

Agricultural Marketing Service, USDA

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for which payment has not been received by the Board within 60 calendar days after the assessments are due. Such interest will continue to accrue monthly until the outstanding balance is paid to the Board.

PART 1223—PECAN PROMOTION, RESEARCH, AND INFORMATION ORDER

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AUTHORITY: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

SOURCE: 86 FR 2898, Jan. 13, 2021, unless otherwise noted.

Subpart A—Pecan Promotion, Research, and Information Order

DEFINITIONS

§ 1223.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

§ 1223.2 American Pecan Council.

American Pecan Council or *APC* means that governing body of the Federal Marketing Order established pursuant to 7 CFR part 986 unless otherwise noted.

§ 1223.3 American Pecan Promotion Board.

American Pecan Promotion Board or the *Board* means the administrative body established pursuant to § 1223.40.

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§ 1223.4 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1223.5 Customs or CDP.

Customs or *CBP* means Customs and Border Protection, an agency of the United States Department of Homeland Security.

§ 1223.6 Department or USDA.

Department or *USDA* means the U.S. Department of Agriculture, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1223.7 First handler.

First handler means any person who receives, shells, cracks, accumulates, warehouses, roasts, packs, sells, consigns, transports, exports, or ships (except as a common or contract carrier of pecans owned by another person), or in any other way puts inshell or shelled pecans in the stream of commerce. The term first handler includes a producer who handles or markets pecans of the producer's own production.

§ 1223.8 Fiscal period.

Fiscal period means October 1 to September 30, or such other period as recommended by the Board and approved by the Secretary.

§ 1223.9 Importer.

Importer means any person who imports pecans into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles pecans outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such pecans.

§ 1223.10 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop

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new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of pecans on a national or international basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of pecans; and

(b) *Industry information*, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the pecan industry, and activities to enhance the image of the pecan industry.

§ 1223.11 Inshell pecans.

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

§ 1223.12 Market or marketing.

(a) *Marketing* means the sale or other disposition of pecans in any channel of commerce.

(b) *To market* means to sell or otherwise dispose of pecans in interstate, foreign, or intrastate commerce.

§ 1223.13 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1223.14 Part and subpart.

This *part* is comprised of all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Pecan Promotion, Research, and Information Order comprises *subpart A* of this part.

§ 1223.15 Pecans.

Pecans means and includes any and all varieties or subvarieties, inshell or shelled, of *Carya illinoensis* grown or imported into the United States.

§ 1223.16 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

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§ 1223.17 Producer.

Producer is synonymous with grower and means any person engaged in the production and sale of pecans in the United States who owns, or who shares in the ownership and risk of loss of such pecans.

§ 1223.18 Programs, plans, and projects.

Programs, plans, and projects mean those research, promotion, and information programs, plans, or projects established pursuant to this subpart.

§ 1223.19 Promotion.

Promotion means any action taken to present a favorable image of pecans to the general public and the food industry for the purpose of improving the competitive position of pecans both in the United States and abroad and stimulating the sale of pecans. This includes paid advertising and public relations.

§ 1223.20 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of pecans, including research relating to nutritional value, cost of production, new product development, varietal development, nutritional value, health research, and marketing of pecans.

§ 1223.21 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1223.22 Shelled pecans.

Shelled pecans are pecans whose shells have been removed leaving only edible kernels, kernel pieces or pecan meal. One pound of shelled pecans is the equivalent of two pounds inshell pecans.

§ 1223.23 Suspend.

Suspend means to issue a rule under section 553 of title 5, U.S.C., to tempo-

rarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1223.24 Terminate.

Terminate means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1223.25 United States.

United States means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

AMERICAN PECAN PROMOTION BOARD

§ 1223.40 Establishment and membership.

