



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 986

[Doc. No. AMS-SC19-0029, SC19-986-2 FR]

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; Changes to Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the reporting requirements prescribed under the Federal marketing order regulating the handling of pecans. This action reduces the number of monthly reporting requirements, revises the requirements for inter-handler transfers, and makes other conforming changes to the reporting requirements.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Agreement and Order No. 986, (7 CFR part 986), regulating the handling of 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. Part 986 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The American Pecan Council (Council) locally administers the Order and is comprised of growers and handlers of pecans operating within the production area, and one accumulator and one public member.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this final rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a

hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the reporting requirements under the Order by reducing the number of monthly reports from six to three and revising the inter-handler report from a monthly to an annual report. This action also makes other conforming and clarifying changes to the reporting requirements. These changes will help reduce the regulatory burden on handlers by reducing reporting requirements. This action was unanimously recommended by the Council at its December 18, 2018, meeting.

Sections 986.75, 986.76, and 986.77 of the Order provide authority to the Council to require handlers to submit reports of inventory, merchantable pecans handled, and pecans received by handlers, respectively, on such dates as the Council may prescribe. Section 986.78 further provides, with the approval of the Secretary, authority for

the Council to collect other reports and information from handlers needed to perform its duties.

Section 986.162 outlines the reporting requirements for inter-handler transfers, and § 986.175 establishes the requirements for the annual year-end inventory report. Section 986.177 prescribes the monthly reporting requirements for pecans received by handlers and for pecans purchased outside the United States. Section 986.178 includes requirements for a monthly report of shipments and inventory, a monthly report of exports, and a monthly report of pecans exported to Mexico for shelling to be returned to the United States.

During the promulgation of the Order, the data collection component was considered one of the most important aspects of the Order. Consequently, when discussing establishing reporting requirements, the Council wanted to ensure the data needed was being collected so valuable reports could be provided to the industry. The Council recommended the initial reporting requirements in 2017, which required handlers to submit six different reports each month and an annual report including pecans received, shipped, held in inventory, transferred, exported for sale or shelling, and purchased from outside the United

States. To facilitate this information collection, the Council held handler information sessions throughout 2018 to explain the reporting process and gather feedback on which, if any, reports were difficult to complete.

At its December 18, 2018, meeting, the Council revisited the reporting requirements, reviewing feedback from the handler sessions. During the handler sessions, some industry members stated it was expensive and time consuming to submit accurate reports each month. Council staff also indicated that handlers were submitting incomplete and inaccurate reports, making it difficult to summarize the data and distribute accurate, timely statistical reports. It was also reported that Council staff were fielding calls daily regarding reporting requirements and the burden placed on handlers. The monthly inter-handler transfer report was also cited specifically as needing to be changed.

To address these concerns, the Council discussed ways to reduce the number of reporting requirements and to address the concerns surrounding the inter-handler transfer report. To accomplish this, the Council recommended combining four of the monthly reporting requirements into two, and converting the inter-handler transfer report from

a monthly report into an annual report to reduce and simplify the reporting process. These changes would reduce the number of monthly reports from six to three.

The Council recommended combining the monthly report of pecans received and the report of shipments and inventory into one summary report. The report of pecans received currently includes handler information, the month covered by the report, the total weight and type of inshell pecans received, and the weight by variety of improved pecans received. The report also includes information regarding total assessments owed and total pounds reported to date. The report of shipments and inventory includes handler information, the month covered by the report, shipments of shelled and inshell pecans, current inventory, and pecans in inventory already committed for shipment.

In addition to combining the reports, the Council also recommended eliminating reporting pecans received by variety. Many handlers submit information on mixed loads, and found it burdensome, and in some cases impossible, to identify the variety of pecans received. Further, Council staff estimated over 76 percent of all pecans received cannot be identified by variety. Some varieties are also limited in use, so disclosing their tonnage would not be

possible without potentially revealing proprietary information.

Handlers also expressed difficulty in understanding which reports applied to them and whether they needed to submit additional reports throughout the fiscal year. Consequently, the Council revised the summary report to include guidance that assists handlers in determining whether any other reports are necessary.

The Council agreed the information on pecans received could easily be combined with the report of shipments and inventory to create one monthly summary report. The Council believes this consolidated report will be easier for handlers to complete and still provide the necessary information.

