

2008 SUPPORTING STATEMENT
Establishment of National Sorghum Promotion, Research,
and Information Program

7 CFR Part 1221
OMB Reference Number 0581-0246
Final Rule

OMB COMMENT:

OMB files this comment in accordance with 5 CFR 1320.11(c). This OMB action is not an approval to conduct or sponsor an information collection under the Paperwork Reduction Act of 1995. This action has no effect on any current approvals. If OMB has assigned this ICR a new OMB Control Number, the OMB Control Number will not appear in the active inventory. For future submissions of this information collection, reference the OMB Control Number provided. In accordance with 5 CFR 1320, OMB is withholding approval at this time. Prior to publication of the final rule, the agency must submit to OMB a summary of all comments related to the information collection contained in the proposed rule and the agency response. The agency should clearly indicate any changes made to the information collection as a result of these comments.

AMS received 215 timely comments regarding the proposed Order and received five comments after the close of the comment period. No additional issues were raised by the late comments that were not previously raised by the timely comments. The late comments were posted with the timely comments on <http://www.Regulations.gov>. One hundred sixty seven comments were submitted by producers in support of the proposed Order. Twenty two comments from producers and five comments from organizations were submitted opposing the implementation of the proposal. Their opposition centered on three areas of concern; Board membership, allocation provisions of section 1221.112(j), and the delayed initial referendum.

The following is a list of issues raised by one commenter related to reporting or recordkeeping requirements of the Order in that the commenter expressed concerns about the burden of specific Order requirements. Further detail is provided in Question #8.

Concerns addressed not resulting in changes to the proposed Order

- Definition of first handler

- Frequency of assessment remittance
- Documentation of State of origin of sorghum
- Recordkeeping retention
- First handler representation on Board
- Non-preemption of State checkoffs
- Time of assessment collection

Concerns addressed that did result in changes to the proposed Order

- Date of sale

Justification

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

A new Sorghum Promotion, Research, and Information Program (Proposed Order) is being implemented under the Commodity Promotion, Research, and Information Act of 1996, (PL 104-127, 110 Stat. 1032, April 4, 1996, 7 U.S. C. 7411-7425). This legislation is hereinafter referred to as the 1996 Act. Under the 1996 Act, Congress delegated the Department of Agriculture (USDA) the responsibility of establishing and overseeing agricultural commodity research and promotion orders, which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain, develop, and expand markets and uses for agricultural commodities. The Proposed Order was submitted by the National Sorghum Producers and is intended for the above mentioned purpose.

The final Order provides for the continued development and financing of a coordinated program of promotion, research, and information for grain sorghum, sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage, hereafter collectively referred to as sorghum. The programs would include projects relating to research, consumer information, advertising, sales promotion, producer information, market development and product research to assist, improve, or promote the marketing, distribution, and utilization

of sorghum.

The program will be administered by a 13 member Board appointed by the Secretary of Agriculture and will be financed by a mandatory assessment on producers and importers, collected by first handlers of sorghum. The Agricultural Marketing Service will provide oversight to ensure: (1) funds are collected and properly accounted for; (2) expenditures of all funds are for the purposes authorized by the enabling legislation; and (3) the Board's administration of the program conforms to USDA policy.

Section 515(i) of the 1996 Act provides authority to request from persons covered under the order any information required to carry out the responsibilities of the program. Each appointed Board is responsible for collecting assessments from the affected persons covered under the program in order to carry out the Board's responsibility. These programs require the use of the forms described in item 2 below.

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 being implemented under the 1996 Act and, will be established by USDA through the issuance of the final Order and rules and regulations. The Order will be subject to approval by sorghum producers in a referendum conducted within three years of the first assessment collection. Under the Order, first handlers of sorghum will collect and remit the mandatory assessment to the Board. Grain sorghum (including hybrid seeds, inbred lines, and cultivars) will be assessed at a rate of 0.6 percent of net market value received by the producer and sorghum forage, silage, hay, haylage, and billets at a rate of 0.35 percent of net market value received by the producer. Assessments will be used to fund a coordinated program to maintain, develop, and expand the demand for sorghum.

The Secretary will certify industry organizations to nominate sorghum producers to serve as members on the Board. The Board will recommend the assessment rate, programs and projects, budgets, and any rules and regulations that might be necessary for the administration of the program. The Board will be composed of five producers from the largest sorghum producing State, three from the State with the second largest production, one producer from the third largest production State, and four producers will serve as at-large National representatives with at least two representatives appointed from States not described. Importers will be entitled to one seat if the volume of imported sorghum reaches or exceeds the production of the third largest sorghum producing State. Board members will serve terms of three years and may serve a maximum of two consecutive terms.

In order to carry out the Board's responsibilities under the Order, first handlers and producers will be required to submit certain information, as provided in Sections 515, 516, and 517 of the 1996 Act, and Sections 1221.101, 1221.102, 1221.107, 1221.116, 1221.117, 1221.120, 1221.124, 1221.125, and 1221.128 of the Order.

