

2007 SUPPORTING STATEMENT
Marketing Order No. 981
for
Almonds Grown in California
Marketing Order Administration Branch
OMB Number 0581-NEW

Justification

1. EXPLAIN THE CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY. IDENTIFY ANY LEGAL OR ADMINISTRATIVE REQUIREMENTS THAT NECESSITATE THE COLLECTION.

This is a request for OMB review and approval of a new information collection related to the change in requirements for interhandler transfers of almonds under the California almond marketing order (M.O. No. 981). The Agricultural Marketing Service is issuing a proposed rule which would require handlers who transfer almonds to other handlers to report to the Almond Board of California (Board), whether or not the almonds were treated to achieve a 4-log reduction in *Salmonella* bacteria (*Salmonella*). This change would help the Board track treated and untreated almonds and facilitate administration of its mandatory *Salmonella* treatment program. This change involves the modification of ABC Form 7, "Interhandler Transfer of Almonds," which is currently approved under OMB No. 0581-0178, Vegetable and Specialty Crops.

Marketing Order No. 981 (7 CFR Part 981), regulates the handling of almonds grown in California and emanates from enabling legislation (the Agricultural Marketing Agreement Act of 1937, Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674). This legislation, hereinafter referred to as the Act, was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and to improve returns to growers. Section 608 (d)(1) of the Act

provides the Department of Agriculture (USDA) with the authority to request from the regulated handlers such information as is deemed necessary to determine the extent to which a marketing order has effectuated the declared policy of the Act.

Marketing Order No. 981 (Order) became effective in 1950, following public hearings in accordance with formal rulemaking procedures specified under the Act, and is locally administered by the Almond Board of California (Board). Growers approved the Order in referendum, as specified by the Act. The Order authorizes the issuance of quality and volume control regulations, as well as inspection and reporting requirements.

In August 2006, the Board unanimously recommended implementation of a mandatory treatment program to reduce the potential for *Salmonella* bacteria in almonds, and thus help ensure that quality almonds are available for human consumption. This action was taken in response to *Salmonella* outbreaks in 2001 and 2004 that were linked to almonds. The Agricultural Marketing Service (AMS) issued a final rule, published in the Federal Register on March 30, 2007 [61 FR 15021], implementing the mandatory program, which will take effect in September 2007. To help track treated and untreated almonds, the Board met in March 2007, and recommended revising the order's administrative rules and regulations to require handlers to report to the Board whether or not the almonds transferred to other handlers were treated under the mandatory treatment program, on the ABC Form 7, "Interhandler Transfer of Almonds."

2. INDICATE HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED. EXCEPT FOR A NEW COLLECTION, INDICATE THE ACTUAL USE THE AGENCY HAS MADE OF THE INFORMATION RECEIVED FROM THE CURRENT COLLECTION.

The order is administered by a 10-member Almond Board of California (Board), comprised of five growers and five handlers. For each member, there is an alternate member.

Two of the 10 members serve 1-year terms, and the remaining eight members serve 3-year terms, beginning March 1 of each respective year. Board members may serve for a total of six consecutive years. Membership is also allocated between cooperative and independent growers. The members and alternates are appointed by the USDA to administer the program locally, and are selected from nominations submitted by almond growers and handlers in the production area.

The marketing order, and rules and regulations issued thereunder, authorize the Board to require growers and handlers to submit certain information, as provided in Sections 900.14, 981.32, 981.34, 981.41, 981.42, 981.55, 981.67, 981.71, 981.72, 981.73, 981.74, 981.441, 981.455, 981.567, 981.472, 981.473, and 981.474.

As previously explained, a proposed rule is being issued by AMS which would require handlers to report to the Board whether or not almonds transferred to other handlers were treated under the mandatory treatment program to reduce the potential for *Salmonella* bacteria in almonds, to help ensure that quality almonds are available to human consumption. Under the mandatory program, handlers will have to subject their almonds to a process that achieves a minimum 4-log reduction in *Salmonella* bacteria prior to shipment.