(a) *Establishment of the American Pecan Promotion Board.* There is hereby established an American Pecan Promotion Board, called the Board in this part, comprised of seventeen (17) members, appointed by the Secretary from nominations as follows:

(1) Ten (10) producer members: Three (3) each from the Eastern Region and Central Region and four (4) from the Western Region as follows:

(i) Eastern Region shall mean the States of Alabama, Florida, Georgia, North Carolina, South Carolina plus any states in the United States, the majority of whose land mass is in the Eastern Time Zone, plus any U.S. territories in the Atlantic Ocean;

(ii) Central Region shall mean the States of Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Texas plus any states in the United States, the majority of whose land mass is in the Central Time Zone; and

(iii) Western Region shall mean the States of Arizona, California, New Mexico plus any states in the United States, the majority of whose land mass is in the Mountain or Pacific Time Zones, plus Alaska and Hawaii and any U.S. territories in the Pacific Ocean.

(2) Seven (7) importers.

(b) *Adjustment of membership.* At least once every five years, the Board will review the geographical distribution of United States production of pecans and

the quantity or value of imports. The review will be conducted through an audit of state crop production and Customs figures and Board assessment records. If warranted, the Board will recommend to the Secretary that the membership on the Board be altered to reflect any changes in the geographical distribution of domestic pecan production and the quantity or value of imports. If the level of imports fluctuates versus domestic pecan production, importer members may be added to or reduced from the Board.

(c) *Board's ability to serve the diversity of the industry.* When making recommendations for appointments, the industry should take into account the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population, size of the operations, methods of production and distribution, and other distinguishing factors to ensure that the recommendations of the Board take into account the diverse interest of persons responsible for paying assessments, and others in the marketing chain, if appropriate.

§ 1223.41 Nominations and appointments.

(a) Initial nominations for producers will be submitted to the Secretary by the American Pecan Council (APC), or the Department if appropriate. Before considering any nominations, the APC shall publicize the nomination process, using trade press or other means it deems appropriate, to reach out to all known producers for the U.S. market. The APC may use regional caucuses, mail or other methods to elicit potential nominees. The APC shall submit the nominations to the Secretary and recommend two nominees for each Board position specified in paragraph (a)(1) of § 1223.40. The Department will conduct initial nominations for the importer members. The Secretary shall appoint the members of the Board.

(b) Subsequent nominations shall be conducted as follows:

(1) Nomination of producer members will be conducted by the Board. The Board staff will seek nominations for each vacant producer seat from each region from producers who have paid their assessments to the Board in the

most recent fiscal period and who produced more than 50,000 pounds of inshell pecans (25,000 pounds of shelled pecans) on average for four fiscal periods (the fiscal period for which nominations are being conducted and the previous three fiscal periods). Producers who produce pecans in more than one region may seek nomination only in the region in which they produce the majority of their pecans. Nominations will be submitted to the Board office and placed on a ballot that will be sent to producers in each region for a vote. Producers may only vote in the region in which they produce the majority of their pecans. The votes shall be tabulated for each region with the nominee receiving the highest number of votes at the top of the list in descending order by vote. Two candidates for each position shall be submitted to the Secretary; and

(2) Nomination of importer members will be conducted by the Board. All qualified national organizations representing importer interests will have the opportunity to nominate members to serve on the Board. If the Secretary determines that there are no qualified national organizations representing importer interests, individual importers who have paid assessments to the Board in the most recent fiscal period and imported more than 50,000 pounds of inshell pecans (25,000 pounds of shelled pecans) on average for four fiscal periods (the fiscal period for which nominations are being conducted and the previous three fiscal periods) may submit nominations. The names of importer nominees shall be placed on a ballot and mailed to importers for a vote. The votes shall be tabulated with the nominee receiving the highest number of votes at the top of the list in descending order by vote. Two candidates for each importer Board position shall be submitted to the Secretary. To be certified by the Secretary as a qualified national organization representing importer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(i) The organization's voting membership must be comprised primarily of importers of pecans;

(ii) The organization has a history of stability and permanency and has been in existence for more than one year;

(iii) The organization must derive a portion of its operating funds from importers;

(iv) The organization must demonstrate it is willing and able to further the Act and Order's purposes; and

(v) To be certified by the Secretary as a qualified national organization representing importer interests, an organization must agree to take reasonable steps to publicize to non-members the availability of open Board importer positions.

(c) Producer and importer nominees may provide the Board a short background statement outlining their qualifications to serve on the Board.

(d) Nominees must be in compliance with the applicable provisions of this subpart.