The information required under this program is gathered through the following forms, and is used by USDA's AMS, and the Board as described below:

a) Background Information Form AD-755 (Section 1221.101) This form contains questions to ascertain the nominee's qualifications for consideration of appointment to the Board by the Secretary of Agriculture. The form questions include: personal identification information, including name, social security number, date of birth, and address; length of time engaged in sorghum production and quantity of pounds produced; length of time engaged in importation of sorghum and the pounds of sorghum imported; employment information; professional affiliation(s); education; income sources for amounts over \$10,000; and criminal history. The form will be completed by all Board nominees. This information will be provided

to the Board and forwarded to USDA for use in the Secretary's appointment of Board members. This form is currently approved under OMB number 0505-0001. Upon approval, 4 burden hours for this form will be merged into 0505-0001.

b) Monthly Report by each First Handler (LS-378) (Sections 1221.116) First handlers and importers will be required to report to the Board on a reporting period determined by the Board information necessary for the Board to perform its duties. For first handlers, the information may include: the total quantity of sorghum acquired during the reporting period; the total quantity of sorghum processed for sale from the first handlers own production; the date assessment payments were made; and the first handler's tax identification number. For importers, the information may include: the total quantity of sorghum imported during such reporting period; a record of each lot of sorghum imported during the reporting period including quantity, date, country of origin, and port of entry; and the importer of record tax identification number.

c) Application for Certification of Organizations (Section 1221.107) This information collection will be used to ascertain the eligibility of national organizations representing the interests of producers and importers for certification by the Secretary of Agriculture as eligible to nominate persons to the Board. Organizations that may seek certification will include: state-legislated sorghum promotion, research, and information organizations; organizations whose primary purpose is to represent sorghum producers within a State, region, or nation; and organizations that have sorghum producers as members. Eligibility will be based upon a factual report submitted by the organization that contains information deemed relevant by the Secretary for making an eligibility determination, including the following: The geographic territory covered by the organization's active membership; the nature and size of the organization's active membership, proportion of active

membership accounted for by producers, a map showing the sorghum producing counties in which the organization has active members, the volume of sorghum produced in each such county, the number of sorghum producers in each such county, and the size of the organization's active sorghum producer membership in each such county; the extent to which the sorghum producer membership of such organization is represented in setting the organization's policies; evidence of stability and permanency of the organization; Sources from which the organizations operating funds are derived; the functions of the organization; and the ability and willingness of the organization to further the purpose and objectives of the 1996 Act. The primary consideration in determining the eligibility of an organization will be whether its sorghum producer membership consists of a sufficiently large number of sorghum producers who produce a relatively significant volume of sorghum to reasonably warrant its participation in the nomination of members to the Board.

d) Nomination of Producers for Appointment (Section 1221.101) This form will be used to nominate persons to serve on the Board. Under the Order, organizations representing producers and importers may nominate persons for Board positions for consideration by the Secretary of Agriculture.

e) Organic Exemption Request Form (AMS-15) (Section 1221.117) Under the Order, the form will be completed by producers and importers requesting exemption from paying assessments. Persons requesting exemption must produce or import products that meet the requirements for a "100 percent organic" label under the National Organic Program (7 CFR Part 205), and are not part of a split operation. The form also includes a certification statement. This form is currently approved under OMB number 0581-0093, National Research, Promotion, and Consumer Information Programs.

f) Referendum Ballot Form (LS-380) (Section 1221.130) This form will be used in

voting for the implementation, suspension, termination or continuation of the Order. The other information requested on this form is used for the purpose of verification. The form includes the Registration Statement, the Ballot, and the Certification Statement. Referendum agents or the Secretary of Agriculture will tabulate the results of the referendum. The agents are officials of USDA who are charged with promulgating and administering the program.

g) Nominee's Agreement to Serve Form (Section 1221.102) This form will be used upon appointment to the Board where the appointee would sign an agreement to serve on the Board and disclose to the Secretary any relationship with any organization that has a contractual relationship with the Board.

h) Application for Qualification of Organizations (Section 1221.128) This information collection will be used to ascertain the eligibility of organizations representing the interests of producers for qualification by the Secretary as eligible to receive funding from the Board under certain conditions. Organizations receiving qualification from the Secretary will be entitled to submit requests for funding to the Board pursuant to 1290.112(j). Only one sorghum producer organization per State may be qualified. Request from State-legislated sorghum promotion, research, and information organizations will be considered first for qualification by the Secretary. If a State-legislated sorghum promotion, research, and information organization does not elect to seek qualification from the Secretary within a specified time period as determined by the Secretary, or does not meet eligibility requirements as specified by the Secretary, then any State sorghum producer organization whose primary purpose is to represent sorghum producers within a State, or any other State organization that has sorghum producers as part of its membership, may request qualification. Eligibility will be based upon a factual report submitted by the organization that contains information deemed relevant by the Secretary for making an eligibility determination, including the following: the

geographic territory covered by the organization's active membership; the nature and size of the organization's active membership, proportion of active membership accounted for by producers, a map showing the sorghum producing counties in which the organization has active members, the volume of sorghum produced in each such county, the number of sorghum producers in each such county, and the size of the organization's active sorghum producer membership in each such county; the extent to which the sorghum producer membership of such organization is represented in setting the organization's policies; evidence of stability and permanency of the organization; sources from which the organizations operating funds are derived; the functions of the organization; and the ability and willingness of the organization to further the purpose and objectives of the 1996 Act. The primary consideration in determining the eligibility of an organization will be whether its sorghum producer membership consists of a sufficiently large number of sorghum producers who produce a relatively significant volume of sorghum to reasonably warrant its participation in the nomination of members to the Board.

