

to present a favorable image of pecans to the public with the express intent of improving the competitive position of pecans in the marketplace and stimulating sales of pecans, including paid advertising.

(20) Research

The term “research” means any type of test, study, or analysis designed to advance the image, desirability, usage, marketability, production, product development, or quality of pecans.

(21) Secretary

The term “Secretary” means the Secretary of Agriculture.

(22) Shell

The term “shell” means to remove the shell from an in-shell pecan.

(23) Shelled pecan

The term “shelled pecan” means a pecan kernel, or portion of a kernel, after the pecan shell has been removed.

(24) Sheller

The term “sheller” means any person who—

(A) shells pecans or has pecans shelled for the account of such person; and

(B) during the immediately previous year, purchased more than 50 percent of the pecans such person shelled or had shelled for such account.

(25) State

The term “State” means any of the several States, the District of Columbia and the Commonwealth of Puerto Rico.

(26) United States

The term “United States” means collectively the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 101-624, title XIX, §1907, Nov. 28, 1990, 104 Stat. 3839; Pub. L. 102-237, title VIII, §802(1), Dec. 13, 1991, 105 Stat. 1882.)

AMENDMENTS

1991—Par. (22). Pub. L. 102-237 substituted “in-shell” for “inshell”.

§ 6003. Issuance of plans

(a) In general

To effectuate the declared policy of section 6001(b) of this title, the Secretary shall, subject to this chapter, issue and from time to time amend, plans applicable to growers, grower-shellers, shellers, first handlers, and importers of pecans. Any such plan shall be national in scope. Not more than one plan shall be in effect under this chapter at any one time.

(b) Procedure

(1) Proposal for issuance of plan

The Secretary may propose the issuance of a plan under this chapter, or an association of pecan growers or grower-shellers or any other person that will be affected by this chapter may request the issuance of, and submit a proposal for, such a plan.

(2) Proposed plan

Not later than 60 days after the receipt of a request and proposal by an interested person for a plan, or when the Secretary determines to propose a plan, the Secretary shall publish a proposed plan and give due notice and opportunity for public comment on the proposed plan.

(3) Issuance of plan

After notice and opportunity for public comment are given, as provided in paragraph (2), the Secretary shall issue a plan, taking into consideration the comments received and including in the plan provisions necessary to ensure that the plan is in conformity with the requirements of this chapter.

(4) Effective date of plan

Such plan shall be issued and become effective not later than 150 days following publication of the proposed plan.

(c) Amendments

The Secretary, from time to time, may amend any plan issued under this section. The provisions of this chapter applicable to a plan shall be applicable to amendments to a plan.

(Pub. L. 101-624, title XIX, §1908, Nov. 28, 1990, 104 Stat. 3841.)

§ 6004. Regulations

The Secretary may issue such regulations as are necessary to carry out this chapter.

(Pub. L. 101-624, title XIX, §1909, Nov. 28, 1990, 104 Stat. 3841.)

§ 6005. Required terms in plans

(a) In general

Each plan issued under this chapter shall contain the terms and conditions prescribed in this section.

(b) Pecan Marketing Board

(1) Establishment

The plan shall establish a Pecan Marketing Board to carry out the program referred to in section 6001(b) of this title.

(2) Service to entire industry

The Board shall carry out programs and projects that will provide maximum benefit to the pecan industry in all parts of the United States and only generically promote pecans.

(3) Board membership

The Board shall consist of 15 members, including—

(A) 8 members who are growers;

(B) 4 members who are shellers;

(C) one member who is a first handler and who derives over 50 percent of the member's gross income from buying and selling pecans;

(D) one member who is an importer of pecans into the United States, nominated by the Board;

(E) one member representing the general public, nominated by the Board; and

(F) at the option of the Board, a consultant or advisor representing the views of

pecan producers in a country other than the United States who may be chosen to attend Board functions as a nonvoting member.

(4) Representation of members

(A) Grower representatives

Of the growers referred to in paragraph (3)(A), 2 members shall be from each district.

(B) Sheller representatives

Of the shellers referred to in paragraph (3)(B)—

(i) 2 members shall be selected from among shellers whose place of residence is east of the Mississippi River; and

(ii) 2 members shall be selected from among shellers whose place of residence is west of the Mississippi River.

(C) First handler representative

The first handler representative on the Board referred to in paragraph (3)(C) shall be selected from among first handlers whose place of residence is in a district.

(D) Importer representative

The importer representative on the Board referred to in paragraph (3)(D) shall be an individual who imports pecans into the United States.

