

**2007 SUPPORTING STATEMENT
Marketing Order No. 983
for
Pistachios Grown in California
OMB Number 0581-0215**

(Final Rule)

Justification

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

Marketing Order No. 983 (7 CFR Part 983) covering pistachios grown in the State of California 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), hereinafter referred to as the Act. The Act authorizes marketing order promulgation for certain agricultural commodities and regulation issuance thereof to provide orderly marketing conditions in interstate and intrastate commerce and to improve producer returns. The Act provides in section 608(d)(1) that information necessary to determine the extent to which an order has effectuated the declared policy of the Act shall be furnished at the request of the Secretary of Agriculture (Secretary). The rules of practice and the procedure governing proceedings to formulate marketing orders are contained in 7 CFR Part 900.

Marketing Order No. 983 went into effect April 5, 2004, following public hearings in accordance with formal rulemaking procedures specified under the Act. Growers approved the marketing order in a referendum, as specified by the Act. The order, established to create orderly marketing conditions for California pistachios, authorizes the issuance of quality, size, inspection, and reporting requirements, as well as aflatoxin

standards.

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 an 11-member Administrative Committee for Pistachios (Committee), comprised of eight producers, two handlers and one public member. For each member, there is an alternate member. Each member serves a two-year term, beginning July 1. However, four producer members, one handler member and their alternates serve one year terms, so that the terms are staggered, resulting in half of the memberships expiring each year. Committee members may serve a total of up to four consecutive, two-year terms of office. The members and alternates are appointed by the USDA to administer the program locally and are selected from nominations submitted by pistachio producers and handlers in the production area.

The marketing order and the rules and regulations issued thereunder authorize the Committee to require producers and handlers to submit certain information, as provided in Sections 900.14, 900.90, 900.304, 900.400, 983.33, 983.37, 983.38, 983.39, 983.40, 983.41, 983.47, 983.49, 983.53, 983.66, and 983.70.

The Committee has developed forms as a convenience for persons who are required to file information with the Committee relating to pistachio supplies, shipments, dispositions, and other information needed to effectively carry out the purposes of the Act and the order.

The information required under the order is gathered on the following forms and is used by the Committee and/or the USDA as outlined below:

- a) **Producer's Referendum Ballot and/or Official Producer's Ballot (FV-240 (Sections 900.14, 900.304, 900.400 and 983.66))**: Producers use this ballot to vote on establishing or amending a marketing order. The ballot allows eligible producers to vote in a referendum and to verify the voter's eligibility. Information collected includes: the vote cast; eligibility statement with production information; name and signature and type of organization (individual, trust, partnership, or corporation); Tax Identification Number; partnership names; address and telephone.
- b) **Cooperative Association of Producers Referendum Ballot and/or Cooperative's Official Ballot FV-241 (Section 900.14, 900.304, 900.400 and 983.66)**: Cooperatives use this ballot to vote on establishing or amending a marketing order. Under this order cooperatives may represent producer members. The ballot allows eligible producer cooperatives to vote in a referendum and to verify the eligibility of such voters. Information requested includes: the vote cast; contact name; name of cooperatives and mailing address with Tax Identification Number; production volume and period; number of producers represented; and an authorized representative signature.
- c) **Marketing Agreement, FV-242 (Sections 900.14 and 900.90)**: Handlers use this form to promulgate or amend an order. Handlers voluntarily sign the agreement, indicating their willingness to abide by provisions regulating respective commodity handling in the promulgated or amended Order. Referendum agents distribute and collect the marketing agreements

from the handlers.

- d) **Certificate of Resolution, FV-242-A (Section 900.14)**: If a board of directors governs a handler or cooperative, the board offers a Certificate of Resolution to indicate if the board agrees or resolves to be a party to the marketing agreement.
- e) **Confidential Producer/Handler and Public Member Qualification and Acceptance Statement FV-243 (Section 983.33)**: This form, used by those candidates nominated to serve as members and alternate members on the Committee, requests information on the nominee's role in pistachio production, handling, industry organizations and programs. The Secretary uses this information to determine nominee eligibility to serve in positions for which they were nominated. This form includes an acceptance statement that nominees would sign indicating that if or when an appointee is nominated they would be willing to serve on the Committee.
- f) **Handler and Alternate Member Nomination Ballot, FV-244 (Section 983.33)**: This form permits qualifying handlers to vote for a handler member or alternate for the Committee. Information requested includes: name and signature; type of organization (individual, trust, partnership or corporation); name of business entity; telephone; number; verification of address, production information, Tax Identification Number and vote cast.
- g) **Producer and Alternate Member Nomination Form, FV-245 (Section 983.33)**: Producers prepare this form to nominate candidates to serve as a producer member on the Committee. Producers may only nominate

producers. A producer/handler may nominate either a producer or a handler, but not both.