(e) The Board must submit nominations to the Secretary at least six months before the new Board term begins. The Secretary shall appoint the members of the Board.

(f) No two members shall be employed by a single corporation, company, partnership, or any other legal entity.

(g) The Board may recommend to the Secretary modifications to its nomination procedures as it deems appropriate. Any such modifications shall be implemented through rulemaking by the Secretary.

§ 1223.42 Term of office.

(a) With the exception of the initial Board, each Board member will serve a three-year term or until the Secretary selects his or her successor. Each term of office shall begin on October 1 and end on September 30. No member may serve more than two consecutive terms, excluding any term of office less than three years.

(b) For the initial board, the terms of Board members shall be staggered for two, three, and four years. Determination of which of the initial members shall serve a term of two, three, or four years shall be determined at random. Those members serving an initial term of two, three, or four years may serve one successive three-year term.

§ 1223.43 Vacancies.

(a) In the event that any member of the Board ceases to work for or be affiliated with the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office.

(c) Without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, including the continued failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

(d) Should the position of a member become vacant, successors for the unexpired terms of such member shall be appointed in the manner specified in §§ 1223.40 and 1223.41, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

§ 1223.44 Procedure.

(a) At a Board meeting, it will be considered a quorum when a majority of members are present.

(b) At the start of each fiscal period, the Board will select a chairperson and vice chairperson who will conduct meetings and appoint committee membership throughout that period.

(c) All Board and committee members will receive a minimum of 10 days advance notice of all Board and committee meetings, unless an emergency meeting is declared by the Chairperson.

(d) Each member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members present.

(e) It will be considered a quorum at a committee meeting when at least one

more than half of those assigned to the committee are present. Committees may also consist of individuals other than Board members and such individuals may vote in committee meetings. These committee members shall be appointed by the Chairperson and shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the Chairperson of the Board such action is considered necessary, the Board may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication, and all telephone votes shall be confirmed promptly in writing. In that event, all members and the Secretary must be notified, and all members must be provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All votes shall be recorded in Board minutes.

(g) There shall be no voting by proxy.

(h) The Chairperson shall be a voting member.

(i) The organization of the Board and the procedures for the conducting of meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

§ 1223.45 Compensation and reimbursement.

The members of the Board when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

§ 1223.46 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer this subpart in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be

necessary to administer this subpart, including activities authorized to be carried out under this subpart;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines to be appropriate;

(d) To employ persons, other than the Board members, or to enter into contracts, other than with Board members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons, or to determine the contractual terms of such parties;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

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(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor;

(f) To prepare and submit for approval of the Secretary fiscal period budgets in accordance with §1223.50;

(g) To invest assessments collected under this part in accordance with §1223.50;

(h) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(i) To cause its books to be audited by a competent auditor at the end of each fiscal period and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(j) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(k) To act as intermediary between the Secretary and any producer, first handler, or importer;

(l) To furnish to the Secretary any information or records that the Secretary may request;

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

(n) To recommend to the Secretary such amendments to this subpart as the Board considers appropriate; and

(o) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the pecan industry's position in the marketplace; maintain and expand existing markets and uses for pecans; and to carry out programs, plans, and projects designed to provide maximum benefits to the pecan industry.

§ 1223.47 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest; and

(b) Using funds collected by the Board under this subpart to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to this subpart.

(c) No program, plan, or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Pecans of all origins shall be treated equally.

EXPENSES AND ASSESSMENTS

§ 1223.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal period, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal period covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent

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with governing bylaws need not have prior approval by the Secretary.

(d) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for start-up costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(g) The Board may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, for authorized activities.

(h) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of this subpart, including all referendum costs in connection with this subpart.

(i) For fiscal periods beginning three (3) or more years after the date of the establishment of the Board, the Board may not expend for administration, maintenance, and functioning of the Board in any fiscal period an amount that exceeds 15 percent of the assessments and other income received by the Board for that fiscal period. Reimbursements to the Secretary required under paragraph (h) of this section are excluded from this limitation on spending.

