



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 986**

[Doc. No. AMS-SC-18-0019; SC18-986-1 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; Revision of Reporting Requirements**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the reporting requirements under the Federal marketing order for pecans. The revised reporting requirements will enable the American Pecan Council (Council) to collect information from handlers on the average handler price paid and the average shelled pecan yield. The Council will use this information to provide important statistical reports to the industry and meet requirements under the marketing order.

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

**FOR FURTHER INFORMATION CONTACT:** Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order

and Agreement Division, Specialty Crops Program, AMS, USDA;  
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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@ams.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 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) has exempted from Executive Order 12866 review. Additionally, because this 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with 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. This action requires all pecan handlers to report to the Council the average handler price paid and average shelled pecan yield as part of its existing year-end report. The Council will use this information to provide statistical reports to the industry and meet requirements under the Order. This action was unanimously recommended by the Council at its January 24, 2017, meeting and affirmed at its April 17, 2018, meeting.

Section 986.76 provides the authority to collect reports on the quantity of pecans handled and other pertinent information as specified by the Council. Section 986.78 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 986.175 specifies that handlers shall submit a year-end report to the Council that includes the amount of shelled and inshell pecans in inventory, total inventory calculated on an inshell basis, total weight and type of domestic pecans handled for the fiscal year, and information on assessments owed, paid, or due.

This rule revises § 986.175 to require that additional information be included in the year-end report. These revisions require handlers to report the average price paid by handler and average yield of shelled pecans as part of the existing year-end report.

At its January 24, 2018, and April 17, 2018, meetings, the Council reviewed the reporting requirements under the Order and determined there were additional data that would be beneficial to collect and summarize for the industry on an annual basis. Specifically, the Council recommended adding two additional items to be reported as part of the annual year-end reporting requirement, average price paid by handlers and shelled pecan yield.

While the National Agricultural Statistics Service (NASS) reports average grower prices, this reporting change will provide information regarding a handler's overall cost

of acquiring pecans. Some handlers buy directly from growers, but many buy from other handlers or import pecans. Understanding the cost of pecans being handled is key information in determining the value of the overall crop and subsequent impacts on the market for pecans the following season. During the meetings, members noted that collecting the average price paid would also be necessary to complete the marketing policy report required under the Order. The marketing policy, as required by § 986.65, must include projected prices for the upcoming fiscal year, which would be influenced by handler costs. Further, the Council believes providing this information would improve the information available to the pecan industry. In particular, the Council feels this information may give growers better information that can be used in making business decisions. The Council recommended adding this reporting requirement as there is currently no comprehensive source for handler cost information.

The Council also discussed asking handlers to provide information regarding the weight of shelled pecans handled. During the formal rulemaking hearing to promulgate the Order, a witness testified regarding a conversion rate of multiplying the shelled weight by two to calculate inshell

weight. That conversion rate was incorporated into the Order. Using this conversion, the weight of shelled pecans is approximately 50 percent of the inshell weight. This proportion is referred to as the "shell-out" or shelled pecan yield. However, there are natural variations in pecans and yield can vary depending on the thickness of the shells of different varieties and can also vary from year to year. These fluctuations make it challenging to accurately convert the total inshell volume harvested into shelled pounds, or shelled pounds into their inshell equivalent to provide an accurate estimate of overall supply.

As with the handler price paid, there is currently no central industry source for information on shelled pecan yield. The Council believes collecting this data will allow them to provide the industry with an updated annual average of this yield, which could be an indicator of quality, and over time provide a series of data on shelled pecan yield that would allow them to determine if changes to the current conversion rate are needed.

Following the recommendation of the proposed changes made at the January 24, 2018 meeting, some members had questions about the specific data that would be collected.

Based on these questions, the Council made some adjustments to the proposed form to clarify that handlers would report the average price paid for all inshell pecans purchased during the fiscal year, regardless of how the pecans are handled, including pecans from outside the production area. For the purposes of this form, the terms crop year and fiscal year are synonymous. The Council reviewed the revised reporting form at its April 17, 2018, meeting and affirmed that the new language met their original intent.

The Council believes these revised reporting requirements are necessary to provide accurate reports to the industry regarding average price paid, yield for shelled pecans, and to meet requirements under the Order. The industry will use this information to complement the information provided by NASS in the development of its marketing policy and to collect accurate data to determine if the definition of weight in § 986.43 needs to be amended.

### **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, and rules issued thereunder, 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 regulation under the Order. Small agricultural growers are defined by the Small Business Administration as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to information from 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 for 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 \$750,000 annually.

Evidence presented at the formal rulemaking hearing indicates 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 for 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 \$7,500,000. Thus, the majority of growers and handlers regulated under the Order may be classified as small entities.

This final rule revises the reporting requirements in § 986.175. This action requires all pecan handlers to report to the Council the average handler price paid and

average shelled pecan yield as part of its existing year-end report. This information will be used by the Council to provide statistical reports to the industry and meet requirements under the Order. The authority for this action is provided in §§ 986.76 and 986.78.

It is not anticipated that this action will impose additional costs on handlers or growers, regardless of size. Council members, including those representing small businesses, indicated the average handler price paid and the average shelled pecan yield information is already recorded and maintained by handlers as a part of their daily business and the information should be readily accessible. Consequently, any additional costs associated with this change would be minimal and apply equally to all handlers.

This action should also help the industry by providing additional data on pecans handled. This information will help with marketing and planning for the industry, as well as provide important information in preparing the annual marketing policy required by the Order. This change will also assist with the development of a dataset to determine if the conversion rate for shelled to inshell pecans needs to be revised. 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 making no changes to the current reporting requirements. However, having the information on handler price paid and shelled pecan yield will provide important information for the industry.

Another alternative considered was to create a new report for the collection of this information. However, the industry recently implemented a series of monthly reports that increased the reporting burden on handlers. Rather than add to the burden by creating a new report, the Council believed it would be more efficient to ask handlers for this information as part of the existing year-end reporting requirement. 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 APC Form 7. However, the changes are minor and the currently approved burden for the form will

not be altered by the changes to the form. The revised form has 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. Further, no public comments were received regarding the initial regulatory flexibility analysis.

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.

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. The Council's meetings held on January 24, 2018, and April 17, 2018, were also public meetings 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 October 9, 2018, (83 FR 50531). Copies of the rule were sent via email to Council members and known pecan handlers. The rule was also made available through the internet by USDA and the Office of the *Federal Register*. A 30-day comment period ending November 8, 2018, was provided to allow interested persons to respond to the proposal. No comments were received. 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 matter presented, including the information and recommendation submitted by the Council and other available information, it is hereby found that this rule, as hereinafter set forth, 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. Section 986.175 is amended by revising paragraphs (a) introductory text, (a) (7) and (8), and adding paragraphs (a) (9) and (10) 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 7. For the purposes of this form, "crop year" is the same as the "fiscal year." The report shall include:

\* \* \* \* \*

(7) Total weight and type of domestic pecans handled for the fiscal year;

(8) Total assessments owed, assessments paid to date, and remaining assessments due to be paid by the due date of the year-end inventory report for the fiscal year;

(9) The average price paid for all inshell pecans purchased during the fiscal year regardless of how the pecans are handled, including pecans from outside the production area; and

(10) The average yield of shelled pecans per pound of inshell pecans shelled during the fiscal year.

Dated: March 5, 2019

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

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