This proposed rule would revise the reporting requirements in § 986.175. This action would require 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 would be used by the Council to provide statistical reports to the industry and meet requirements under the Order. The authority for this proposal is provided in §§ 986.76 and 986.78.

It is not anticipated that this proposed rule would 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 would 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 would 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 proposed action, including making no changes to the current reporting requirements. However, having the information on handler price paid and shelled pecan yield would 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 proposed rule would require changes to the Council's existing APC Form 7. However, the changes are minor and the currently approved burden for the form should not be altered by the proposed 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. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed 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 Committee 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. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this proposed action on small businesses.

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 proposal. 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, Nuts, 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. 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: October 3, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2018–21841 Filed 10–5–18; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[Docket No. PRM–2–15; NRC–2015–0264]

Agency Procedures for Responding to Adverse Court Decisions and Addressing Funding Shortfalls

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM) submitted on October 22, 2015, by Jeffrey M. Skov (the petitioner), and supplemented on December 7, 2015, March 1, 2016, March 21, 2016, and March 1, 2017. The petition was docketed by the NRC on November 10, 2015, and was assigned Docket No. PRM–2–15. The petitioner requests that the NRC amend its rules of practice to establish procedures for responding to adverse court decisions and to annually report to the public each instance where the NRC does not receive ''sufficient funds reasonably necessary to implement in good faith its statutory mandates.'' The NRC is denying the petition because the petitioner has not identified shortcomings in the NRC's current regulations or demonstrated a need for the requested changes.

DATES: The docket for the petition for rulemaking, PRM–2–15, is closed on October 9, 2018.

ADDRESSES: Please refer to Docket ID NRC–2015–0264 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0264. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section. The petition is available in ADAMS under Accession No. ML15314A075.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Olivia Mikula, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone: 301–287–9107; email: *Olivia.Mikula@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. The Petition

Section 2.802 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Petition for rulemaking—requirements for filing,'' provides an opportunity for any interested person to petition the Commission to issue, amend, or rescind any regulation. The NRC received a PRM from Mr. Jeffrey M. Skov on October 22, 2015, and supplemental information from the petitioner on December 7, 2015 (ADAMS Accession No. ML15342A005), March 1, 2016 (ADAMS Accession No. ML16063A026), March 21, 2016 (ADAMS Accession No. ML16082A020), and March 1, 2017 (ADAMS Accession Nos. ML17111A673 and ML17111A657). In the PRM and associated supplements, the petitioner requests that the NRC amend 10 CFR part 2, ''Agency rules of practice and procedure,'' to establish procedures for (1) responding to adverse court decisions, and (2) annually reporting to the public each instance where the NRC does not receive sufficient funds reasonably necessary to implement in good faith its statutory mandates.

In his PRM, the petitioner raises concerns about the NRC's independence, its mission-related functions, and its commitment to transparency in light of the adverse decision *In re Aiken County. See In re Aiken Cty.,* 725 F.3d 255 (D.C. Cir. 2013). In that case, a group of individuals and government organizations filed a petition for writ of mandamus against the NRC in the U.S. Court of Appeals for the District of Columbia Circuit. The *Aiken County* petitioners challenged the NRC's decision to cease review and consideration of the license application filed by the U.S. Department of Energy (DOE) to construct a geologic repository at Yucca Mountain, Nevada, and claimed that this decision constituted agency action that was unlawfully withheld or unreasonably delayed. In August 2013, the court issued a decision granting the petition for writ of mandamus and concluding that the NRC was ''defying a law enacted by Congress, and . . . doing so without any legal basis.'' *Id.* The court directed the NRC to continue the proceeding and to make whatever progress it could with the remaining funds. According to Mr. Skov, the *Aiken County* decision raises concerns about the NRC's independence, its mission-related functions, and its commitment to transparency.

Mr. Skov's PRM proposes two rules. The first proposed rule would require the NRC to take certain actions following the receipt of a court decision (and after the expiration of rehearing and appeal rights) finding that the agency violated applicable law. Specifically, the rule would require (1) an identification and determination of the causes of each violation; (2) an ''extent of condition'' evaluation to determine whether the NRC's implementation of other statutes and regulations is similarly affected by the violation; (3) implementation of immediate corrective actions based on the evaluation performed; (4) implementation of corrective actions to prevent recurrence; and (5) preparation of a public report documenting the agency's review. The rule also would require the NRC to seek investigation by the U.S. Department of Justice (DOJ) as to whether the agency has adequate oversight mechanisms in place to prevent the violation of applicable laws and whether any violations of Federal criminal laws have occurred (particularly laws prohibiting obstruction of Federal proceedings and conspiracies to commit offense or to defraud the United States). In addition, the rule would require the NRC to decide whether to appeal or seek rehearing in accordance with the American Bar Association's (ABA) Model Rules of Professional Conduct.