(j) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided* that the funds in the reserve

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do not exceed the last two fiscal periods' budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

(k) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this part in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System;

(4) Obligations fully guaranteed as to principal interest by the United States; or

(5) Other investments as authorized by the Secretary.

§ 1223.51 Financial statements.

(a) The Board shall prepare and submit financial statements to the Secretary on a monthly or quarterly basis or at any other time as requested by the Secretary. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal period to which it applies.

§ 1223.52 Assessments.

(a) The funds to cover the Board's expenses shall be paid from assessments on producers and importers, other income of the Board, and other funds available to the Board including those collected pursuant to §1223.57 and subject to the limitations contained in §1223.57.

(b) Each producer shall pay an assessment per pound of pecans produced in

the United States. The collection of assessments on pecans produced in the United States will be the responsibility of the first handler receiving the pecans from producers. In the case of the producer acting as its own first handler, the producer will be required to collect and remit its individual assessments.

(1) First handlers may remit assessments to a third-party collection agent under this subpart.

(2) First handlers may also remit assessments directly to the Board.

(c) Such assessments shall be levied at \$0.02 per pound on all inshell pecans and \$0.04 per pound on all shelled pecans. The assessment rate may be reviewed and modified with the approval of the Secretary. A change in the assessment rate is subject to rulemaking by the Secretary.

(d) All assessment payments and reports will be submitted to the office of the Board. All assessment payments for a fiscal period are to be received no later than the 10th of the month following the end of the previous month. A late payment charge shall be imposed on any producer and importer who fails to remit to the Board, the total amount for which any such producer and importer is liable on or before the due date established by the Board on forms approved by the Secretary. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the producer and importer is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(e) Each importer of pecans shall pay an assessment to the Board on pecans imported for marketing in the United States, through Customs.

(1) The assessment rate for imported pecans shall be the same or equivalent to the rate for pecans produced in the United States.

(2) The import assessment shall be uniformly applied to imported pecans that are identified by the number 0802.90.10.00 and 0802.90.15.00 in the Harmonized Tariff Schedule (HTS) of the United States or any other numbers used to identify pecans in that schedule.

(3) In the event that any HTS number is subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of pecans, assessment will continue to be collected based on the new numbers.

(4) The assessment due on imported pecans shall be paid when they enter, or are withdrawn from warehouse, for consumption in the United States.

(5) If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment directly to the Board no later than the 10th of the month following the month the assessed pecans were imported into the United States.

(f) Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

(g) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

§ 1223.53 Exemption procedures.

(a) *De minimis*. An exemption from payment of assessments as provided in § 1223.52, shall be provided to producers that domestically produce and importers that import less than 50,000 pounds of inshell pecans (25,000 pounds of shelled pecans) on average for four fiscal periods (the fiscal period for which the exemption is claimed and the previous three fiscal periods) as follows:

(1) Any producer who desires to claim an exemption from assessments shall file an application on a form provided by the Board, for a certificate of exemption for each fiscal period claiming an exemption. Such producer shall certify that it will domestically produce less than 50,000 pounds of inshell pecans (25,000 pounds of shelled pecans) on average for four fiscal periods (the fiscal period for which the exemption is claimed and the previous three fiscal periods). It is the responsibility of the producer to retain a copy of the certificate of exemption.

(2) Any importer who desires to claim an exemption from assessments shall file an application on a form provided by the Board, for a certificate of exemption for each fiscal period claiming

an exemption. Such importer shall certify that it will import less than 50,000 pounds of inshell pecans (25,000 pounds of shelled pecans) on average for four fiscal periods (the fiscal period for which the exemption is claimed and the previous three fiscal periods). It is the responsibility of the importer to retain a copy of the certificate of exemption.

(3) On receipt of an exemption application, the Board shall determine whether an exemption may be granted for that fiscal period. The Board will then issue, if deemed appropriate, a certificate of exemption to the producer or importer which is eligible to receive one covering that fiscal period. The Board may request persons applying for the exemption to provide supporting documentation, such as past sales receipts or import data.

(4) The Board, with the Secretary's approval, may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt pecans and, in the case of importers, proof of payment of assessments.

(5) The exemption will apply immediately following the issuance of the certificate of exemption.