h) Handler Member Nomination Form, FV-245A (Section 983.33):

Handlers use this form to nominate candidates to serve as a handler member on the Committee. Handlers may only nominate handlers. A producer/handler may nominate either a producer or a handler, but not both.

i) Producer and Alternate Member Ballot, FV-246 (Section 983.33): This

form permits qualifying pistachio producers to vote for the producer members and alternates of their choice. Information requested includes a signature, verification of address, production information, Tax Identification Number and vote cast.

j) Receipts/Assessment Report (Form ACP-1), (Sections 983.47 and

983.53): California pistachio handlers, who receive pistachios for processing (removal of green hulls and drying pistachios to 5 percent moisture), file this form once a year with the committee. Such regulated handlers would be required to pay an assessment attributable to the assessed weight of pistachios received by the handler and to report that assessed weight to the committee on the ACP-1; Receipts/Assessment form. The form covers the following worksheet on pistachio data: total marketable in-shell; total marketable closed-shell; total marketable shelling stock; total assessed weight; total assessment due; any penalty due; and the handler employee signature.

k) Failed Lot Notification (Form ACP-2), (Section 983.40(b)): California pistachio handlers who have a failed pistachios lot due to minimum size/quality certification and/or maximum aflatoxin concentration, file this form with the committee within 10 days of test completion. The owner/handlers send the original to the committee office and retain a copy for their records. The handler completes Section A of this form and is required to describe the lot, report the lot ID marks, list the weight in pounds, the container size and description, identify the product's owner/handler, list the handler's address, whom the product was sampled by, the sampling date, and the agency's name that sampled the product. USDA's inspection and certification agency completes Section B. The USDA inspector records if the lot passes or fails marketing order requirements and the sampling certification number. If a lot fails minimum size/quality inspection, the inspector returns the form to the handler who, under the supervision of the inspector, sends it to the committee. An accredited aflatoxin testing laboratory completes Section C of this form. The lab records whether the lot failed aflatoxin requirements and notes the laboratory certification number, as well as the results of the tests conducted and the test averages. If the lot fails minimum size/quality certification, the handler completes the bottom of the form with the signature, date, and identification information. If the lot failed aflatoxin tolerances, an accredited lab representative completes the bottom by providing the signature, date, and lab identification information.

- l) Failed Lot Disposition and Rework Report (Form ACP-3), (Sections 983.40(c) and 983.40(d)):** The handler notifies the committee with this form when disposition or rework of a failed lot has been completed (committee previously notified by filing on the ACP-2 form). The form is divided into two sections. Section A covers the lot description and lot identification, lot size and container description, as well as the handler/owner of the lot and aflatoxin and minimum quality certificate numbers. This is to associate the form with information from the ACP-2 form. Section B1, “Non-Human Consumption,” covers the number of pounds, appropriate bills of lading, the identity of the person receiving the pistachios, and the intended use. Section B2, “Export,” covers the pounds of failed pistachios shipped to export, bills of lading numbers, customers, and contact information. Section B3, “Rework,” covers the number of pounds reworked; pounds accepted and submitted for certification, as well as the pounds rejected; the rework procedure location, a description of the rework process, new lot description and identification, including container description, minimum quality inspection results and certificate number, maximum aflatoxin inspection and certificate numbers with aflatoxin results and averages. Section B4, “Shelled,” provides data on the number of pounds shelled and the location of the sheller. Additionally, this section requires the handler signature, as well as the date for the individual who filled out the ACP-3 form.
- m) FMO Exempt Handler Notification, (Form ACP-4), (Sections 983.70**

and 983.147(c) and (g): Handlers submit this form to the committee for an exemption under Sec. 983.70 if they receive 5,000 pounds or less (assessed weight) of pistachios in a given production year. The form must be submitted by November 15th of each production year. The handler completes Section A and is required to provide his/her name, address, and the assessed weight handled in pounds, as well as the production year. The handler signs, dates and completes handler identification information and then submits it to the committee.

n) **Minimal Testing Form, (Form ACP-5), (Section 983.41(b))**: Handlers will complete this form by August 1, prior to each production year if they handle less than 1,000,000 pounds (assessed weight) of pistachios in a given production year. Upon form approval, the committee offers the option of complying with the marketing order, according to Sec.983.41. The handler completes Section A of this form and provides the handler name, address, assessed pounds handled and the production year. The handler is required to complete the middle of the form by signing, dating, and completing the handler identification information. The committee completes Section B of the form by providing the signature, date, and committee identification information. The committee then returns a copy of the form to the handler.