ABC Form 7, "Interhandler Transfer of Almonds," is currently approved under OMB No. 0581-0178, which is being modified to add two extra columns. One column would allow handlers to indicate whether or not the transferred almonds were treated to achieve the 4-log reduction in *Salmonella*. The second column would provide for the inclusion of a lot identification number for tracking purposes. Upon approval of this information collection, we are requesting that the burden and information collection be merged into OMB No. 0581-0178, Vegetable and Specialty Crops. The information required on this form is used by AMS and

the Board, and is described below:

a) Interhandler Transfer of Almonds, ABC Form 7 (Sections 981.55 and

981.455(a)): This form is used by handlers who transfer almonds to other handlers, permitting the Board to make appropriate adjustments in assessments and/or reserve requirements, as well as tracking treated and untreated almonds. The following information is collected on the form: 1) date of transfer; 2) names and plant locations of both the transferring and receiving handlers; 3) the variety of almonds transferred; 4) whether the almonds are shelled or unshelled; 5) the name of the handler assuming reserve and assessment obligation on the almonds transferred; 6) whether the almonds had been treated to achieve a 4-log reduction in *Salmonella* bacteria; and 7) a unique handler identification number for each lot.

3. DESCRIBE WHETHER, AND TO WHAT EXTENT, THE COLLECTION OF INFORMATION INVOLVES THE USE OF AUTOMATED, ELECTRONIC, MECHANICAL, OR OTHER TECHNOLOGICAL COLLECTION TECHNIQUES OR OTHER FORMS OF INFORMATION TECHNOLOGY, E.G., PERMITTING ELECTRONIC SUBMISSION OF RESPONSES, AND THE BASIS FOR THE DECISION FOR ADOPTING THIS MEANS OF COLLECTION. ALSO DESCRIBE ANY CONSIDERATION OF USING INFORMATION TECHNOLOGY TO REDUCE BURDEN.

Upon approval, this form will be used to submit information directly to the Board, which administers the order. The Board is not part of a Federal agency, but is a commodity industry board that operates under Federal authority and oversight. Though AMS is committed to complying with the e-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible, the availability and submission of forms electronically is at the Board's discretion. Currently, forms are transmitted by fax machine and postal delivery.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION. SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN ITEM 2 ABOVE.

Information collection processes are periodically reviewed to avoid unnecessary duplication by industry and public sector agencies. At the present time, there is no duplication between Federal agencies.

5. IF THE COLLECTION OF INFORMATION IMPACTS SMALL BUSINESSES OR OTHER SMALL ENTITIES (ITEM 5 OF THE OMB FORM 83-1), DESCRIBE THE METHODS USED TO MINIMIZE BURDEN.

Information collection requirements have been reduced to the minimum requirements of the order. This information collection is relatively small. Requesting this information from almond handlers does not significantly disadvantage any handler that is smaller than industry average.

6. DESCRIBE THE CONSEQUENCE TO FEDERAL PROGRAM OR POLICY ACTIVITIES IF THE COLLECTION IS NOT CONDUCTED OR IS CONDUCTED LESS FREQUENTLY, AS WELL AS ANY TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN.

The information will be collected through a mandatory program to ensure that quality almonds are available for human consumption and to reduce the potential for *Salmonella* bacteria in almonds. If the information collection herein were not collected, the Secretary could not ensure compliance with the mandatory program or track shipments of almonds. Collecting data less frequently would also eliminate the Secretary's ability to administer the order.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES THAT WOULD CAUSE AN INFORMATION COLLECTION TO BE CONDUCTED IN A MANNER:

- **REQUIRING RESPONDENTS TO REPORT INFORMATION TO THE AGENCY MORE OFTEN THAN QUARTERLY;**
- **REQUIRING RESPONDENTS TO PREPARE A WRITTEN RESPONSE TO A**

COLLECTION OF INFORMATION IN FEWER THAN 30 DAYS AFTER RECEIPT OF IT;

- REQUIRING RESPONDENTS TO SUBMIT MORE THAN AN ORIGINAL AND TWO COPIES OF ANY DOCUMENT;**
- REQUIRING RESPONDENTS TO RETAIN RECORDS, OTHER THAN HEALTH, MEDICAL, GOVERNMENT CONTRACT, GRANT-IN-AID, OR TAX RECORDS FOR MORE THAN 3 YEARS;**
- IN CONNECTION WITH A STATISTICAL SURVEY, THAT IS NOT DESIGNED TO PRODUCE VALID AND RELIABLE RESULTS THAT CAN BE GENERALIZED TO THE UNIVERSE OF STUDY;**
- REQUIRING THE USE OF A STATISTICAL DATA CLASSIFICATION THAT HAS NOT BEEN REVIEWED AND APPROVED BY OMB;**
- THAT INCLUDES A PLEDGE OF CONFIDENTIALITY THAT IS NOT SUPPORTED BY AUTHORITY ESTABLISHED IN STATUE OR REGULATION, THAT IS NOT SUPPORTED BY DISCLOSURE AND DATA SECURITY POLICIES THAT ARE CONSISTENT WITH THE PLEDGE, OR WHICH UNNECESSARILY IMPEDES SHARING OF DATA WITH OTHER AGENCIES FOR COMPATIBLE CONFIDENTIAL USE; OR**
- REQUIRING RESPONDENTS TO SUBMIT PROPRIETARY TRADE SECRET, OR OTHER CONFIDENTIAL INFORMATION UNLESS THE AGENCY CAN DEMONSTRATE THAT IT HAS INSTITUTED PROCEDURES TO PROTECT THE INFORMATION'S CONFIDENTIALITY TO THE EXTENT PERMITTED BY LAW.**

