for in this part. The Secretary may at any time require the Council and its members to account for all receipts and disbursements.

(d) Upon the removal or expiration of the term of office of any member of the Council, such member shall account for all receipts and disbursements and deliver all property and funds in their possession to the Council, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the Council full title to all of the property, funds, and claims vested in such member pursuant to this part.

(e) The Council may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for

holding records, funds, or any other Council property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and if the Secretary determines such action appropriate, he or she may direct that such person or persons shall act as trustee or trustees for the Council.

§ 986.65 Marketing policy.

By the end of each fiscal year, the Council shall make a report and recommendation to the Secretary on the Council's proposed marketing policy for the next fiscal year. Each year such report and recommendation shall be adopted by the affirmative vote of at least two-thirds (2/3) of the members of the Council and shall include the following and, where applicable, on an inshell basis:

(a) Estimate of the grower-cleaned production and handler-cleaned production in the area of production for the fiscal year;

(b) Estimate of disappearance;

(c) Estimate of the improved, native, and substandard pecans;

(d) Estimate of the handler inventory on August 31, of inshell and shelled pecans;

(e) Estimate of unassessed inventory;

(f) Estimate of the trade supply, taking into consideration trade inventory, carry-in, imports, and other factors;

(g) Preferable handler inventory of inshell and shelled pecans on August 31 of the following year;

(h) Projected prices in the new fiscal year;

(i) Competing nut supplies; and,

(j) Any other relevant factors.

Authorities Relating to Research, Promotion, Data Gathering, Packaging, Grading, Compliance and Reporting

§ 986.67 Recommendations for regulations.

Upon complying with § 986.65, Marketing Policy, the Council may propose regulations to the Secretary whenever it finds that such proposed regulations may assist in effectuating the declared policy of the Act.

§ 986.68 Authority for research and promotion activities.

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

§ 986.69 Authorities regulating handling.

(a) The Council may recommend, subject to the approval of the Secretary, regulations that:

(1) Establish handling requirements or minimum tolerances for particular grades, sizes, or qualities, or any combination thereof, of any or all varieties of pecans during any period;

(2) Establish different handling requirements or minimum tolerances for particular grades, sizes, or qualities, or any combination thereof for different varieties, for different containers, for different portions of the production area, or any combination of the foregoing, during any period;

(3) Fix the size, capacity, weight, dimensions, or pack of the container or containers, which may be used in the packaging, transportation, sale, preparation for market, shipment, or other handling of pecans; and

(4) Establish inspection and certification requirements for the purposes of paragraphs (a)(1) through (a)(3) of this section.

(b) Regulations issued hereunder may be amended, modified, suspended, or terminated whenever it is determined:

(1) That such action is warranted upon recommendation of the Council or other available information; or,

(2) That regulations issued hereunder no longer tend to effectuate the declared policy of the Act.

(c) The authority to regulate as put forward in this section shall not in any way constitute authority for the Council to recommend volume regulation, such as reserve pools, producer allotments, or handler withholding requirements which limit the flow of product to market for the purpose of reducing market supply.

(d) The Council may recommend, subject to the approval of the Secretary, rules and regulations to effectuate this subpart.

§ 986.70 Handling for special purposes.

Regulations in effect pursuant to § 986.69, Authorities regulating handling, may be modified, suspended, or terminated to facilitate handling of pecans for:

(a) Relief or charity;

(b) Experimental purposes; and,

(c) Other purposes which may be recommended by the Council and approved by the Secretary.

§ 986.71 Safeguards.

The Council, with the approval of the Secretary, may establish through rules such requirements as may be necessary to establish that shipments made pursuant to § 986.70, Handling for special purposes, were handled and used for the purpose stated.

§ 986.72 Notification of regulation.

The Secretary shall promptly notify the Council of regulations issued or of any modification, suspension, or termination thereof. The Council shall give reasonable notice thereof to industry participants.

Reports, Books and Other Records

§ 986.75 Reports of handler inventory.

Each handler shall submit to the Council in such form and on such dates as the Council may prescribe, reports showing their inventory of inshell and shelled pecans.

§ 986.76 Reports of merchantable pecans handled.

