TITLE 7 - AGRICULTURE
CHAPTER 89—PECAN PROMOTION AND RESEARCH

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TITLE 7—AGRICULTURE

Chap. ...Sec.
1. Commodity Exchanges ...1
2. Cotton Standards ...51
3. Grain Standards ...71
4. Naval Stores ...91
5. Importation of Adulterated Seeds [Repealed] ...111
6. Insecticides and Environmental Pesticide Control ...121
6A. National Laboratory Accreditation ...138
7. Insect Pests Generally [Repealed, Omitted, or Transferred] ...141
7A. Golden Nematode [Repealed] ...150
7B. Plant Pests [Repealed] ...150aa
8. Nursery Stock and Other Plants and Plant Products [Repealed, Omitted, or Transferred] ...151
8A. Rubber and Other Critical Agricultural Materials ...171
9. Packers and Stockyards ...181
10. Warehouses ...241
11. Honeybees ...281
12. Associations of Agricultural Products Producers ...291
13. Agricultural and Mechanical Colleges ...301
14. Agricultural Experiment Stations ...361
15. Bureau of Animal Industry ...391
16. Bureau of Dairy Industry ...401
17. Miscellaneous Matters ...411
18. Cooperative Marketing ...451
19. Cotton Statistics and Estimates ...471
20. Dumping or Destruction of Interstate Produce ...491
20A. Perishable Agricultural Commodities ...499a
21. Tobacco Statistics ...501
21A. Tobacco Inspection ...511
21B. Tobacco Control [Repealed] ...515
21C. Tobacco Reform ...518
22. Agricultural Marketing [Omitted or Transferred] ...521
23. Foreign Agricultural Service [Repealed] ...541
24. Perishable Agricultural Commodities [Transferred to Chapter 20A] ...551
25. Export Standards for Apples ...581
25A. Export Standards for Grapes and Plums ...591
26. Agricultural Adjustment ...601
26A. Agricultural Marketing Agreements ...671
27. Cotton Marketing [Repealed or Omitted] ...701
28. Tobacco Industry [Repealed] ...751
29. Potato Act of 1935 [Repealed] ...801
30. Anti-Hog-Cholera Serum and Hog-Cholera Virus ...851
31. Rural Electrification and Telephone Service ...901
31A. Telemedicine and Distance Learning Services in Rural Areas ...950aaa
32. Peanut Statistics ...951
33. Farm Tenancy ...1000
34. Sugar Production and Control [Omitted or Repealed] ...1100
35. Agricultural Adjustment Act of 1938 ...1281
35A. Price Support of Agricultural Commodities ...1421
36. Crop Insurance ...1501
37. Seeds ...1511
38. Distribution and Marketing of Agricultural Products ...1621
39. Stabilization of International Wheat Market ...1641
40. Halogeton Glomeratus Control [Repealed] ...1651
41. Food for Peace ...1691
42. Agricultural Commodity Set-Aside ...1741
43. Foreign Market Development ...1761
44. Wool Program [Repealed] ...1781
45. Soil Bank Program ...1801
46. Surplus Disposal of Agricultural Commodities ...1851
47. Interchange of Department of Agriculture and State Employees [Repealed] ...1881
48. Humane Methods of Livestock Slaughter ...1901
49. Consultation on Agricultural Programs ...1911
50. Agricultural Credit ...1921
51. Supplemental Nutrition Assistance Program ...2011
52. Farm Labor Contractor Registration [Repealed] ...2041
53. Cotton Research and Promotion ...2101
54. Transportation, Sale, and Handling of Certain Animals ...2131
55. Department of Agriculture ...2201
55A. Department of Agriculture Advisory Committees ...2281
56. Unfair Trade Practices Affecting Producers of Agricultural Products ...2301
57. Plant Variety Protection ...2321
58. Potato Research and Promotion ...2611
59. Rural Fire Protection, Development, and Small Farm Research and Education ...2651
60. Egg Research and Consumer Information ...2701
61. Noxious Weeds ...2801
62. Beef Research and Information ...2901
63. Farmer-to-Consumer Direct Marketing ...3001
64. Agricultural Research, Extension, and Teaching ...3101
65. Wheat and Wheat Foods Research and Nutrition Education ...3401
66. Agricultural Foreign Investment Disclosure ...3501
67. Implementation of International Sugar Agreement, 1977 ...3601
68. Agricultural Subterminal Facilities ...3701
69. Swine Health Protection ...3801
70. Animal Cancer Research ...3901
71. Agricultural Trade Suspension Adjustment ...4001
72. National Agricultural Cost of Production Standards Review Board [Omitted] ...4101
73. Farmland Protection Policy ...4201
74. Floral Research and Consumer Information ...4301
75. International Carriage of Perishable Foodstuffs ...4401
76. Dairy Research and Promotion ...4501
77. Honey Research, Promotion, and Consumer Information ...4601
78. Agricultural Productivity Research [Repealed] ...4701
79. Pork Promotion, Research, and Consumer Information ...4801
80. Watermelon Research and Promotion ...4901
81. National Commission on Agriculture and Rural Development Policy [Omitted] ...5001
82. State Agricultural Loan Mediation Programs ...5101
83. Agricultural Competitiveness and Trade ...5201
84. National Nutrition Monitoring and Related Research ...5301
85. Administration of Environmental Programs ...5401
86. Water Quality Research, Education, and Coordination ...5501
87. Export Promotion ...5601
88. Research ...5801
89. Pecan Promotion and Research ...6001
90. Mushroom Promotion, Research, and Consumer Information ...6101
91. Lime Promotion, Research, and Consumer Information ...6201
92. Soybean Promotion, Research, and Consumer Information ...6301
93. Processor-Funded Milk Promotion Program ...6401
94. Organic Certification ...6501
95. Rural Revitalization Through Forestry ...6601
96. Global Climate Change ...6701
97. Fresh Cut Flowers and Fresh Cut Greens Promotion and Information ...6801
98. Department of Agriculture Reorganization ...6901
99. Sheep Promotion, Research, and Information ...7101
100. Agricultural Market Transition ...7201
101. Agricultural Promotion ...7401
102. Emergency Food Assistance ...7501
103. Agricultural Research, Extension, and Education Reform ...7601
104. Plant Protection ...7701
105. Hass Avocado Promotion, Research, and Information ...7801
106. Commodity Programs ...7901
107. Renewable Energy Research and Development ...8101
108. Tree Assistance Program ...8201
109. Animal Health Protection ...8301
110. Enhancing Controls on Dangerous Biological Agents and Toxins ...8401
111. Brown Tree Snake Control and Eradication ...8501
112. Biomass Research and Development [Repealed] ...8601
113. Agricultural Commodity Support Programs ...8701
114. Agricultural Security ...8901
CHAPTER 89—PECAN PROMOTION AND RESEARCH