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

- 8. IF APPLICABLE, PROVIDE A COPY AND IDENTIFY THE DATE AND PAGE NUMBER OF PUBLICATION IN THE FEDERAL REGISTER OF THE AGENCY'S NOTICE, REQUIRED BY 5 CFR 1320.8(d), SOLICITING COMMENTS ON THE INFORMATION COLLECTION PRIOR TO SUBMISSION TO OMB. SUMMARIZE PUBLIC COMMENTS RECEIVED IN RESPONSE TO THAT NOTICE AND DESCRIBE ACTIONS TAKEN BY THE AGENCY IN RESPONSE TO THESE COMMENTS. SPECIFICALLY ADDRESS COMMENTS RECEIVED ON COST AND HOUR BURDEN.**

The 60-day notice for comments was embedded in the proposed rule, which was published in the Federal Register on (Vol. , No.). No comments are expected.

DESCRIBE EFFORTS TO CONSULT WITH PERSONS OUTSIDE THE AGENCY TO OBTAIN THEIR VIEWS ON THE AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, THE CLARITY OF INSTRUCTIONS AND RECORDKEEPING, DISCLOSURE, OR REPORTING FORMAT (IF ANY), AND ON THE DATA ELEMENTS TO BE RECORDED, DISCLOSED, OR REPORTED.

Board members and staff consult with representatives from whom the information is to be obtained through one-on-one meetings and through regular Board meetings. All meetings are widely publicized throughout the industry and all interested persons are invited to attend and participate in discussion and deliberation concerning forms required for this new program. The Board is elected by the members of the almond industry for the purpose of representing them and making decisions for them. The staff is subsequently hired by the Board to carry out directives and attend various meetings to respond to questions and recommendations that come directly from members. Use of these forms has been discussed with the Board's Chief Executive Officer, Richard Waycott, telephone number (209) 549-8262.

CONSULTATION WITH REPRESENTATIVES OF THOSE FROM WHOM INFORMATION IS TO BE OBTAINED OR THOSE WHO MUST COMPILE RECORDS SHOULD OCCUR AT LEAST ONCE EVERY 3 YEARS □ EVEN IF THE COLLECTION OF INFORMATION ACTIVITY IS THE SAME AS IN PRIOR PERIODS. THERE MAY BE CIRCUMSTANCES THAT MAY PRECLUDE CONSULTATION IN A SPECIFIC SITUATION, THESE CIRCUMSTANCES SHOULD BE EXPLAINED.

Ex parte communication prohibitions, specified in § 900.16 (7 CFR Part 900), apply when the proposed rule is issued and continues until the final or interim final rule is issued. During this time, there can be no written or oral communication relevant to the merits of the proposed rule between a USDA employee and any person having an interest in the proposal or with any representative of such a person except through the comment process outlined in the proposal. Solicitation of information from respondents outside the parameters of the

rulemaking/comment guidelines is not permitted under *ex parte*.

9. EXPLAIN ANY DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS, OTHER THAN REMUNERATION OF CONTRACTORS OR GRANTEES.

AMS does not provide payments or gifts to respondents.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS AND THE BASIS FOR THE ASSURANCE IN STATUTE, REGULATION, OR AGENCY POLICY.

Questions of a sensitive nature are not included on any form. The information requested on this form relates to almonds transferred from one handler to another, and whether or not the almonds were treated under the mandatory treatment program. This information is provided to the Board to assist in making appropriate adjustments in assessments and/or reserve requirements, as well as tracking treated and untreated almonds.

In addition, Section 608(d) of the Act provides that information acquired will be kept confidential, and that penalties exist for violating confidentiality requirements. Therefore, USDA's AMS field office staff and employees in Washington, D.C. are required to maintain confidentiality. Other confidential information will be withheld from public review under the Freedom of Information Act and the Privacy Act, 5 USC 552.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE. THIS JUSTIFICATION SHOULD INCLUDE THE REASONS WHY THE AGENCY CONSIDERS THE QUESTIONS NECESSARY, THE SPECIFIC USES TO BE MADE OF THE INFORMATION, THE EXPLANATION TO BE GIVEN TO PERSONS FROM WHOM THE INFORMATION IS REQUESTED, AND ANY STEPS TO BE TAKEN TO OBTAIN THEIR CONSENT.

