

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 986

[Doc. No. AMS–SC–17–0027; SC17–986–1 PR]

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; Establishment of Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the American Pecan Council (Council) to establish the initial assessment rates for the 2016–2017 and subsequent fiscal years at \$0.03 per pound for improved varieties, \$0.02 per pound for native and seedling varieties, and \$0.02 for substandard pecans handled under the pecan marketing order (order). The Council administers the order and is comprised of growers and handlers of pecans operating within the production area and a public member. Assessments upon pecan handlers would be used by the Council to fund reasonable and necessary expenses of the program. The fiscal year begins October 1 and ends September 30. The assessment rates would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by July 13, 2017.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: <http://www.regulations.gov>.

Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

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; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: Jennie.Varela@ams.usda.gov or Christian.Nissen@ams.usda.gov.

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 proposed 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, hereinafter referred to as the “order.” 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 Department of Agriculture (USDA) is issuing this proposed 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, pecan handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rates as proposed herein would be applicable to all assessable pecans beginning on October 1, 2016, and continue until amended, suspended, or terminated.

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. Such 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 proposed rule would establish continuing assessment rates for the 2016–2017 and subsequent fiscal years at \$0.03 per pound for improved varieties and \$0.02 per pound for native and seedling varieties and for substandard pecans handled. It is intended that the assessment rates as proposed herein would be applicable to all assessable pecans beginning on October 1, 2016, and continue until amended, suspended, or terminated.

The order provides authority for the Council, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Council are growers and handlers of pecans and a public member. They are familiar with the Council’s needs and with the costs for goods and services in their respective

local areas and are thus in a position to formulate an appropriate budget and assessment rates. The assessment rates are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2016–2017 fiscal year, the Council recommended, and USDA approved, the Council's budget and the assessment rates that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Council or other information available to USDA.

The Council met on November 17, 2016, and unanimously recommended 2016–2017 budget expenditures of \$6,000,000 and assessment rates of \$0.03 per pound for improved varieties, \$0.02 per pound for native and seedling varieties, and \$0.02 per pound for substandard pecans handled. These are the first budget of expenditures and assessment rates established under this order.

The major expenditures recommended by the Council for the 2016–2017 year include \$3,850,000 for marketing and promotion, \$900,000 for administration, \$250,000 for reporting and statistics, and \$200,000 for compliance.

The assessment rates recommended by the Council were derived by dividing anticipated expenses by expected shipments of pecans. Pecan shipments for the year are estimated at 260,000,000 pounds, with about 75 percent, or an estimated 195 million pounds of improved varieties, and about 25 percent of native and seedling varieties and substandard pecans. This should provide approximately \$6,000,000 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. As the Council has no established reserve, its budget also allocated \$500,000 for reserve funds to be carried into the next fiscal year. This would be within the maximum permitted by the order of approximately three fiscal years' expenses. If the assessment rates generate less money than is anticipated, the Council and the Agricultural Marketing Service (AMS) will adjust the budget accordingly.

The proposed assessment rates would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Council or other available information.

Although these assessment rates would be in effect for an indefinite period, the Council would continue to

meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rates.

The dates and times of Council meetings are available from the Council or USDA. Council meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Council recommendations and other available information to determine whether modification of the assessment rates is needed. Further rulemaking would be undertaken as necessary. The Council's budget for subsequent fiscal years would be reviewed and, as appropriate, approved by USDA.

The Council also recommended reporting requirements, to include information on pecans received, shipped, exported, or in inventory, which would facilitate the collection of the assessments. These requirements are being considered under a separate action.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial 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 the 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 producers of pecans in the production area and approximately 250 handlers subject to regulation under the marketing order. Small agricultural producers 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 the National Agricultural Statistics Service (NASS), the average grower price for pecans during the 2015–2016 season was \$2.20 per pound and 254 million pounds were utilized. The value for pecans in that year totaled \$558.8 million (\$2.20 per pound multiplied by 254 million pounds). Taking the total value of production for pecans and dividing it by the total number of pecan

producers provides a return per grower of \$223,520. Using the average price and utilization information, and assuming a normal distribution, the majority of growers have annual receipts of less than \$750,000. Evidence presented at the order promulgation hearing indicates an average handler margin of \$0.58 per pound for in-shell pecans for an estimated handler price of \$2.78. With a total 2015 production of 254 million pounds, the total value of production in 2015 was \$706.12 million (\$2.78 per pound multiplied by 254 million pounds). Taking the total value of production for pecans and dividing it by the total number of pecan handlers provides a return per handler of \$2,824,480. Using this estimated price, the utilization volume, number of handlers, and assuming a normal distribution, the majority of handlers have annual receipts of less than \$7,500,000. Thus, the majority of producers and handlers 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 may be classified as small entities.