Each handler who handles merchantable pecans at any time during a fiscal year shall submit to the Council in such form and at such intervals as the Council may prescribe, reports showing the quantity so handled and such other information pertinent thereto as the Council may specify.

§ 986.77 Reports of pecans received by handlers.

Each handler shall file such reports of their pecan receipts from growers, handlers, or others in such form and at such times as may be required by the Council with the approval of the Secretary.

§ 986.78 Other handler reports.

Upon request of the Council made with the approval of the Secretary each handler shall furnish such other reports and information as are needed to enable the Council to perform its duties and exercise its powers under this part.

§ 986.79 Verification of reports.

For the purpose of verifying and checking reports filed by handlers on their operations, the Secretary and the Council, through their duly authorized representatives, shall have access to any premises where pecans and pecan records are held. Such access shall be available at any time during reasonable business hours. Authorized representatives of the Council or the Secretary shall be permitted to inspect any pecans held and any and all records of the handler with respect to matters within the purview of this part. Each handler shall maintain complete records on the receiving, holding, and disposition of all pecans. Each handler shall furnish all labor necessary to facilitate such inspections at no expense

to the Council or the Secretary. Each handler shall store all pecans held by him in such manner as to facilitate inspection and shall maintain adequate storage records which will permit accurate identification with respect to inspection certificates of respective lots and of all such pecans held or disposed of theretofore. The Council, with the approval of the Secretary, may establish any methods and procedures needed to verify reports.

§ 986.80 Certification of reports.

All reports submitted to the Council as required in this part shall be certified to the Secretary and the Council as to the completeness and correctness of the information contained therein.

§ 986.81 Confidential information.

All reports and records submitted by handlers to the Council, which include data or information constituting a trade secret or disclosing the trade position, or financial condition or business operations of the handler shall be kept in the custody of one or more employees of the Council and shall be disclosed to no person except the Secretary.

§ 986.82 Books and other records.

Each handler shall maintain such records of pecans received, held and disposed of by them as may be prescribed by the Council for the purpose of performing its duties under this part. Such books and records shall be retained and be available for examination by authorized representatives of the Council and the Secretary for the current fiscal year and the preceding three (3) fiscal years.

Additional Provisions

§ 986.86 Exemptions.

(a) Any handler may handle inshell pecans within the production area free of the requirements of this part if such pecans are handled in quantities not exceeding 1,000 inshell pounds during any fiscal year.

(b) Any handler may handle shelled pecans within the production area free of the requirements of this part if such pecans are handled in quantities not exceeding 500 shelled pounds during any fiscal year.

(c) Mail order sales are not exempt sales under this part.

(d) The Council, with the approval of the Secretary, may establish such rules, regulations, and safeguards, and require such reports, certifications, and other conditions, as are necessary to ensure compliance with this part.

§ 986.87 Compliance.

Except as provided in this subpart, no handler shall handle pecans, the handling of which has been prohibited by the Secretary in accordance with provisions of this part, or the rules and regulations thereunder.

§ 986.88 Duration of immunities.

The benefits, privileges, and immunities conferred by virtue of this part shall cease upon termination hereof, except with respect to acts done under and during the existence of this part.

§ 986.89 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remaining provisions and the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 986.90 Derogation.

Nothing contained in this part is or shall be construed to be in derogation of, or in modification of, the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 986.91 Liability.

No member or alternate of the Council nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any party under this part or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent or employee, except for acts of dishonesty, willful misconduct, or gross negligence. The Council may purchase liability insurance for its members and officers.

§ 986.92 Agents.

The Secretary may name, by designation in writing, any person, including any officer or employee of the USDA or the United States to act as their agent or representative in connection with any of the provisions of this part.

§ 986.93 Effective time.

The provisions of this part and of any amendment thereto shall become effective at such time as the Secretary may declare, and shall continue in force until terminated in one of the ways specified in § 986.94.

§ 986.94 Termination.

(a) The Secretary may at any time terminate this part.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever he or she finds that such operation obstructs or does not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part applicable to pecans for market or pecans for handling at the end of any fiscal year whenever the Secretary finds, by referendum or otherwise, that such termination is favored by a majority of growers; *Provided,* That such majority of growers has produced more than 50 percent of the volume of pecans in the production area during such fiscal year. Such termination shall be effective only if announced on or before the last day of the then current fiscal year.