No questions of such sensitive nature are included in this information collection.

12. PROVIDE ESTIMATES OF THE HOUR BURDEN OF THE COLLECTION OF INFORMATION.

THE STATEMENT SHOULD:

INDICATE THE NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, ANNUAL HOUR BURDEN, AND AN EXPLANATION OF HOW THE BURDEN WAS ESTIMATED. UNLESS DIRECTED TO DO SO, AGENCIES SHOULD NOT CONDUCT SPECIAL SURVEYS TO OBTAIN INFORMATION ON WHICH TO BASE HOUR BURDEN ESTIMATES. CONSULTATION WITH A SAMPLE (FEWER THAN 10) OF POTENTIAL RESPONDENTS IS DESIRABLE. IF THE HOUR BURDEN ON RESPONDENTS IS EXPECTED TO VARY WIDELY BECAUSE OF DIFFERENCE IN ACTIVITY, SIZE, OR COMPLEXITY, SHOW THE RANGE OF ESTIMATED HOUR BURDEN, AND EXPLAIN THE REASONS FOR THE VARIANCE. GENERALLY, ESTIMATES SHOULD NOT INCLUDE BURDEN HOURS FOR CUSTOMARY AND USUAL BUSINESS PRACTICES. IF THIS REQUEST FOR APPROVAL COVERS MORE THAN ONE FORM, PROVIDE SEPARATE HOUR BURDEN ESTIMATES FOR EACH FORM AND AGGREGATE THE HOUR BURDENS IN ITEM 13 OF OMB FORM 83-I.

Estimates of the burden of collection of information are summarized on AMS Form 71.

PROVIDE ESTIMATES OF ANNUALIZED COST TO RESPONDENTS FOR THE HOUR BURDENS FOR COLLECTIONS OF INFORMATION, IDENTIFYING AND USING APPROPRIATE WAGE RATE CATEGORIES. THE COST OF CONTRACTING OUT OR PAYING OUTSIDE PARTIES FOR INFORMATION COLLECTION ACTIVITIES SHOULD NOT BE INCLUDED HERE. INSTEAD, THIS COST SHOULD BE INCLUDED IN ITEM 14.

The respondents' estimated annual cost of providing information to the Board is \$4,125. This total has been estimated by multiplying 125 hours (total burden hours) by \$33, the average mean hourly earnings of professional, specialty and technical white collar occupations, and executive, administrative, and managerial white collar occupations by worker and establishment characteristics and geographic areas (metropolitan). Data for computation of this hourly wage were obtained from the U.S. Department of Labor Statistics' publication, "National Compensation Survey: Occupational Wages in the United States, June 2005", published August 2006 (Bulletin 2581). This publication can also be found at the following website: <http://www.bls.gov/ncs/ocs/sp/ncbl0832.pdf>.

13. **PROVIDE AN ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS OR RECORDKEEPERS RESULTING FROM THE COLLECTION OF INFORMATION. (DO NOT INCLUDE THE COST OF ANY HOUR BURDEN SHOWN IN ITEMS 12 AND 14).**
- **IF COST ESTIMATES ARE EXPECTED TO VARY WIDELY, AGENCIES SHOULD PRESENT RANGES OF COST BURDENS AND EXPLAIN THE REASONS FOR THE VARIANCE. THE COST OF PURCHASING OR CONTRACTING OUT INFORMATION COLLECTION SERVICES SHOULD BE A PART OF THIS COST BURDEN ESTIMATE. IN DEVELOPING COST BURDEN ESTIMATES, AGENCIES MAY CONSULT WITH A SAMPLE OF RESPONDENTS (FEWER THAN 10), UTILIZE THE 60-DAY PRE-OMB SUBMISSION PUBLIC COMMENT PROCESS AND USE EXISTING ECONOMIC OR REGULATORY IMPACT ANALYSIS ASSOCIATED WITH THE RULEMAKING CONTAINING THE INFORMATION COLLECTION, AS APPROPRIATE.**

GENERALLY, ESTIMATES SHOULD NOT INCLUDE PURCHASES OF EQUIPMENT OR SERVICES, OR PORTIONS THEREOF, MADE: (1) PRIOR TO OCTOBER 1, 1995, (2) TO ACHIEVE REGULATORY COMPLIANCE WITH REQUIREMENTS NOT ASSOCIATED WITH THE INFORMATION COLLECTION, (3) FOR REASONS OTHER THAN TO PROVIDE INFORMATION OR KEEPING RECORDS FOR THE GOVERNMENT, OR (4) AS PART OF CUSTOMARY AND USUAL BUSINESS OR PRIVATE PRACTICES.