o) **Inter-Handler Transfer, (Form ACP-6), (Sections 983.38(c) and 983.39(d))**: Pistachio handlers file this form with the committee as needed. The information collected on this form includes the date of transfer, the

transferring and receiving handlers, a description of the inventory including lot description and identification marks, weight and container size/description, inspection status of the lot, aflatoxin and minimum size/quality certificate numbers, and signatures of both the transferring and receiving handlers. The transferring handler fills out the form and submits a copy to the committee within 30 days of the transfer. The transferring handler must also provide the receiving handler with the original and a copy of the form. The receiving handler must sign and submit the original to the committee within 30 days of the transfer. Both handlers are responsible for maintaining a copy of the completed forms for their records for three years after the end of the production year in which the transfer took place.

- p) **Monthly Report of Inventory/Shipments (Form ACP-7), (Sections 983.37 and 983.49)**: California pistachio handlers currently file this form on a monthly basis to the committee. The form, based on the monthly inventory/shipment report handlers must file with the California Pistachio Commission (CPC), covers the following on the pistachio data worksheet: there are five categories of pistachios including open shell, artificially opened, closed shell, shelling stock and loose kernels. Handlers must report each category (with exceptions listed below) under the descriptions of beginning inventory, grower deliveries (new crop), current month's shipments domestic, export, splitting/shelling adjustments, inter-handler transfers, non-handler purchases of California product, inventory

adjustments, and ending inventory. A signature line is provided for the handler signature. Instructions are attached to assist in filling out ACP-7. While handlers may opt to fill out the monthly inventory/shipment report, they may also attach a photocopy of the CPC report and sign the ACP-7.

The Committee has recommended changes through rulemaking that would modify existing form ACP-7 and add a new form, ACP-8, to the information collection currently approved by the Office of Management and Budget under OMB No. 0581-0215, "Pistachios Grown in California." The new data collected will enable the committee to obtain better information for preparing its annual marketing policy statement and conducting committee nominations for pistachios producers. The reports would also provide the committee with information previously available from the California Pistachio Commission (CPC), a State marketing program. As the result of a producer referendum, the CPC will terminate and data historically collected by the Commission and shared with the committee will no longer be available. Thus, the Committee needs to collect the information necessary for effective administration of the order another way. This action would slightly modify handler reporting requirements in form ACP- 7. Currently, all handlers must report their beginning inventory, grower deliveries, and pistachio shipments to domestic and export markets, inter-handler transfers, non-handler purchases of California product, inventory adjustments on split and shelled pistachios, and ending inventory on a monthly basis on this form. The

Committee seeks to slightly modify the reporting requirements for all pistachio handlers, removing the requirement to report inventory adjustments on split and shelled pistachios, as the committee believes that it no longer needs this information.

- q) Producer Delivery Report (Form ACP-8) Section 983.147(g):** This new form being proposed by the committee would require handlers to annually provide the names of producers who deliver pistachios to them, the producers' mailing addresses and other contact information (telephone and facsimile numbers and email addresses), the producers' Tax Identification Number, total receipts of pistachios from each producer, and the counties in which the pistachios were grown. These reports would allow the committee to identify all authorized voters for committee selections and referenda in which each business entity is entitled to cast one vote. Individual producers may produce and deliver pistachios under more than one business entity. The information collected on this new report would also allow the committee to determine whether an individual producer is eligible to represent more than one business entity based upon the tax identification numbers.

- 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, these forms will be used to submit information directly to the

Committee, which administers the order. The Committee is not part of a Federal agency, but is a commodity industry committee 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 Committee'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 to oversee each order or agreement. This information collection and reporting burden is relatively small. Requesting this information from producers does not pose a significant disadvantage to any of the respondents.

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 is collected on an as-needed basis. If the information collection herein was not collected, the Secretary could not ascertain the support level for the order,

nor in fact, carry out obligations required by the Act. 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.

This submission package is for the final rule. There are no changes between the proposed rule and the final rule.

The 60-day notice for this information collection was embedded into the proposed rule, which was published in the Federal Register on September 7, 2007 (Vol. 72, No. 173, Page 51378) and invited comments from interested persons through November 6, 2007. One comment was received during the 60-day comment period.