(6) Producers and importers who received an exemption certificate from the Board but domestically produced or imported more than 50,000 pounds of inshell pecans (25,000 shelled of pecans) on average for four fiscal periods (the fiscal period for which the exemption is claimed and the previous three fiscal periods) during the fiscal period shall pay the Board the applicable assessments owed and submit any necessary reports to the Board pursuant to § 1223.60.

(b) *Assessment refunds.* Importers and producers who are exempt from assessment shall be eligible for a refund of assessments collected, either by Customs or a first handler. Requests for such assessment refunds must be submitted to the Board within 90 days of the last day in the fiscal period when assessments were collected on such producer's or importer's pecans. No interest will be paid on such assessments. The Board shall refund such assessments no later than 60 calendar days after receipt by the Board of informa-

tion justifying the exemption from assessment.

(c) *Organic.* (1) A producer who domestically produces pecans under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as "organic" or "100 percent organic" (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified "organic" or "100 percent organic" (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS-15) at any time during the fiscal period initially, and annually thereafter on or before the start of the fiscal period, for as long as the producer continues to be eligible for the exemption.

(3) A producer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant produces organic products eligible to be labeled "organic" or "100 percent organic" under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports pecans that are eligible to be labeled as “organic” or “100 percent organic” under the NOP, or certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments. Such importer may submit documentation to the Board and request an exemption from assessment on certified “organic” or “100 percent organic” pecans on an *Organic Exemption Request Form* (Form AMS-15) at any time initially, and annually thereafter on or before the beginning of the fiscal period, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a producer in paragraph (c)(3) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(6) If Customs collects the assessment on exempt product under paragraph (c)(5) of this section that is identified as “organic” by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for

which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

(7) The exemption will apply immediately following the issuance of the Certificate of Exemption.

§ 1223.54 Refund escrow accounts.

(a) The Board shall establish an interest bearing escrow account with a financial institution that is a member of the Federal Reserve System and will deposit into such account an amount equal to 10 percent of the assessments collected during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum.

(b) If the Order is not approved by the required referendum, the Board shall promptly pay refunds of assessments to all producers and importers that have paid assessments during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum in the manner specified in paragraph (c) of this section.

(c) If the amount deposited in the escrow account is less than the amount of all refunds that producers and importers subject to this subpart have a right to receive, the Board shall prorate the amount deposited in such account among all producers and importers who desire a refund of assessments paid no later than 90 days after the required referendum results are announced by the Secretary.

(d) Any producer or importer requesting a refund shall submit an application on the prescribed form to the Board within 60 days from the date the results of the required referendum are announced by the Secretary. The producer and importer shall also submit documentation to substantiate that assessments were paid. Any such demand shall be made by such producer or importer in accordance with the provisions of this subpart and in a manner consistent with the regulations in this part.

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(e) If the Order is approved by the required referendum conducted under § 1223.71 then:

(1) The escrow account shall be closed; and,

(2) The funds shall be available to the Board for disbursement under § 1223.50.

PROMOTION, RESEARCH, AND INFORMATION

§ 1223.55 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to pecans; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of pecans, and the creation of new products thereof, to the end that the marketing and use of pecans may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of pecans.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan, or project.

§ 1223.56 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the

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Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this section.

§ 1223.57 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1223.73 shall apply to determine disposition of all such property.

REPORTS, BOOKS, AND RECORDS

§ 1223.60 Reports.

(a) Each first handler, producer, or importer subject to this subpart shall be required to provide to the Board periodically such information as required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

(1) First handler must report or producer acting as its own first handler:

(i) Number of pounds handled;

(ii) Number of pounds on which an assessment was collected;

(iii) Name, address and other contact information from whom the first handler has collected the assessments on each pound handled; and

(iv) Date collection was made on each pound handled.

(2) Unless provided by Customs, importer must report:

(i) Number of pounds imported;

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(ii) Number of pounds on which an assessment was paid;

(iii) Name, address, and other contact information of the importer; and

(iv) Date assessment was paid on each pound imported.

(b) These reports shall accompany the payment of the collected assessments.

§ 1223.61 Books and records.