(E) Public representative

The public representative on the Board referred to in paragraph (3)(E) shall not be a grower, grower-sheller, sheller, first handler, or importer.

(5) Alternate for each member

Each member of the Board shall have an alternate with the same qualifications as the member such alternate would replace.

(6) Limitation on State residence

There shall be no more than one member from each State in each district, except that the State of Georgia may have 2 growers from such State representing the district that it is in.

(7) Modifying Board membership

In accordance with regulations approved by the Secretary, at least once each 3 years and not more than once each 2 years, the Board shall—

(A) review the geographic distribution of pecan production throughout the United States; and

(B) if warranted, recommend to the Secretary that the Secretary reapportion a district in order to reflect the geographic distribution of pecan production.

(8) Selection process for members

(A) Publicity

The Board shall give reasonable publicity to the industry for nomination of persons interested in being nominated for Board membership.

(B) Eligibility

Each grower and sheller shall be eligible to vote for the nomination of members who represent that class of members on the Board. Growers shall be eligible to vote for

the nomination of the first handler members on the Board.

(C) Selection of nominees

Each person referred to in subparagraph (B) shall have one vote. The 2 eligible candidates receiving the largest number of votes cast for each Board position for each class of members shall be the nominees for such position.

(D) Certification

Except for the establishment of the initial Board, the nominations made under subparagraph (C) and subsections (b)(3)(D) and (b)(3)(E) shall be certified by the Board and submitted to the Secretary no later than May 1 or such other date recommended by the Board and approved by the Secretary preceding the commencement of the term of office for Board membership, as established in paragraph (9).

(E) Appointment

To each vacant Board position, the Secretary shall appoint 1 individual from among the nominees certified and submitted under subparagraph (D).

(F) Rejection of nominees

The Secretary may reject any nominee submitted under subparagraph (D). If there are insufficient nominees from which to appoint members to the Board as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary in the same manner.

(G) Initial Board

The Secretary shall establish an initial Board from among nominations solicited by the Secretary. For the purpose of obtaining nominations for the members of the initial Board described in subparagraphs (A), (B), and (C) of paragraph (3), the Secretary shall perform the functions of the Board under this subsection as the Secretary determines necessary and appropriate. Nominations for those members of the initial Board described in subparagraphs (D) and (E) of paragraph (3) shall be made in accordance with paragraph (3).

(H) Failure to nominate

If growers and shellers fail to nominate individuals for appointment, the Secretary may appoint members on a basis provided for in the plan. If the Board fails to nominate an importer or a public representative, such member may be appointed without a nomination.

(9) Terms of office

(A) In general

The members of the Board shall serve for a term of 3 years, except that the members appointed to the initial Board established under paragraph (8)(G) shall serve, proportionately, for terms of 1, 2, and 3 years, as determined by the Secretary.

(B) Termination of terms

Notwithstanding subparagraph (C), each member shall continue to serve until a successor is appointed by the Secretary.

(C) Limitation on terms

No individual may serve more than 2 consecutive 3-year terms as a member.

(D) Vacancies**(i) Submitting nominations**

To fill any vacancy created by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall request that at least 2 eligible nominations for a successor for each such vacancy be submitted by the Board in the manner provided in paragraph (8).

(ii) Lack of nominations

If at least 2 eligible nominations are not submitted under clause (i), the Secretary shall determine the manner of submission of nominations for the vacancy.

(10) Compensation

A member of the Board shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred in the performance of duties for and approved by the Board.

(c) Powers and duties of Board

The plan shall define the powers and duties of the Board, which shall include the power and duty—

- (1) to administer the plan in accordance with its terms and conditions;
- (2) to make regulations to effectuate the terms and conditions of the plan;
- (3) to meet, organize, and select from among members of the Board a chairperson, other officers, and committees and subcommittees, as the Board determines appropriate;
- (4) to establish working committees of persons other than Board members;
- (5) to employ such persons, other than Board members, as the Board considers necessary and to determine the compensation and define the duties of such persons;
- (6) to prepare and submit for the approval of the Secretary, prior to the beginning of each fiscal period, a recommended rate of assessment under section 6007 of this title, and a fiscal period budget of the anticipated expenses in the administration of the plan, including the probable costs of all programs and projects;
- (7) to develop programs and projects, subject to subsection (d);
- (8) to enter into contracts or agreements, subject to subsection (e), to develop and carry out programs or projects of promotion, research, industry information and consumer information;
- (9) to carry out research, promotion, industry information, and consumer information, and to pay the costs of such projects with assessments collected pursuant to section 6007 of this title;
- (10) to keep minutes, books, and records that reflect the actions and transactions of the Board, and promptly report minutes of each Board meeting to the Secretary;
- (11) to appoint and convene, from time to time, working committees comprised of growers, grower-shellers, first handlers, shellers,

importers, and the public to assist in the development of research, promotion, industry information, and consumer information programs for pecans;