§ 6001. Findings and declaration of policy

(a) Findings

Congress finds that—

1. pecans are a native American nut that is an important food, and is a valuable part of the human diet;
2. the production of pecans plays a significant role in the economy of the United States in that pecans are produced by thousands of pecan producers, shelled and processed by numerous shellers and processors, and pecans produced in the United States are consumed by millions of people throughout the United States and foreign countries;
3. pecans must be high quality, readily available, handled properly, and marketed efficiently to ensure that consumers have an adequate supply of pecans;
4. the maintenance and expansion of existing markets and development of new markets for pecans are vital to the welfare of pecan producers and those concerned with marketing, using, and producing pecans, as well as to the general economy of the United States, and necessary to ensure the ready availability and efficient marketing of pecans;
5. there exist established State organizations conducting pecan promotion, research, and industry and consumer education programs that are invaluable to the efforts of promoting the consumption of pecans;
6. the cooperative development, financing, and implementation of a coordinated national program of pecan promotion, research, industry information, and consumer information are necessary to maintain and expand existing markets and develop new markets for pecans; and
7. pecans move in interstate and foreign commerce, and pecans that do not move in such channels of commerce directly burden or affect interstate commerce in pecans.

(b) Policy

It is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this chapter, of an orderly procedure for developing, financing (through adequate assessments on pecans produced or imported into the United States), and carrying out an effective, continuous, coordinated program of promotion, research, industry information, and consumer information designed to—

1. strengthen the pecan industry’s position in the marketplace;
2. maintain and expand existing domestic and foreign markets and uses for pecans; and
§ 6002. Definitions

As used in this chapter—

(1) Board

The term “Board” means the Pecan Marketing Board established in section 6005 (b) of this title.

(2) Commerce

The term “commerce” means interstate, foreign, or intrastate commerce.

(3) Conflict of interest

The term “conflict of interest” means a situation in which a member has a direct or indirect financial interest in a corporation, partnership, sole proprietorship, joint venture, or other business entity dealing directly or indirectly with the Board.

(4) Consumer information

The term “consumer information” means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of pecans.

(5) Department

The term “Department” means the Department of Agriculture.

(6) District

The term “district” means a geographical area of the United States, as determined by the Board and approved by the Secretary, in which there is produced approximately one-fourth of the volume of pecans produced in the United States.