The commenter was opposed to the committee collecting and disseminating monthly export shipment and inventory data from handlers, and stated that the export data is unnecessary since the Federal marketing order only regulates domestically-shipped products and not exports. The commenter stated that the data has been collected voluntarily, and is published on the committee website 15 days past the end of each month. This data, when collected in the past by the California Pistachio Commission, was valuable in evaluating market conditions, and measuring the effectiveness of marketing efforts by private companies. The commenter also expressed concern with the accuracy of the inventory data, and contended that discrepancies within the inventory data are deliberate or accidental errors in the reporting to the committee, and the only solution is standardized inventory reporting practices, since there are no standards for determining inventory levels. Lastly, the commenter contends that without set procedures, operators could easily manipulate their reported inventory to seek competitive advantage in the

marketplace.

In regards to the concerns about export shipments filed, the marketing order doesn't preclude the collection of export shipment data for statistical purposes, which assists handlers in determining the availability of pistachios. The committee believes this information is valuable to the industry, and unanimously voted to collect this information under the marketing order.

USDA believes there is merit to the commenter's concerns regarding the accuracy of the monthly inventory data. The ACP-7 form requires handlers to report an inventory adjustment figure (an adjustment to inventory due to splitting, shelling, shrink, loss of products, etc.). There is variability, according to committee staff, in the way handlers store and manage their pistachios, creating variability in inventory adjustments. USDA understands that this problem was discussed at a committee meeting on November 15, 2007. The committee deliberated using an estimated adjustment figure at the beginning of the season, adjusting it periodically as the season progresses. USDA will work with the committee to ensure that they research the issue further and report at the next committee meeting, and the issue is addressed. No changes will be made based on this comment.

- **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.**

The data for the information collected is not available anywhere. Use of the ballot forms are required by regulations governing referendum procedure.

- **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.

The committee members and staff are constantly alert to other marketing order actions through correspondence, meetings, and information received from the USDA. The committee consults with representatives from whom they obtain information on an annual basis. In addition, the Committee sends its meeting notices to all associated with the pistachio industry. Any concerns regarding committee business are welcome at those meetings. USDA marketing specialists will attend committee meetings and respond to questions and recommendations from members. The Committee has discussed the use of these forms with the Committee Manager, Bob Klein, phone number (559) 221-8294; or U.S. Department of Agriculture, Agricultural Marketing Service, Marketing Order Administration Branch, Marketing Specialist Terry Vawter, California Marketing Field Office, located in Fresno, California, phone (559) 487-5901.

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. Private information is required on the Confidential Producer/Handler and Public Member Qualification and Acceptance Statement (FV-243), which a nominee to the committee must fill out. These questions are asked to ascertain his/her qualifications to serve on the committee and include position in the industry or firm, years producing or handling, approximate volume

produced or handled, and office held in industry organizations. This information is provided to the Secretary for use in the selection process.

The information collected on the proposed new form, ACP-8, will require handlers annually to provide the producer names, addresses, Tax Identification Number, and other contact information. The information collected will also allow the committee to determine whether individual producers are eligible to represent more than one business entity based upon the Tax Identification Numbers.

Section 608(d) of the Act states that information acquired will be kept confidential, and that penalties exist for violating confidentiality requirements. Therefore, USDA requires AMS field office staff and employees in Washington, D.C. 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-71 Form (enclosed). Under the final rule a new form ACP-8 is being submitted for 2.8 hours, and an increase of 24 hours for a revision to the currently approved form ACP-7. This submission also includes correction of inadvertently reversed per response times for Forms FV-241, and FV-245A in the proposed rule submission package.

- **PROVIDE ESTIMATES OF ANNUALIZED COST TO RESPONDENTS FOR THE HOUR BURDENS FOR COLLECTIONS OF INFORMATION, IDENTIFYING AND USING APPROPRIATE WAGE RATE CATEGORIES.**

The respondents' estimated annual cost of providing information to the committee is \$5,742.00. This total has been estimated by multiplying 174 (total burden hours) by \$33.00, 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 (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) also found at the website: <http://www.bls.gov/nc/ocs/sp/ncb10832.pdf>.

- **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 Federal government's estimated annual cost for providing oversight and assistance for the pistachio marketing order program is estimated at \$186,925. This total has been estimated by adding the costs of providing oversight and assistance to all marketing order committees/boards (annual budget for administration of Federal fruit, vegetable, and specialty crop marketing orders is \$6,197,000) and dividing the total amount by the number of fruit, vegetable and specialty crops marketing order programs (40), resulting in \$154,925 per program; plus \$32,000 (400 hours at \$80, which is an average of the salaries of the staff involved in the preparation of all stages of rulemaking, from the recommendation, to the proposed and final rule, as well as in the preparation of this information collection package.