There is no capital, startup, operation, or maintenance costs associated with this program.

14. **PROVIDE ESTIMATES OF ANNUALIZED COST TO THE FEDERAL GOVERNMENT. ALSO, PROVIDE A DESCRIPTION OF THE METHOD USED TO ESTIMATE COST, WHICH SHOULD INCLUDE QUANTIFICATION OF HOURS, OPERATION EXPENSES (SUCH AS EQUIPMENT, OVERHEAD, PRINTING, AND SUPPORT STAFF), AND ANY OTHER EXPENSE THAT WOULD NOT HAVE BEEN INCURRED WITHOUT THIS COLLECTION OF INFORMATION. AGENCIES ALSO MAY AGGREGATE COST ESTIMATES FROM ITEMS 12, 13, AND 14 IN A SINGLE TABLE.**

The estimated annual cost to the Federal Government, which includes salaries, benefits, travel, communication, supplies, etc., to administer this regulation is \$36,000. The cost was developed by estimating the number of hours that the Agency employees will spend providing oversight and assistance for the administration, preparation of all stages of

rulemaking, from the recommendation, to the interim and final rule, as well as in the preparation of this information collection package (450 hours) at approximately \$80 per hour.

15. EXPLAIN THE REASON FOR ANY PROGRAM CHANGES OR ADJUSTMENTS REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-I.

Notation: The ABC Form 7 is currently approved under OMB No. 0581-0178 for .35 burden hours. The per response time on the AMS 71 form, was inadvertently shown as .07 hours, rather than .50 hours (30 minutes) per response, as indicated on the form. In addition, the number of responses per respondent was inadvertently shown as 1, but should have indicated 5 responses per respondent. The new burden of 125 hours in this new collection accounts for an increase in the number of respondents (from 5 to 50, since the 2004 submission), the correction in the number of responses per respondent (5), and the hours per response (.50). The proposed rulemaking is for a minimal revision to the form. The minimal revision does not affect the forms per response time. The revised ABC Form 7 will be included in the renewal of OMB No. 0581-0178.

16. FOR COLLECTIONS OF INFORMATION WHOSE RESULTS WILL BE PUBLISHED, OUTLINE PLANS FOR TABULATION, AND PUBLICATION. ADDRESS ANY COMPLEX, ANALYTICAL TECHNIQUES THAT WILL BE USED. PROVIDE THE TIME SCHEDULE FOR THE ENTIRE PROJECT, INCLUDING BEGINNING AND ENDING DATES OF THE COLLECTION OF INFORMATION, COMPLETION OF REPORT, PUBLICATION DATES, AND OTHER ACTIONS.

There are no plans to publish any information or data collected.

17. IF SEEKING APPROVAL TO NOT DISPLAY THE EXPIRATION DATE FOR OMB APPROVAL OF THE INFORMATION COLLECTION, EXPLAIN THE REASONS THAT DISPLAY WOULD BE INAPPROPRIATE.

The Agency requests approval not to display the expiration date for OMB approval of the information collection. This requirement significantly affects mandatory programs by increasing costs to users because otherwise usable forms must be destroyed based on the

expiration date, if the form is revised, and redistributed. Such needless cost increases are passed on to users of mandatory services, and are counter-productive to the Administration's goal of reducing costs and increasing program efficiency. In addition, the Board office orders forms well in advance of the marketing year, so that forms can be mailed to handlers and growers in a timely manner. The Board office attempts to order forms in quantities large enough to get a price break. If the Board office needs to order more forms prior to an OMB submission for extension of approval, there are no guarantees that a requested expiration date will be honored by OMB. There is also some confusion among respondents thinking their annual applications are good for the length of time noted in the expiration date, rather than expiring at the end of the marketing season. Additionally, the impact of the expiration date requirement on administrative and regulatory forms for the programs can adversely affect the operation and enforcement of statutes. Inadvertent use of a form with an expired date poses an opportunity for those looking for a means of disruption to challenge paying for services rendered, the validity of the collection of information, or legal requirement imposed by regulations or statutes.

18. EXPLAIN EACH EXCEPTION TO THE CERTIFICATION STATEMENT IDENTIFIED IN ITEM 19, □CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS, OF OMB FORM 83-I.

The agency is able to certify compliance with all provisions under Item 19 of OMB Form 83-I.

COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This information collection does not employ statistical methods.