(7) First handler

The term “first handler” means the first person who buys or takes possession of pecans from a grower for marketing. If a grower markets pecans directly to consumers, such grower shall be considered the first handler with respect to pecans grown by such grower.

(8) Grower

The term “grower” means any person engaged in the production and sale of pecans in the United States who owns, or who shares the ownership and risk of loss of, such pecans.

(9) Grower-sheller

The term “grower-sheller” means a person who—
(A) shells pecans, or has pecans shelled for such person, in the United States; and
(B) during the immediately previous year, grew 50 percent or more of the pecans such person
shelled or had shelled for such person.

(10) Handle
The term “handle” means receipt of in-shell pecans by a sheller or first handler, including pecans
produced by such sheller or first handler.

(11) Importer
The term “importer” means any person who imports pecans from outside of the United States for sale
in the United States.

(12) Industry information
The term “industry information” means information and programs that will lead to the development
of new markets and marketing strategies, increased efficiency, and activities to enhance the image of
the pecan industry.

(13) In-shell pecan
The term “in-shell pecan” means a pecan that has a shell that has not been removed.

(14) To market
The term “to market” means to sell or offer to dispose of pecans in any channel of commerce.

(15) Member
The term “member” means a member of the Board.

(16) Pecan
The term “pecan” means the nut of the pecan tree carya illinoensis.

(17) Person
The term “person” means any individual, group of individuals, partnership, corporation, association,
cooperative, or any other entity.

(18) Plan
The term “plan” means a plan issued under section 6003 of this title.

(19) Promotion
The term “promotion” means any action taken by the Board, pursuant to this chapter, 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—
§ 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.
§ 6004. Regulations

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


§ 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) of this section 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) of this section;
(8) to enter into contracts or agreements, subject to subsection (e) of this section, 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) of this section) 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 authority 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.


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 appropriate 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.


§ 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) of this section 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) of this section 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.

(B) Grower-shellers

Each first handler who is a grower-sheller and who is required to remit an assessment under paragraph (1) shall remit such assessment to the Board, to the extent practicable, in payments of one-third of the total annual amount of such assessment due to the Board on January 31, March 31, and May 10, or such dates as may be recommended by the Board and approved by the Secretary, during the fiscal year that the pecans being assessed were harvested.

(C) Importers

Importers of pecans into the United States shall pay the assessment at the time the pecans enter the United States and shall remit such assessment to the Board.

(d) Assessment rate

(1) In general

Except as provided in paragraph (2), assessment rates shall be recommended by the Board and approved by the Secretary, except that the maximum assessment shall not exceed—
(A) during the period commencing on the effective date of the issuance of a plan and ending on the date the referendum is conducted under section 6011 (a) of this title, one-half cent per pound for in-shell pecans as determined by the Board and approved by the Secretary; and

(B) after such period, 2 cents per pound for in-shell pecans.

(2) Adjusting rate for shelled pecans

The rate of assessment of shelled pecans shall be twice the rate established for in-shell pecans pursuant to paragraph (1).

(3) Special State assessment

(A) In general

Notwithstanding any other provision of this chapter, with the approval of the Secretary and if authorized by State law and requested by such State, a special assessment of one-quarter cent per pound for in-shell pecans, and an appropriate per-pound assessment for shelled pecans as adjusted under paragraph (2), shall be remitted to the Board for the purpose of utilizing such funds by a State pecan marketing board for research projects to promote pecans pursuant to State law.

(B) Collection and remittance

The Board shall collect such assessments and upon receipt of such assessments shall remit such assessments to the State, within a time period mutually agreed upon between the State and the Board, and approved by the Secretary. In the collection of such State assessments, neither the Board nor the Secretary shall in any manner enforce the collection or remittance of any such payment by producers of such State assessments or investigate nonpayment of such State assessments, except to provide to a State the names of growers from whom such assessments were collected and the respective amounts of assessments collected.

(C) Regulations

The Secretary is authorized to make such regulations as may be necessary to carry out the provisions of this section.

(e) Late-payment charge

(1) In general

There shall be a late-payment charge imposed on any person who fails to remit, on or before the due date established by the Board under subsection (c)(2) of this section, to the Board the total amount for which such person is liable.

(2) Amount of charge

The amount of the late-payment charge imposed under paragraph (1) shall be prescribed by the Board with the approval of the Secretary.

(f) Refund of assessments from escrow account

(1) Establishment of escrow account

During the period beginning on the effective date of a plan first issued under section 6003 of this title and ending on the date the referendum is conducted under section 6011 (a) of this title, the Board shall—

(A) establish an escrow account to be used for assessment refunds; and

(B) place funds in such account in accordance with paragraph (2).