The second proposed rule would require the NRC to disclose annually ''each instance where [the NRC] does not receive sufficient funds reasonably necessary to implement in good faith its statutory mandates.'' In these instances, the proposed rule would have the NRC publicly disclose whether the NRC was directed not to request funds, requested funds but did not receive them, or determined on its own not to request funds. Further, the rule would require ''a discussion of the consequences of each instance with respect to (1) public safety and health; (2) environmental protection; (3) the common defense and security; (4) the reputation/credibility of the agency as a 'trusted, independent, transparent, and effective nuclear regulator;' and (5) collateral fiscal impacts.''

On February 17, 2016 (81 FR 8021), the NRC published a notice of docketing of PRM–2–15. The NRC elected not to request public comment on PRM–2–15 because the petition was sufficiently

comprehensive for the NRC to address the issues contained therein. Accordingly, there were no public comments on this petition.

II. Reasons for Denial

In the original petition and subsequent submittals, the petitioner focuses on the outcome of the *Aiken County* decision and perceived agency inaction with regard to the court's ruling. As discussed further, the NRC is denying the petition because the petitioner has not identified shortcomings in the NRC's current regulations or demonstrated a need for the proposed requirements. The NRC took into account the § 2.803(h)(1) considerations for an agency determination on a petition for rulemaking with particular attention to § 2.803(h)(1)(vi), relevant agency policies and current practice.

The NRC is denying further consideration of the petitioner's first proposed rule because it does not present a practical process for agency accountability and because the NRC already has the tools in place to provide for independent evaluation of agency actions. The petitioner's proposed rule presents the goal of requiring the agency to reflect upon the reasons for a loss it has sustained in court and to implement corrective actions in light of any lessons learned. However, for the reasons discussed below, the proposed rule is neither necessary nor appropriate for meeting this goal.

With regard to the trigger for the proposed rule—a finding by a court of competent jurisdiction that the NRC violated applicable law—adverse court decisions that relate to the NRC's licensing responsibilities do not necessarily reflect misconduct. Rather, the NRC's losses ordinarily have involved a failure to explain the basis for a technical conclusion,[1] a request for further development of the administrative record,[2] or a court's determination that the legal position that the NRC has adopted on a point of law is incorrect.[3] In such circumstances, the NRC's response to judicial direction is transparent so that the public is able to see how the agency has addressed the concerns in the decision.[4] Indeed, after the *Aiken County* decision was rendered by the D.C. Circuit Court of Appeals, the Commission responded by soliciting the views of all participants involved and issuing an order detailing how the agency would continue with the licensing process. *See U.S. Department of Energy* (High-Level Waste Repository), CLI–13–08, 78 NRC 219 (2013). This included a direction to staff to complete and issue the Safety Evaluation Report associated with the construction authorization application and make associated documents available on the NRC's recordkeeping system.

Moreover, the vast majority of NRC licensing cases that result in Federal court litigation have already been the subject of litigation before the Atomic Safety and Licensing Boards and the Commission, such that opportunities to identify deficiencies have been provided through the Commission's internal adjudicatory process. Further, the Agency's Office of the General Counsel (OGC) ensures that the Commission and pertinent staff offices are informed of court decisions and the need for any responsive action to ensure compliance with the holding. In addition, OGC will provide advice on the impact, if any, of that decision on any current and future NRC decisionmaking. Given these facts, the additional processes in the proposed rule are not necessary.