Each producer, first handler, and importer subject to this subpart shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this part, including such records as are necessary to verify any reports required. Such records shall be retained for at least 3 years beyond the fiscal period of their applicability.

§ 1223.62 Confidential treatment.

All information obtained from books, records, or reports under the Act and this part shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, producers, importers, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements will not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any per-

son who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

MISCELLANEOUS

§ 1223.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1223.71 Referenda.

(a) *Required referendum.* For the purpose of ascertaining whether the persons subject to this subpart favor the continuation, suspension, amendment, or termination of this subpart, the Secretary shall conduct a referendum among persons subject to assessments under § 1223.52 who, during a representative period determined by the Secretary, have engaged in the production or importation of pecans:

(1) The required referendum shall be conducted not later than 3 years after assessments first begin under the Order; and

(2) The Order will be approved in a referendum if a majority of producers and importers vote for approval in the referendum.

(b) *Subsequent referenda.* The Secretary shall conduct subsequent referenda:

(1) For the purpose of ascertaining whether producers and importers favor the continuation, suspension, or termination of the Order;

(2) Every seven years the Secretary shall hold a referendum to determine whether producers and importers of pecans favor the continuation of the Order. The Order shall continue if it is favored by a majority of producers and importers voting for approval in the referendum who have been engaged in the production or importation of pecans;

(3) At the request of the Board established in this subpart;

(4) At the request of 10 percent or more of the number of persons eligible to vote in a referendum as set forth under the Order; or

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(5) At any time as determined by the Secretary.

§ 1223.72 Suspension and termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that this part or subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this part or subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal period whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers voting for approval who, during a representative period determined by the Secretary, have been engaged in the production or importation of pecans.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1223.73 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agree-

ments entered into pursuant to this subpart;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary and appropriate to vest in such person's title and right to all funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the pecan producer organizations in the interest of continuing pecan promotion, research, and information programs.

§ 1223.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part, or the issuance of any amendment to this part, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen, or which may thereafter arise in connection with any provision of this part; or

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1223.75 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

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§ 1223.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1223.77 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1223.78 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581-NEW, except for the Board nominee background statement form which is assigned OMB control number 0505-0001.

Subpart B—Referendum Procedures

§ 1223.100 General.

Referenda to determine whether eligible pecan producers and importers favor the issuance, amendment, suspension, or termination of the Pecan Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1223.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employees of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Eligible importer* means any person who, during the representative period, was subject to the Order and required to pay assessments on pecans imported into the United States.

(c) *Eligible producer* means any person who, during the representative period, was subject to the Order and required

to pay assessments on pecans produced in the United States.

(d) *Order* means subpart A of this part, the Pecan Promotion, Research, and Information Order.

(e) *Pecans* means and includes any and all varieties or subvarieties, inshell and shelled, of *Carya illinoensis* grown or imported into the United States.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this paragraph (f), the term "partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a pecan farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(g) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(h) *Representative period* means the period designated by the Secretary.

(i) *United States* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1223.102 Voting.

(a) Each person who is an eligible producer or an eligible importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce pecans, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

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(b) Proxy voting is not authorized, but an officer or employee of a corporate producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such person. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, overnight delivery, electronic mail, facsimile, or by other means as instructed by the Secretary.

§ 1223.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this section, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions in this section, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and eligible importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1223.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing the referendum agent's functions listed in this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1223.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if the agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1223.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1223.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Subpart C—Administrative Provisions

§ 1223.520 Late payment and interest charges for past due assessments.

(a) A late payment charge will be imposed on any producer, first handler or importer who fails to make timely remittance to the Board of the total assessments for which they are liable. The late payment will be imposed on any assessments not received within 30 calendar days of the date when assessments are due. This one-time late payment charge will be 5 percent of the assessments due before interest charges have accrued.

(b) In addition to the late payment charge, 1 percent per month interest on the outstanding balance, including any late payment and accrued interest, will be added to any accounts for which payment has not been received within 30 calendar days of the date when assessments are due. Interest will continue to accrue monthly until the outstanding balance is paid to the Board.

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Pork Promotion, Research, and Consumer Information Order

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