(2) Placement of funds in account

The Board shall place in such account, from assessments collected during the period referred to in paragraph (1), an amount equal to the product obtained by multiplying the total amount of assessments collected during such period by 10 percent.

(3) Right to receive refund
Subject to paragraphs (4), (5), and (6), any grower, grower-sheller, or importer shall have the right to demand and receive from the Board a one-time refund of assessments paid by or on behalf of such grower, grower-sheller, or importer during the period referred to in paragraph (1) if—

(A) such grower, grower-sheller, or importer is required to pay such assessments;
(B) such grower, grower-sheller, or importer does not support the program established under this chapter;
(C) such grower, grower-sheller, or importer demands such refund prior to the conduct of the referendum under section 6011 (a) of this title; and
(D) the plan is not approved pursuant to the referendum conducted under section 6011 (a) of this title.

(4) Form of demand

Such demand shall be made in accordance with regulations, on a form, and within a time period prescribed by the Board.

(5) Making of refund

Such refund shall be made on submission of proof satisfactory to the Board that such grower, grower-sheller, or importer paid the assessment for which refund is demanded.

(6) Proration

If—

(A) the amount in the escrow account required by paragraph (1) is not sufficient to refund the total amount of assessments demanded by eligible growers, grower-shellers, or importers; and
(B) the plan is not approved pursuant to the referendum conducted under section 6011 (a) of this title;

the Board shall prorate the amount of such refunds among all eligible growers, grower-shellers, and importers who demand such refund.

(7) Program approved

If the plan is approved pursuant to the referendum conducted under section 6011 (a) of this title, all funds in the escrow account shall be returned to the Board for use by the Board in accordance with this chapter.


§ 6008. Petition and review

(a) Petition

(1) In general

A person subject to a plan issued under this chapter may file with the Secretary a petition—

(A) stating that the plan, any provision of the plan, or any obligation imposed in connection with the plan is not in accordance with law; and
(B) requesting a modification of the plan or an exemption from the plan.

(2) Hearings

The petitioner shall be given the opportunity for a hearing on the petition, on the record and in accordance with regulations issued by the Secretary.

(3) Ruling

After such hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with law.

(b) Review
(1) Commencement of action

The district courts of the United States in any district in which a person who is a petitioner under subsection (a) of this section resides or carries on business are hereby vested with jurisdiction to review the ruling on such person’s petition, if a complaint for that purpose is filed within 20 days after the date of the entry of a ruling by the Secretary under subsection (a) of this section.

(2) Process

Service of process in such proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) Remands

If the court determines that such ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions either—

(A) to make such ruling as the court shall determine to be in accordance with law; or

(B) to take such further proceedings as, in the opinion of the court, the law requires.

(4) Enforcement

The pendency of proceedings instituted under subsection (a) of this section shall not impede, hinder, or delay the Attorney General or the Secretary from taking any action under section 6009 of this title.


References in Text

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 6009. Enforcement

(a) Jurisdiction

The district courts of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain a person from violating, this chapter or any plan or regulation issued under this chapter.

(b) Referral to Attorney General

A civil action to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this chapter or any plan or regulation issued under this chapter if the Secretary believes that the administration and enforcement of this chapter would be adequately served by administrative action under subsection (c) of this section or by providing a suitable written notice or warning to any person committing the violation.

(c) Civil penalties and orders

(1) Civil penalties

(A) In general

A person who willfully violates any provision of this chapter or any plan or regulation issued under this chapter, or who fails to pay, collect, or remit any assessment or fee required of the person under this chapter or any plan or regulation issued under this chapter, may be assessed by the Secretary a civil penalty of not less than $1,000 nor more than $10,000 for each such violation.

(B) Separate offense

Each violation described in subparagraph (A) shall be a separate offense.

(2) Cease and desist orders
In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(3) **Notice and hearing**

No penalty shall be assessed or cease and desist order issued by the Secretary under this subsection unless the Secretary gives the person against whom the order is issued notice and opportunity for a hearing on the record with respect to such violation.

(4) **Finality**

The order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the person against whom the order is issued files an appeal from the Secretary’s order in accordance with subsection (d) of this section.

(d) **Review by district court**

(1) **Commencement of action**

A person against whom a civil penalty is assessed or a cease and desist order is issued under subsection (c) of this section may obtain review of such penalty or order in the district court of the United States for the district in which such person resides or does business, or in the United States District Court for the District of Columbia, by—

(A) filing, within the 30-day period beginning on the date such penalty is assessed or order issued, a notice of appeal in such court; and

(B) simultaneously sending a copy of the notice by certified mail to the Secretary.