There are nine agency forms contained in this information collection package (Producer Referendum Ballot (FV-240); Cooperative Association of Producers Referendum Ballot (FV-241); Marketing Agreement (FV-242); Certificate of Resolution (FV-242A); Confidential Producer/Handler and Public Member Qualification and Acceptance Statement (FV-243); Handler and Alternate Member Nomination Ballot (FV-244); Producer and Alternate Member Nomination Ballot (FV-245); Handler Member Nomination Form (FV-245A); and Producer and Alternate Member Ballot (FV-246)) that are funded by the agency. The committee pays for all the administrative costs of all other forms not included in the cost estimate. Committee funds are derived from assessments on shipments of California pistachios.

**COSTS OF ADMINISTERING REFERENDUM BALLOTS AND USING BALLOTS
FOR PISTACHIO MARKETING ORDER
(Numbers are rounded up or down as necessary)**

Items and services required to administer a continuance referendum for the order. Listed below are the costs associated with form administration of four of the agency forms (FV-240, Producer Referendum Ballot; FV-241, Cooperative Association of Producers Referendum Ballot; FV-242, Marketing Agreement; and FV-242A, Certificate of Resolution). This is based on the following scenario:

Postage:

Ballots to producers (741 X \$.37 each)	\$274.17
Ballots returned from producers, assuming 50 percent respond (371 x .50 x \$.37)	68.64
Marketing Agreement to handlers (24 x \$.37)	8.88
Marketing Agreements returned from handlers -- Assuming 60 percent respond (14 x .60 x \$.37)	3.11

Ballot Set Up for Printing and Mail Administration:

One and a half day set up of ballot by Marketing Specialist	100.00
Printing of Labels	100.00
Printing or copies (741 x \$.20)	148.20
Mailing Service --Placing in envelopes and labeling (741 x \$.30 each)	222.30

Notice:

Write-up of Notice -- GS 12 Marketing Specialist (16 hours @ \$23.00/hour)	368.00
Review of Notice	100.00
Publication of Notice in the <u>Federal Register</u> (2 pages @ \$600.00/page)	1,200.00

Counting of Ballots:

Two Marketing Specialists -- (2 Specialists x 8 hours x \$25.00/hour x 2 days = \$800.00)	
Marketing Assistant -- (1 Assistant x 8 hours x \$16.00/hour x 2 days = \$256.00)	<u>1,056.00</u>

TOTAL COST OF FORMS ADMINISTRATION \$3,649.39

A. Total annual cost of administration of forms **\$608.22**
 (\$3,649.39 total cost/6 -- estimated Referendums occurrence is every six years)

COSTS OF ADMINISTERING SELECTION ORDER NOMINATION FORMS

AND BACKGROUND QUESTIONNAIRES

This includes five of the following forms: FV-243, Confidential Producer/Handler and Public Member Qualification and Acceptance Statement; FV-244, Handler and Alternate Member Nomination Ballot; FV-245, Producer and Alternate Member Nomination Form; FV-245A, Handler Member Nomination Form; and FV-246, Producer and Alternate Member Ballot.

Postage and Mailing:

All costs associated with collecting background information related to the qualification and acceptance statement are covered by the Administrative Committee for Pistachios.

Selection Order Development:

Write-up of Selection Order	\$120.00
(1 Marketing Assistant x 8 hours x \$15.00/hour x 1 day)	
Review (1 Marketing Specialist x 4 hours x \$25/00/hour)	100.00
ASU -- Washington HQ (1 Secretary x \$15.00/hour x 2 hours)	30.00
(2 Reviewers x \$25.00/hour x 1 hour each)	50.00
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B. Total cost of administering the selection order	\$300.00

TOTAL COST TO AGENCY FOR FORM ADMINISTRATION (A + B)	\$908.23
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15. EXPLAIN THE REASON FOR ANY PROGRAM CHANGES OR ADJUSTMENTS REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-1.

There is no change between the proposed rule and the final rule. However, this submission corrects the increase adjustment hours from 27 to 29 burden hours. The per response times for forms FV-241 and FV-245A were inadvertently reversed on the spreadsheet (grid) in the proposed rule submission package. _

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.

AMS requests approval not to display the expiration date on the forms associated with this information collection. USDA orders forms well in advance of the marketing year, so forms can be mailed to growers in a timely manner. USDA orders forms in quantities large enough to get a price break. If USDA needs to order more forms prior to an OMB submission for extension of approval, there is no guarantee that OMB will use a requested expiration date. Also, there is some confusion to respondents thinking their forms can be submitted by the time noted in the expiration date, rather than an earlier date as stated elsewhere on the forms.

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 can certify compliance with all provisions under OMB Form 83-I, Item 19.

COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This information collection does not employ statistical methods.