In addition, the petitioner's proposed rule would require an independent evaluation of agency action in light of an adverse court decision. The NRC's Office of the Inspector General, however, already has the authority to perform that function. The Inspector General (IG) is authorized ''to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of'' the agency in which the office is established. *See* 5 United States Code (U.S.C.) App 3, section 4(a)(1). This responsibility includes reporting ''to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.'' *See id.* section 4(d). The IG prepares a semiannual report to Congress which includes ''a description of significant problems, abuses, and deficiencies relating to the administration of programs'' and agency operations. *See id.* section 5(a)(1). Notably, this report includes ''a description of the recommendations for corrective action made by the [Office of the Inspector General] during the reporting periods with respect to significant problems, abuses, or deficiencies.'' *See id.* section 5(a)(2).[5] The IG may initiate an investigation upon the request of an employee or member of the public. Although investigation by the IG is not necessarily precipitated by a specific event, the duties and abilities of the IG provide the authority and flexibility to investigate a wide range of agency action. Therefore, the proposed rule essentially requests the creation of a process of independent investigation that is duplicative of the one that already exists.[6]

Similarly, the proposal to seek DOJ review of an adverse decision is not necessary because the DOJ is a party to, or has some involvement in, virtually all of the program-related cases in which the agency is named as a defendant. The Hobbs Act, which is the primary vehicle through which NRC decisions are challenged, requires that the United States be named as a respondent. *See* 28 U.S.C. 2344. And although the Hobbs Act did not apply to, and the United States was not named as a respondent in, the *Aiken County* proceeding, the NRC consulted with the DOJ in its defense of the case. Moreover, the court specifically requested the views of the United States on several issues, and the United States filed its own brief in response to the court's request. Finally, to the extent the agency is sued directly in Federal district court, it is represented by the DOJ both on

[1] *See, e.g. Shieldalloy Metallurgical Corp.* v. *NRC,* 707 F.3d 371 (D.C. Cir. 2013); *Honeywell International, Inc.* v. *NRC,* 628 F.3d 568 (D.C. Cir. 2010).

[2] *See, e.g., Brodsky* v. *NRC,* 704 F.3d 113 (2d Cir. 2013).

[3] *See, e.g., San Luis Obispo Mothers for Peace* v. *NRC,* 449 F.3d 1016 (9th Cir. 2006).

[4] *See, e.g. Shieldalloy Metallurgical Corp.* (Decommissioning of the Newfield, New Jersey Site), CLI–13–06, 78 NRC 155 (2013); *Honeywell Int'l, Inc.* (Metropolis Works Uranium Conversion Facility), CLI–13–01, 77 NRC 1 (2013); Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit 3, Draft Environmental Assessment and Finding of No Significant Impact, 78 FR 20144 (April 3, 2013); *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI–07–11, 65 NRC 148 (2007).

[5] Office of the Inspector General reports and associated corrective action recommendations for the NRC are available on the public website. *See* U.S. NRC, *OIG Reports,* available at *https://www.nrc.gov/reading-rm/doc-collections/insp-gen/* (last updated October 19, 2017).

[6] In additional submissions to the NRC, the petitioner emphasized the same or similar arguments for the implementation of the proposed rules. His March 1, 2017, submission notes that the IG's Office did not prevent the statutory violation that led to the *Aiken County* proceeding. However, there is little explanation as to why the implementation of a process that essentially duplicates that of the independent investigative authority of the Office of the Inspector General would serve to effectively and efficiently eliminate the possibility of a violation in the future. Indeed, the IG opened a report to investigate wrongdoing associated with the NRC's decision to halt progress on DOE's Yucca Mountain application and the *Aiken County* court was aware of the findings. *See In re Aiken Cty.,* 725 F.3d at 268 (Randolph, J., concurring) (citing U.S. Nuclear Regulatory Commission, Office of the Inspector General, OIG Case NO. 11–05, NRC Chairman's Unilateral Decision to Terminate NRC's Review of DOE Yucca Mountain Repository License Application 7–10, 17, 44–46 (2011)).

programmatic matters as well as matters involving agency personnel or procurement. *See, e.g., Brodsky* v. *NRC,* No. 09–Civ–10594 (LAP), 2015 WL 1623824 (S.D.N.Y. Feb. 26, 2015); *Khoury* v. *Meserve,* 268 F. Supp. 2d 600 (D. Md. 2003). Consequently, the DOJ was well aware of the NRC's filings in the *Aiken County* case specifically and is deeply involved in the NRC's litigation matters generally.

With respect to the codification of the need to make appeals and rehearing decisions in accordance with the Model Rules of Professional Conduct, each NRC attorney is already subject to the disciplinary rules of the bar in which he or she is admitted as well as the courts in which he or she appears. All decisions to seek further review of an adverse ruling are coordinated with the DOJ and, as necessary, the Solicitor General, who are likewise bound by applicable disciplinary rules. It is therefore not necessary to reference the ABA's Model Rules of Professional Conduct in the NRC's regulations.