(12) to invest, pending disbursement under a program or project, funds collected through assessments authorized under this chapter, only in—

- (A) obligations of the United States or any agency thereof;
- (B) general obligations of any State or any political subdivision thereof;
- (C) any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or
- (D) obligations fully guaranteed as to principal and interest by the United States;

except that income from any such invested funds may be used for any purpose for which the invested funds may be used;

(13) to receive, investigate, and report to the Secretary complaints of violations of the plan;

(14) to furnish the Secretary with such information as the Secretary may request;

(15) to recommend to the Secretary amendments to the plan; and

(16) to develop and recommend to the Secretary for approval such regulations as may be necessary for the development and execution of programs or projects, or as may otherwise be necessary, to carry out the plan.

(d) Programs and budgets**(1) Submission to Secretary**

The plan shall provide that the Board shall submit to the Secretary for approval any program or project of promotion, research, consumer information, or industry information. No program or project shall be implemented prior to its approval by the Secretary.

(2) Budgets

The plan shall require the Board, prior to the beginning of each fiscal year, or as may be necessary after the beginning of such fiscal year, to submit to the Secretary for approval budgets of its anticipated expenses (including reimbursements under subsection (b)(10)) and disbursements in the implementation of the plan, including projected costs of promotion, research, consumer information, and industry information programs and projects.

(3) Incurring expenses

The Board may incur such expenses for programs or projects of research, promotion, consumer information, or industry information, and other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, including any implementation, administrative, and referendum costs incurred by the Department.

(4) Paying expenses

The funds to cover the expenses referred to in paragraph (3) shall be paid by the Board from assessments collected under section 6007 of this title or funds borrowed pursuant to paragraph (5).

(5) Authority to borrow

In order to meet the expenses referred to in paragraph (3), the Board shall have the author-

ity to borrow funds, as approved by the Secretary, for capital outlays and startup costs.

(6) Limitation on spending

Effective on the date that is 3 years after the date of the establishment of the Board, the Board shall not spend in excess of 20 percent of the assessments collected under section 6007 of this title for administration of the Board.

(e) Contracts and agreements

(1) In general

To ensure efficient use of funds, the plan shall provide that the Board may enter into contracts or agreements for the implementation and carrying out of programs or projects of pecan promotion, research, consumer information, or industry information, including contracts with grower and grower-sheller organizations, and for the payment of the cost thereof with funds received by the Board under the plan.

(2) Requirements

Any such contract or agreement shall provide that—

(A) the contracting party shall develop and submit to the Board a program or project together with a budget or budgets that shall show estimated costs to be incurred for such program or project;

(B) the program or project shall become effective on the approval of the Secretary; and

(C) the contracting party shall keep accurate records of all of its transactions, account for funds received and expended, make periodic reports to the Board of activities conducted, and make such other reports as the Board or the Secretary may require.

(3) Grower and grower-sheller organizations

The plan shall provide that the Board may contract with grower and grower-sheller organizations for any other services. Any such contract shall include provisions comparable to those required by paragraph (2).

(f) Books and records of Board

(1) In general

The plan shall require the Board to—

(A) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe;

(B) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

(C) account for the receipt and disbursement of all funds entrusted to the Board.

(2) Audits

The Board shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

(g) Prohibition

The Board shall not engage in any action to, nor shall any funds received by the Board under this chapter be used to—

(1) influence legislation or governmental action, other than recommending to the Secretary amendments to the plan;

(2) engage in any action that would be a conflict of interest; or

(3) engage in any advertising that may be false or misleading.

(h) Books and records

(1) In general

The plan shall require that each first handler, grower-sheller, or importer shall—

(A) maintain and submit to the Board any reports considered necessary by the Secretary to ensure compliance with this chapter; and

(B) make available during normal business hours, for inspection by employees of the Board or Secretary, such books and records as are necessary to carry out this chapter, including such records as are necessary to verify any required reports.

(2) Time requirement

The records required under paragraph (1) shall be maintained for 2 years beyond the fiscal period of the applicability of such records.

(3) Confidentiality

(A) In general

Except as otherwise provided in this chapter, all information obtained from books, records, or reports required to be maintained under paragraph (1) shall be kept confidential, and shall not be disclosed to the public by any person.