Two other reports the Council agreed could be combined are the report of pecans purchased outside the United States and the report of pecans shipped to Mexico for shelling and then returned to the United States. The monthly report of pecans purchased outside the United States includes the name of the handler importing pecans, the month covered by the report, the date imported, country of origin, volume, and variety of pecans imported. The report of inshell pecans exported to Mexico for shelling

includes handler information, the month covered by the report, dates of shipments, the total weight of inshell pecans shipped for shelling, and the weight of shelled pecans returned to the United States.

Initially, the Council recommended separate reports to ensure the import data collected was accurate. The industry was concerned import data available at the time was not accounting for domestic product sent to Mexico for processing then returned to the United States. Hence, it was difficult to estimate current supply. However, feedback from the industry indicated handlers could provide the necessary data to account for both foreign purchases and domestic product being shelled then returned from Mexico in a consolidated report rather than submitting two separate reports. Thus, the Council recommended combining these two reports.

The current inter-handler transfer report is submitted monthly. The report includes information on the month of transfer, type of pecans transferred, the volume transferred, the amount of assessments owed on the pecans transferred, handler information, and signatures of the two handlers involved. It also indicates if the transferring

handler or receiving handler would be responsible for reporting and paying the assessments.

When established, the inter-handler transfer form was intended to relieve small handlers of the burden of reporting and submitting assessments by allowing them to transfer those requirements to a second handler purchasing the pecans. In practice, handlers have struggled to track the volume of all the shipments within a month, and often the forms submitted were incomplete or did not include both handler signatures.

Inter-handler transfers usually occur between the same two handlers throughout the year. Consequently, the Council recommended to simplify the process of meeting the inter-handler transfer requirements by establishing one report that would cover the transfers between the same two handlers for the whole fiscal year. Agreements between new handlers require submission of a new form with the Council.

The changes will require handlers to submit a report following the first transfer of the fiscal year. By filing the Inter-Handler Transfer Form with the Council, the receiving and transferring handlers establish an agreement that remains in effect for the entire fiscal year. The receiving and transferring handlers need to complete their

portions of the form and file it annually with the Council. It also removes the requirement for the report to include the associated volume transferred. Instead, the volume associated with the inter-handler transfer will be reported by the receiving handler. Handlers will still maintain the option of designating who is responsible for paying the assessments on the pecans transferred, as currently authorized in §986.162(a)(5). The Council expects the change to provide some reporting relief to small handlers and create a more efficient method of tracking transferred pecans.

Along with these changes, the Council recommended conforming and clarifying adjustments to the remaining two reporting forms in §§ 986.175 and 986.178. These changes include renumbering the forms to remain in sequential order, removing past dates that no longer apply, and updating terms to be consistent with the Order. The Council believes these revised reporting requirements are necessary to maintain compliance with the assessment requirements of the Order and provide accurate reports to the industry on the production and total supply of pecans.

Final Regulatory Flexibility Analysis

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

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

There are approximately 2,500 growers of pecans in the production area and approximately 250 handlers subject to the Order. Small agricultural growers are defined by the Small Business Administration as those having annual receipts less than \$1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to information from the National Agricultural Statistics Service (NASS), the average grower price for pecans during the 2016-2017 season was \$2.59 per

pound and 269 million pounds were utilized. The value for pecans that year totaled \$697 million (\$2.59 per pound multiplied by 269 million pounds). Taking the total value of production of pecans and dividing it by the total number of pecan growers provides an average return per grower of \$278,684. Using the average price and utilization information, and assuming a normal distribution among growers, the majority of growers receive less than \$1,000,000 annually.

Evidence presented at the formal rulemaking hearing, held in 2015, indicated an average handler margin of \$0.58 per pound. Adding this margin to the average grower price of \$2.59 per pound of inshell pecans results in an estimated handler price of \$3.17 per pound. With a total 2017 production of 269 million pounds, the total value of production in 2017 was \$853 million (\$3.17 per pound multiplied by 269 million pounds). Taking the total value of production of pecans and dividing it by the total number of pecan handlers provides an average return per handler of \$3.4 million. Using this estimated price, the utilization volume, number of handlers, and assuming a normal distribution among handlers, the majority of handlers have annual receipts of less than \$30,000,000. Thus, the

majority of growers and handlers regulated by the Order may be classified as small entities.

This final rule revises the reporting requirements in the Order by reducing the number of monthly reports from six to three and revising the inter-handler report from a monthly to an annual report. This rule also makes other conforming changes to the reporting requirements. This final rule revises §§ 986.162, 986.175, 986.177, and 986.178. The authority for these actions is provided in §§ 986.75, 986.76, 986.77, and 986.78 of the Order.