This proposal would establish the assessment rates to be collected from handlers for the 2016–2017 and subsequent fiscal years. The Council unanimously recommended 2016–2017 expenditures of \$6,000,000 and an assessment rate of \$0.03 per pound for improved varieties, \$0.02 per pound for native and seedling varieties, and \$0.02 per pound for substandard pecans handled. The quantity of pecans for the 2016–2017 year is estimated at 260,000,000 pounds, with about 75 percent, or 195 million pounds of improved varieties, and about 25 percent of native and seedling varieties and substandard pecans. Thus, the proposed rates should provide \$6,000,000 in assessment income and be adequate to meet this year's expenses. If the assessment rates generate less money than is anticipated, the Council and AMS will adjust the budget accordingly.

The major expenditures recommended by the Council for the 2016–2017 fiscal year include \$3,850,000 for marketing and promotion, \$900,000 for administration, \$250,000 for reporting and statistics, and \$200,000 for compliance.

These are the first budget of expenditures and assessment rates established under this order. The Council's budget also includes a reserve of \$500,000.

These are initial assessment rates for the order. The order establishes a range of assessment rates that are permissible during the initial four years of the order. Specifically improved varieties shall be initially assessed at \$0.02 to \$0.03 per pound and native, seedling, and substandard pecans shall be initially assessed at \$0.01 to \$0.02 per pound. Prior to arriving at this budget and assessment rates, the Council considered information from various sources, such as the Council's Governance Committee, and its Marketing, Research, and Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various activities to the pecan industry.

The Council also considered different assessment levels. Some members expressed concern regarding a \$0.02 assessment on native, seedling, and substandard pecans given the prices of those pecans. Another member suggested the idea of establishing a lower rate for substandard pecans. The need to collect sufficient assessments to fund the start-up costs for the order and the development of a marketing program was also noted. After consideration and discussion, the Council unanimously supported the levels as recommended.

A communication from one of the states in the production area recommending postponing the establishment of an assessment rate was also considered. The Council determined waiting until the next fiscal year to establish assessment rates would be costly in terms of time lost for a program that had been anticipated by the industry to improve its marketing. The Council also recognized that the industry had been notified through multiple outlets of communication of the possible range of assessments in the order. The Council expressed a preference to establish these rates and begin its work immediately rather than borrowing funds and being limited in its operations until the coming fiscal year. Therefore, these alternatives were rejected, and the Council ultimately determined that 2016–2017 expenditures of \$6,000,000 were appropriate, and the recommended assessment rates would generate sufficient revenue to meet its expenses.

A review of historical information and preliminary information pertaining to the upcoming production year indicates the grower price for the 2016–2017 season could range between \$1.73 and \$2.31 per pound for improved varieties, and between \$0.88 and \$1.36 per pound for native and seedling pecans. Therefore, the estimated assessment revenue for the 2016–2017 crop year as

a percentage of total grower revenue could range between 1.3 and 1.7 percent for improved pecans and 1.5 and 2.2 percent for native and seedling pecans.

This action would establish an assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform for all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Council's meeting was widely publicized throughout the pecan industry and all interested persons were invited to attend the meeting and participate in Council deliberations on all issues. Like all Council meetings, the November 17, 2016, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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 the Office of Management and Budget (OMB) and assigned OMB No. 0581–0291 "Pecans Grown in AL, AR, AZ, CA, FL, GA, KS, LA, MO, MS, NC, NM, OK, SC and TX." No changes in those requirements are necessary as a result of this action. However, the Council is recommending reporting requirements, to include information on pecans received, shipped, exported, or in inventory, which would facilitate the collection of the assessments. These requirements are being considered under a separate action. Should any changes to the information collection requirements become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large pecan handlers. 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.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

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.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. A 30-day period is deemed appropriate because: (1) The 2016–2017 fiscal year began on October 1, 2016, and the marketing order requires that the rate of assessment for each fiscal year apply to all pecans handled during such fiscal year; (2) the Council needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Council at a public meeting. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 986

Marketing agreements, Pecans, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 986 is proposed to be 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. Amend part 986 by adding Subpart—Assessment Rates consisting of § 986.161 to read as follows:

Subpart—Assessment Rates

§ 986.161 Assessment rates.

On and after October 1, 2016, assessment rates of \$0.03 per pound for pecans classified as improved, \$0.02 per pound for pecans classified as native and seedling, and \$0.02 per pound for pecans classified as substandard pecans are established.