(B) Disclosure

Information referred to in subparagraph

(A) may be disclosed to the public only if—

(i) the Secretary considers the information relevant;

(ii) the information is revealed in a suit or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party; and

(iii) the information relates to this chapter.

(C) Misconduct

Any disclosure of confidential information in violation of subparagraph (A) by any Board member or employee of the Board, except as required by other law or allowed under subparagraph (B) or (D), shall be considered a violation of this chapter.

(D) General statements

Nothing in this paragraph may be construed to prohibit—

(i) the issuance of general statements, based on the reports, of the number of persons subject to the plan or statistical data collected therefrom, which statements do not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of any person violating the plan, together with a statement of the particular provisions of the plan violated by such person.

(4) Availability of information

(A) Exception

Except as provided in this chapter, information obtained under this chapter may be

made available to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular information desired and the law enforcement activity for which the information is sought.

(B) Penalty

Any person knowingly violating this subsection, on conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for not more than 1 year, or both, and if an officer or employee of the Board or the Department, shall be removed from office.

(5) Withholding information

Nothing in this chapter shall be construed to authorize the withholding of information from Congress.

(i) Use of assessments

The plan shall provide that the assessments collected under section 6007 of this title shall be used for payment of the expenses in implementing and administering this chapter, with provision for a reasonable reserve, and to cover those administrative costs incurred by the Secretary in implementing and administering this chapter, except for the salaries of Government employees incurred in conducting referenda.

(j) Other terms and conditions

The plan also shall contain such terms and conditions, not inconsistent with this chapter, as determined necessary by the Secretary to effectuate this chapter.

(Pub. L. 101-624, title XIX, §1910, Nov. 28, 1990, 104 Stat. 3841; Pub. L. 102-237, title VIII, §802(2), Dec. 13, 1991, 105 Stat. 1882.)

AMENDMENTS

1991—Subsec. (b)(8)(G). Pub. L. 102-237 substituted “subparagraphs (A), (B), and (C) of paragraph (3),” for “paragraph 3(A), (B), and (C),” and “subparagraphs (D) and (E) of paragraph (3)” for “paragraph (3)(D) and (E)”.

§ 6006. Permissive terms in plans

(a) In general

A plan issued pursuant to this chapter may contain one or more of the terms and conditions contained in this section.

(b) Exemptions

The plan may provide authority to exempt from the plan pecans used for nonfood uses and authority for the Board to require satisfactory safeguards against improper uses of such exemptions.

(c) Different payment and reporting schedules

The plan may provide authority to designate different payment and reporting schedules for growers, grower-shellers, first handlers and importers to recognize differences in marketing practices and procedures utilized in different production areas.

(d) Promotion

The plan may provide for the establishment, issuance, effectuation, and administration of ap-

propriate programs or projects for the promotion of pecans and for the disbursement of necessary funds for such purposes, except that—

(1) any such program or project shall be directed toward increasing the general demand for pecans; and

(2) such promotional activities shall comply with other restrictions on the use of funds that are established under this chapter.

(e) Research and information

The plan may provide for establishing and carrying on research, consumer information, and industry information projects and studies to the end that the marketing and utilization of pecans may be encouraged, expanded, improved, or made more efficient, and for the disbursement of necessary funds for such purposes.

(f) Reserve funds

The plan may provide authority to accumulate reserve funds from assessments collected pursuant to this chapter, to permit an effective and continuous coordinated program of research, consumer information, industry information and promotion in years when the production and assessment income may be reduced, except that the total reserve fund may not exceed the amount budgeted for the operation of the plan for 2 years.

(g) Foreign markets

The plan may provide authority to use funds collected under this chapter, with the approval of the Secretary, for the development and expansion of pecan sales in foreign markets.

(Pub. L. 101-624, title XIX, §1911, Nov. 28, 1990, 104 Stat. 3847.)

§ 6007. Assessments

(a) In general

During the effective period of a plan issued pursuant to this chapter, assessments shall be—

(1) levied on all pecans produced in, and all pecans imported into, the United States and marketed; and

(2) deducted from the payment made to a grower for all pecans sold to a first handler.

(b) Limitation on assessments

No more than one assessment may be assessed under subsection (a) on a grower (as remitted by a first handler), grower-sheller, or importer, for any lot of pecans handled or imported.

(c) Remitting assessments

(1) In general

Assessments required under subsection (a) shall be remitted to the Board by—

(A) a first handler; and

(B) an importer.

(2) Times to remit assessment

(A) First handlers

Each first handler who is not a grower-sheller and who is required to remit an assessment under paragraph (1) shall remit such assessment to the Board no later than the last day of the month following the month that the pecans being assessed were purchased or marketed by such first handler.