It is not anticipated that this action will impose additional costs on handlers or growers, regardless of size. Handlers should see a savings in time and labor cost due to the reduced number of forms submitted each month. The change to an annual inter-handler transfer report in place of a monthly report will provide additional time savings to both handlers involved in the transaction. Council members, including those representing small businesses, recommended these changes in order to ease the reporting and regulatory burden on industry handlers. The benefits of this rule are expected to be equally available to all pecan growers and handlers, regardless of their size.

The Council discussed other alternatives to this action, including eliminating the inter-handler transfer option. However, removing the inter-handler transfer option from the Order could involve a lengthy process. Also, the inter-handler transfer was supported during promulgation of the marketing order as a way to ease reporting burdens on small businesses.

Another alternative considered was leaving the current reporting requirements unchanged. When the current requirements were established, the Council was eager to collect as much data as possible. Despite considerable industry outreach, many handlers had difficulty meeting the reporting requirements. The Council believed it must respond to the issues raised by handlers and address the extensive resources being used by its staff to help handlers comply with the reporting requirements in the Order. Therefore, the alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0291 Federal Marketing Order for Pecans. This final rule will require changes to the Council's existing forms by combining forms and shifting

one form from a monthly report to an annual report. Modifying the forms as indicated will decrease the burden on pecan handlers required to complete the forms and enhance Board efficiencies related to information collection. The revised forms have been submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Further, the Council's meetings were widely publicized throughout the pecan industry and all interested persons were invited to attend the meetings and participate in Council deliberations on all issues. Additionally, the Council's meeting held on December 18, 2018, was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the Federal Register on November 20, 2019, (84 FR 64028). Copies of the rule were sent via email to Council members and known pecan handlers. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending December 20, 2019, was provided to allow interested persons to respond to the proposal.

During the comment period, five comments were received in response to the proposal. Of the comments received, two fully supported the regulation as proposed, one was in support but requested changes to the proposal, one was opposed, and one questioned the need to make the proposed changes.

The three commenters supporting the regulation stated that the recommended changes would simplify the reporting process for handlers. One comment mentioned the changes would support industry compliance and the long-term management of pecans. Another mentioned the consolidation of the reports would increase accurate reporting and efficiency.

One comment received expressed opposition to all the changes in the proposed action. The comment recommended

that the Council maintain their current reporting requirements because consolidating the forms would cause a compromise of important data. In 2017, the Council initially recommended the reporting requirements to collect valuable industry data. Once the forms were implemented, both staff and industry members realized handlers were having trouble keeping up with multiple reports each month. As previously stated, the Council reviewed the feedback from handlers and staff and determined the necessary information could be collected in fewer reports.

The only data points being eliminated by this action are volumes by variety, which handlers indicated were nearly impossible to accurately report due to the prevalence of mixed loads; and inter-handler transfer volumes, which the industry expressed were not valuable in decision-making. As such, this action will allow the Council to continue collecting relevant information by converting four of the monthly reporting requirements into two, and converting the inter-handler transfer report from a monthly report into an annual report. This action will simplify the reporting process by reducing the number of monthly reports from six to three, which will benefit handlers.

Two of the comments submitted, one with partial support and one in opposition, raised concerns regarding the proposed changes to the inter-handler transfer report. One commenter stated the proposed action would lead to inaccurate information and records. The other added that reducing the frequency of the inter-handler report was insufficient to accurately track and collect necessary data for industry members. Both comments recommended the Council consider quarterly or bi-annual reporting as an alternative to the proposal.

The Council considered all of these alternatives when reviewing the reporting requirements. The inter-handler transfer form was initially intended to relieve the reporting burden on small handlers. Industry members suggested, and the Council agreed, the annual report will still achieve this goal. Industry feedback indicated that transfers normally occur between the same two handlers throughout the year. This action requires handlers to submit a report following the first transfer of the fiscal year and will remain in effect for the entire fiscal year. Agreements between new handlers will require submission of a new form with the Council. Reporting transferred volume was intended to aid in the collection of assessments, not

for its value in reporting to the industry. The new report eliminates the need to track multiple transfers between the same parties. As such, this action will provide reporting relief to small handlers and create administrative efficiencies in collecting assessments.

One last commenter took no position on the proposed changes, but rather questioned if changing the reporting requirements would result in a significant enough change to justify the process. The benefits of this action will help reduce the regulatory burden on all handlers by reducing the number of reports submitted and eliminating details that were burdensome to track and not highly valuable to the industry. This action reduces the number of monthly reports from six to three and revises the inter-handler report from a monthly to an annual report. This action will also make other conforming and clarifying changes to the reporting requirements so the requirements and the corresponding information provided meets the needs of the industry.

Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and

orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Council and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 986

Marketing agreements, Nuts, Pecans, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 986 is amended 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

1. The authority citation for 7 CFR part 986 continues to read as follows:

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

2. Revise § 986.162 to read as follows:

§986.162 Inter-handler transfers.

(a) Inter-handler transfers of inshell pecans, pursuant to §986.62, shall be reported to the Council on APC Form 4. Handlers shall file reports by the tenth day of the month following the first transfer between two handlers. Should the tenth day of the month fall on a weekend or holiday, reports are due by the first business day following the tenth day of the month. This report must be renewed each fiscal year. The report shall contain the following information:

(1) The fiscal year covered by the report;

(2) The names and signatures for both the transferring and receiving handler; and

(3) Handler assuming the reporting and assessment obligations on the pecans transferred.

(b) [Reserved]

3. Amend § 986.175 by revising paragraph (a) introductory text to read as follows:

§ 986.175 Handler inventory.

(a) Handlers shall submit to the Council a year-end inventory report following August 31 each fiscal year. Handlers shall file such reports by September 10. Should September 10 fall on a weekend, reports are due by the

first business day following September 10. Such reports shall be reported to the Council on APC Form 5 and include:

* * * * *

§ 986.177 [Amended]

4. Amend § 986.177 by:

a. Revising paragraphs (a) introductory text and (a) (3) and (4);

b. Removing the period at the end of paragraph (a) (5) and adding a semicolon in its place;

c. Adding paragraphs (a) (6) through (10);

d. Revising paragraph (b) introductory text;

e. Removing "and," from the end of paragraph (b) (4);

f. Removing the period at the end of paragraph (b) (5) and adding a semicolon in its place; and

g. Adding paragraphs (b) (6) through (9).

The revisions and additions read as follows:

§986.177 Reports of pecans received by handlers.

(a) *Summary report.* Handlers shall submit to the Council, by the tenth day of the month, a summary report of inshell domestic pecans received, and all shipments, inventory, and committed inventory for pecans following the month of activity. Should the tenth day of the month fall on a weekend or holiday, reports are due by the first

business day following the tenth day of the month. The report shall be submitted to the Council on APC Form 1 and contain the following information:

* * * * *

(3) The total weight and type of inshell pecans received during the reporting period;

(4) The total weight and type of inshell pecans received year to date;

* * * * *

(6) The weight of all shipments of pecans, inshell and shelled, and inter-handler transfers shipped and received during the reporting period;

(7) The weight of all shipments of pecans, inshell and shelled, and inter-handler transfers shipped and received in the previous month and year to date;

(8) Total inventory held by handler;

(9) All the inventory committed (pecans not shipped, but sold or otherwise obligated) whether for domestic sale or export; and,

(10) The weight of all shelled or inshell pecans under contract for purchase from other handlers.

(b) *Pecans purchased outside the United States and inshell pecans exported to Mexico for shelling and returned*

to the United States as shelled meats. Handlers shall submit to the Council, by the tenth day of the month following the month of activity, a summary report of shelled and inshell pecans imported during the preceding month. Should the tenth day of the month fall on a weekend or holiday, reports are due by the first business day following the tenth day of the month. The report shall be submitted to the Council on APC Form 2 and contain the following information:

* * * * *

(6) The weight of inshell pecans exported to Mexico for shelling;

(7) The date shelled pecans returned to the United States after shelling in Mexico;

(8) The weight of shelled pecans returned to the United States after shelling in Mexico; and

(9) The total weight of inshell pecans exported to Mexico for shelling, and shelled pecans returned from Mexico, year to date.

5. Amend § 986.178 by revising paragraph (a) to read as follows:

§986.178 Other reports.

(a) *Exports by country of destination.* Handlers shall submit to the Council, by the tenth day of the month following the month of shipment, a report of exports. Should the tenth day of the month fall on a weekend or holiday, reports are due by the first business day following the tenth day of the month. The report shall be reported to the Council on APC Form 3 and contain the following information:

(1) The name and address of the handler;

(2) The month covered by the report;

(3) The total weight of pecans shipped for export, whether inshell, shelled, or substandard during the reporting period;

(4) The total weight of pecans shipped for export, whether inshell, shelled, or substandard during the previous period and year to date; and,

(5) The destination(s) of such exports.

Bruce Summers,

Administrator,

Agricultural Marketing Service.

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