The NRC therefore denies further consideration of the petitioner's first proposed rule for the reasons stated.

The NRC is denying further consideration of the petitioner's second proposed rule because it is the NRC's practice to refrain from disclosing pre-decisional budgetary information, consistent with Office of Management and Budget (OMB) guidance. OMB Circular A–11 directs agencies to withhold pre-decisional materials underlying budget deliberations. *See* OMB Circular A–11, *Preparation, Submission, and Execution of the Budget,* 22–1 (July 2016). Circular A–11 directs agencies ''not [to] release agency justifications provided to OMB and any agency future year plans or long-range estimates to anyone outside of the Executive Branch'' unless otherwise allowed under the Circular. Communications within the Executive Branch that ultimately lead to the President's budgetary decisions are not disclosed either by the NRC or by OMB. The petitioner's proposed rule would require the NRC to disclose annually certain budget decisions and the Executive Branch communications underlying those decisions. On the basis of our practice of compliance with OMB guidance, the NRC will not proceed with the petitioner's proposed rule.

The arguments presented by the petitioner focus heavily on the outcome and safety consequences of the *Aiken County* decision, but they fail to justify the need for additional processes in the NRC's regulations. In light of the processes currently in place, the NRC did not identify any safety, environmental, or security issues associated with the petitioner's concerns. Further, the NRC continues to be committed to its safety mission and to promoting a positive safety culture.[7]

With regard to the petitioner's concerns about agency inaction with respect to Yucca Mountain, the NRC has used virtually all of the remaining funds appropriated through fiscal year 2011 by Congress for the Yucca Mountain project to further review the application, consistent with the *Aiken County* decision and the Commission's Order in response to the case. Among other things, the NRC staff completed the Safety Evaluation Report and a Final Supplement to DOE's Environmental Impact Statement for the Yucca Mountain geologic repository. The NRC staff also placed millions of items of discovery material from the adjudicatory proceeding relating to the application in the public portion of the agency's online records collection.

III. Conclusion

For the reasons stated in Section II, the NRC is denying PRM–2–15. The petition failed to identify a need for the proposed rules. Further, the NRC evaluated the petition in light of the considerations described in § 2.803(h)(1) and found the petition inconsistent with current agency policies and practice.

Dated at Rockville, Maryland, this 2nd day of October 2018.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2018–21804 Filed 10–5–18; 8:45 am]

BILLING CODE 7590–01–P

[7] The NRC has processes to self-assess and promote the safety culture of the agency. In conjunction with the IG's Office, the NRC participates in a safety culture climate survey to evaluate the comfort of the agency's workforce to raise safety concerns through these processes. The IG's Office appraises the outcome of these surveys in reports and provides corrective action recommendations, where appropriate. The most recent IG report on this topic was released on April 15, 2016. *See* U.S. NRC, *OIG Reports,* available at *https://www.nrc.gov/reading-rm/doc-collections/insp-gen/* (last updated October 19, 2017).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2018–0860]

Proposed Primary Category Design Standards; Vertical Aviation Technologies (VAT) Model S–52L Rotorcraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice shortening comment period.

SUMMARY: This action shortens the comment period for the notice of availability; request for comments that was published on September 26, 2018. In that document, the FAA announced the existence of and requested comments on the proposed airworthiness design standards for acceptance of the Vertical Aviation Technologies (VAT) Model S–52L rotorcraft under the regulations for primary category aircraft.

DATES: The comment period for the document published September 26, 2018, at 83 FR 48574, is shortened. Comments must be received on or before October 26, 2018.

ADDRESSES: Send comments to the Federal Aviation Administration, Policy and Innovation Division, Rotorcraft Standards Branch, AIR–681, Attention: Michael Hughlett, 10101 Hillwood Parkway, Ft. Worth, Texas 76117. Comments may also be emailed to: *Michael.Hughlett@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hughlett, Aviation Safety Engineer, Rotorcraft Standards Branch, Policy and Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, Texas 76177; telephone (817) 222–5110; email *Michael.Hughlett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested parties to submit comments on the proposed airworthiness standards to the address specified above. Commenters must identify the VAT Model S–52L on all submitted correspondence. The most helpful comments reference a specific portion of the airworthiness standards, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received on or before the closing date before issuing the final acceptance. We will consider comments filed late if it is possible to do so without incurring expense or delay. We