(d) The Secretary shall conduct a referendum within every five-year period beginning from the implementation of this part, to ascertain whether continuance of the provisions of this part applicable to pecans are favored by two-thirds by number or volume of growers voting in the referendum. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this part is not favored by growers who, during ~~a representative~~ period of time determined by the Secretary, have been engaged in the production of pecans in the production area: *Provided,* That termination of this part shall be effective only if announced on or before the last day of the then current fiscal year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 986.95 Proceedings after termination.

(a) Upon the termination of this part, the Council members serving shall continue as joint trustees for the purpose of liquidating all funds and property then in the possession or under the control of the Council, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The joint trustees shall continue in such capacity until discharged by the Secretary; from time to time accounting for all receipts and disbursements; delivering all funds and property on hand, together with all books and records of the Council and of the joint trustees to such person as the Secretary shall direct; and, upon the request of the Secretary, executing such assignments or other instruments necessary and

appropriate to vest in such person full title and right to all of the funds, property, or claims vested in the Council or in said joint trustees.

(c) Any funds collected pursuant to this part and held by such joint trustees or such person over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the joint trustees or such other person in the performance of their duties under this subpart, as soon as practicable after the termination hereof, shall be returned to the handlers pro rata in proportion to their contributions thereto.

(d) Any person to whom funds, property, or claims have been transferred or delivered by the Council, upon direction of the Secretary, as provided in this part, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are imposed upon said joint trustees.

§ 986.96 Amendments.

Amendments to this part may be proposed from time to time by the Council or by the Secretary.

***§ 986.97 Counterparts.**

Handlers may sign an agreement with the Secretary indicating their support for this marketing order. This agreement may be executed in multiple counterparts by each handler. If more than fifty percent of the handlers, weighted by the volume of pecans handled during a representative period, enter into such an agreement, then a marketing agreement shall exist for the pecans marketing order. This marketing agreement shall not alter the terms of this part. Upon the termination of this part, the marketing agreement has no further force or effect.

***§ 986.98 Additional parties.**

After this part becomes effective, any handler may become a party to the marketing agreement if a counterpart is executed by the handler and delivered to the Secretary.

***§ 986.99 Order with marketing agreement.**

Each signatory handler hereby requests the Secretary to issue, pursuant to the Act, an order for regulating the handling of pecans in the same manner as is provided for in this agreement.

Subpart B—[Reserved]

Dated: June 26, 2015.

Rex Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–16259 Filed 7–1–15; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2015–BT–STD–0008]

RIN 1904–AD52

Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Dedicated-Purpose Pool Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Reopening of public comment period.

SUMMARY: On May 8, 2015, the U.S. Department of Energy (DOE) published in the **Federal Register** (80 FR 26475) a Request for Information (RFI) that requests information regarding potential energy efficiency standards for pool pumps established under the Energy Policy and Conservation Act. DOE published the RFI to solicit information to help DOE determine the feasibility of developing energy conservation standards and an appropriate test procedure for this equipment. The RFI outlines the potential scope that could be involved in regulating dedicated-purpose pool pumps, possible industry-based testing methods that could be used to evaluate the efficiency of this equipment, and the types of information that would be needed in analyzing the potential for setting standards for this equipment. It also solicits the public for information to help inform DOE's efforts in evaluating the prospect of regulating this equipment. The comment period for the RFI pertaining to the subject dedicated-purpose pool pumps was scheduled to end June 22, 2015. After receiving a request for additional time to comment, DOE has decided to reopen the comment period for the RFI pertaining to the potential energy efficiency standards for pool pumps until August 17, 2015.

DATES: DOE will accept comments, data, and information regarding the notice of proposed rulemaking no later than August 17, 2015.

ADDRESSES: *Instructions:* All comments submitted must identify the RFI for Energy Conservation Standards for Dedicated-Purpose Pool Pumps, and provide docket number EERE–2015–BT–STD–0008 and/or regulatory information number (RIN) number 1904–AD52. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: PoolPumps2015STD0008@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in Word Perfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form on encryption.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publically available, such as those containing information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2015-BT-STD-0008.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a comment or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *pumps@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121.