Dated: June 6, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017-12031 Filed 6-12-17; 8:45 am]

BILLING CODE 3410-02-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2017-0184, FRL-9963-65-Region 10]

Approval and Promulgation of Implementation Plans; Alaska: Adoption Updates and Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve state implementation plan (SIP) revisions submitted by the State of Alaska Department of Environmental Conservation (ADEC) on September 15, 2016. These revisions primarily update adoptions of Federal regulations in the Alaska SIP. The revisions also strengthen the State of Alaska's (Alaska) minor source permitting requirements and remove obsolete source-specific regulations. EPA also proposes to approve SIP revisions to Alaska's general and transportation conformity regulations submitted by ADEC on March 10, 2016. The EPA is taking action only on the conformity related portions of the March 2016 submittal. The other portions of the submittal are or will be addressed in separate actions.

DATES: Comments must be received on or before July 13, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2017-0184, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*

on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Randall Ruddick, Air Planning Unit, Office of Air and Waste (OAW-150), Environmental Protection Agency, Region 10, 1200 Sixth Ave., Suite 900, Seattle, WA 98101; telephone number: (206) 553-1999; email address: ruddick.randall@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, wherever "we," "us," or "our" is used, it is intended to refer to EPA.

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I. Background

Section 110 of the Clean Air Act (CAA) governs the process by which a state submits air quality protection requirements to EPA for approval into the State Implementation Plan (SIP). The SIP is the state's plan to implement, maintain, and enforce National Ambient Air Quality Standards (NAAQS) set by EPA. Because Alaska regularly revises its state rules, and to ensure they stay consistent with Federal CAA requirements, Alaska generally submits an annual update to EPA for approval into the SIP.

On September 15, 2016, ADEC, submitted such an update. The submittal contains regulatory updates to the Alaska Administrative Code (AAC) with a state effective date of August 20, 2016. These updates to AAC Title 18, Environmental Conservation, Chapter 50, Air Quality Control (18 AAC 50) reflect updates to the adoption by reference date of certain Federal regulations, strengthen minor stationary source permitting rules, remove obsolete source-specific regulations, and adopt the Federal 2015 ozone NAAQS.

Transportation conformity is required under section 176(c) of the CAA to ensure federally supported highway, transit projects, and other activities are consistent with ("conform to") the

purpose of the SIP. Transportation conformity currently applies to areas that are designated nonattainment, and to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the CAA for the following transportation-related criteria pollutants: Ozone, particulate matter (PM_{2.5} and PM₁₀), carbon monoxide, and nitrogen dioxide. The transportation conformity regulation is found in 40 CFR part 93, subpart A, and in 40 CFR 51.390.

On September 27, 1995, the EPA approved the general conformity rules in Article 7 of AAC Title 18, Chapter 50 into the Alaska SIP (60 FR 49765). On December 29, 1999, EPA approved ADEC's transportation conformity rules in Article 7 of 18 AAC 50 into the Alaska SIP (64 FR 72940). On March 10, 2016, ADEC submitted a request to make two modifications to the transportation conformity regulations and one modification to the general conformity regulations, discussed below.

II. EPA Evaluation of Alaska SIP Revisions

A. Updates to Adoption by Reference

ADEC revised 18 AAC 50 to update the adoption by reference date of certain federal regulations and documents and submitted those changes to EPA for approval into the Alaska SIP. ADEC also updated citation dates at 18 AAC 50.035(a)(3) to adopt *AP-42, Compilation of Air Pollutant Emission Factors*, as updated through April 2015. Likewise, ADEC updated the adoption by reference date in 18 AAC 50.035(a)(7) to incorporate a more current version of EPA's AERSCREEN User's Guide, EPA-454/B-15-005, dated July 2015. EPA is proposing to approve Alaska's updates.

Alaska's major new source review (NSR) permitting rules for attainment and unclassifiable areas, 18 AAC 50, Article 3, largely adopt by reference the federal Prevention of Significant Deterioration of Air Quality (PSD) program regulations in 40 CFR 51.166 and 40 CFR 52.21. The most recent EPA approval of revisions to Alaska's PSD permitting program was May 19, 2016 (81 FR 31511), in which ADEC adopted by reference portions of 40 CFR 51.166 and 52.21 as in effect on December 9, 2013. ADEC recently updated 18 AAC 50.040(f) and (h) to incorporate federal revisions to portions of 40 CFR 51.166 and 52.21 as in effect on December 28, 2015. These updates ensure Alaska's PSD program is consistent with Federal requirements and therefore EPA is proposing to approve them.