(2) **Record**

The Secretary shall promptly file in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(3) **Standard of review**

A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) **Failure to obey orders**

Any person who fails to obey a cease and desist order after the order has become final and unappealable, or after the appropriate district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing on the record and for judicial review under the procedures specified in subsections (c) and (d) of this section, of not more than $1,000 for each offense. Each day during which the failure continues shall be considered a separate violation of such order.

(f) **Failure to pay penalty**

If a person fails to pay a civil penalty after it has become a final and unappealable order issued by the Secretary, or after the appropriate district court has entered a final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States in any district in which the person resides or conducts business. In such action, the validity and appropriateness of such order imposing such civil penalty shall not be subject to review.


§ 6010. Investigations and power to subpoena

(a) **In general**

The Secretary may make such investigations as the Secretary determines necessary—
(1) for the effective administration of this chapter; or
(2) to determine whether a person has engaged or is engaging in any act or practice that constitutes a violation of any provision of this chapter, or of any plan, rule, or regulation issued under this chapter.

(b) **Power to subpoena**

(1) **Investigations**

For the purpose of an investigation made under subsection (a) of this section, the Secretary is authorized to administer oaths and affirmations and to issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

(2) **Administrative hearings**

For the purpose of an administrative hearing held under section 6008 or 6009 of this title, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) **Aid of courts**

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b) of this section. The court may issue an order requiring such person to comply with such a subpoena.

(d) **Contempt**

Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) **Process**

Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

(f) **Hearing site**

The site of any hearings held under section 6008 or 6009 of this title shall be within the judicial district where such person resides or has a principal place of business.


**Amendments**


§ 6011. Requirement of referendum

(a) **In general**

Not later than 24 months after the effective date of the plan first issued under section 6003 of this title, the Secretary shall conduct a referendum among growers, grower-shellers, and importers, who during a representative period determined by the Secretary have been engaged in the production or importation of pecans, for the purpose of ascertaining whether growers, grower-shellers, and importers favor continuation, termination, or suspension of the plan.

(b) **Other referenda**
(1) In general
After the referendum required under subsection (a) of this section, the Secretary shall hold a referendum on request of the Board or 10 percent or more of the total number of growers, grower-shellers, and importers, to determine if growers, grower-shellers, and importers favor the termination or suspension of the plan.

(2) Suspension or termination
The Secretary shall terminate or suspend such plan, in accordance with section 6012 (b) of this title, whenever the Secretary determines that such suspension or termination is favored by a majority of those voting in a referendum.

(c) Costs of referendum
The Secretary shall be reimbursed from any assessments collected by the Board for any expenses incurred by the Department in connection with the conduct of any referendum under this chapter, except for the salaries of Government employees.

(d) Manner
(1) In general
Referenda conducted pursuant to this chapter shall be conducted in such a manner as is determined by the Secretary.

(2) Advance registration
A grower, grower-sheller, or importer who chooses to vote in any referendum conducted under this chapter shall register in person prior to the voting period at the appropriate local office of the Agricultural Stabilization and Conservation Service, as determined by the Secretary, for such grower, grower-sheller, or by mailing such a request to the Secretary on behalf of an importer.

(3) Voting
A grower, grower-sheller, or importer who votes in any referendum conducted under this chapter shall vote in person at the appropriate local office of the Agricultural Stabilization and Conservation Service, as determined by the Secretary or by mail to the Secretary.

(4) Notice
Each Agricultural Stabilization and Conservation Service office shall notify all growers, grower-shellers, and importers in the area of such office, as determined by the Secretary, at least 30 days prior to a referendum conducted under this chapter. Such notice shall explain the registration and voting procedures established under this subsection.


§ 6012. Suspension or termination of plan

(a) Mandatory suspension or termination
The Secretary shall, whenever the Secretary finds that the plan or any provision of the plan obstructs or does not tend to effectuate the declared policy of this chapter, terminate or suspend the operation of such plan or provision.

(b) Suspension or termination
If, as a result of any referendum conducted under this chapter, the Secretary determines that suspension or termination of a plan is favored by a majority of the growers, grower-shellers, and importers voting in the referendum, the Secretary shall—

(1) within 6 months after making such determination, suspend or terminate, as the case may be, collection of assessments under the plan; and
(2) suspend or terminate, as the case may be, activities under the plan in an orderly manner as soon as practicable.

(c) Limitation

The termination or suspension of any plan, or any provision thereof, shall not be considered a plan within the meaning of this chapter.


§ 6013. Authorization of appropriations

(a) In general

There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this chapter.

(b) Administrative expenses

Funds appropriated to carry out this chapter shall not be available for payment of the expenses or expenditures of the Board in administering any provision of any plan issued under this chapter.