i) Application for Refund of Assessment (LS-380) (Section 1221.117) Exempted importers will complete this form to request refunds of assessments paid to the Board. Under the Order, assessments on imported grain sorghum, sorghum forage, hay, haylage, billets, sorghum silage, and hybrid seed would be collected by U.S. Customs Service (Customs) at the time of entry into the U.S. The assessments will then be remitted by Customs to the Board. Customs does not distinguish between nonexempt importers and exempt importers. Accordingly, it will be the Board's responsibility to reimburse exempt importers provided the appropriate reports and justification is submitted to the Board. The information included on this form is necessary to allow the Board to verify the status of importers claiming reimbursement.

Upon failure of the required referendum, each producer or importer who paid an assessment pursuant to this subpart during the period beginning on the effective date of the Order and ending on the date the required referendum results are announced may obtain a refund of such assessment. Any producer or importer requesting a refund shall submit an application on the prescribed form to the Board within 60 days from the date the assessments were paid by such producer or importer but no later than the date the results of the required referendum are announced by the Secretary. The refund application shall show: Producer's or importer's name and address; Name and address of the person who collected applicant's assessment; Number of bushels or tons of sorghum on which a refund is requested; Total amount of refund requested. An importer must submit documentation showing that the assessment was paid along with a copy of the appropriate Customs form stating the net market value of the sorghum.

j) Recordkeeping Requirements (Sections 1290.124 and 1290.125) Producers, importers, and first handlers are required to maintain and make available information for inspection by the Board and USDA. Recordkeeping requirements will help provide for the effective operation of the Order, and its conformance with the 1996 Act.

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 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 USDA/AMS 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 for the current order and there is no duplication anticipated for the Order.

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.

Based on a review of 2002 Census data, USDA is estimating that approximately 81 percent of the 10,216 respondents can be classified as small businesses. Generally, producers are expected to be small business owners and first handlers are not expected to be small businesses.

Under the program, first handlers will be required to collect assessments from producers and importers, file reports with, and submit assessments to the Board. While the Order imposes certain recordkeeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. Such records will be retained for at least two years beyond the marketing year of their applicability. Therefore the Order imposes no recordkeeping requirement in excess of OMB's standard good business practice of 3 years. The Order's provisions have been carefully reviewed, and

every effort has been made to minimize any unnecessary recordkeeping costs or requirements.

The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms are simple, easy to understand, and place as small a burden as possible on the person required to file the information. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers, importers, and first handlers who are subject to the provisions of the Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

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 check-off program designed to maintain, develop, and expand markets for sorghum. If the information collection herein were not collected, the Board could not carry out the coordinated promotion, research, and information program on sorghum, ensure compliance with the mandatory program or ensure proper assessment collection. Collecting data less frequently also would limit the Secretary's ability to oversee 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;

Most respondents already maintain monthly records as part of normal business practices and requiring them to report information monthly would cause no significant additional burden.

- REQUIRING RESPONDENTS TO PREPARE A WRITTEN RESPONSE TO A COLLECTION OF INFORMATION IN FEWER THAN 30 DAYS AFTER RECEIPT OF IT;

In order for the Board to receive timely remittance of assessments collected, it is anticipated that the agency will craft rules and regulations requiring those persons collecting assessments to remit the Monthly Remittance Report and the assessments to the Board by the 15th of the month following the month in which sorghum was purchased or imported. These records are currently a part of normal business practice and therefore impose no additional burden.

- REQUIRING RESPONDENTS TO SUBMIT MORE THAN AN ORIGINAL AND TWO COPIES OF ANY DOCUMENT;

It is not anticipated that there are any special circumstances that will require 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;

It is not anticipated that respondents will need to retain records for more than 3 years, as the Order requires respondents to retain records for 2 years beyond the fiscal year of their applicability, a part of normal business practice.

- 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;

There are no such special circumstances. The Agency will not be using any statistical surveys that are 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;

There are no such special circumstances. The Agency will not be using 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 WHICH 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

There are no such special circumstances. The Order supports a pledge of confidentiality.

- 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, that was

published in the Federal Register on November 23, 2007 (Vol. 72, No. 65842), and invited comments through January 22, 2008. The proposed and final rules may be accessed at <http://www.Regulations.gov>, docket number AMS-LS-07-0056. There are no significant changes from the proposed rule to the final rule. AMS received 215 timely comments regarding the proposed Order and received five comments after the close of the comment period. No additional issues were raised by the late comments that were not previously raised by the timely comments. The late comments were posted with the timely comments on <http://www.Regulations.gov>. One hundred sixty seven comments were submitted by producers in support of the Order. Twenty two comments from producers and five comments from organizations were submitted opposing the implementation of the proposal. Their opposition centered on three areas of concern; Board membership, allocation provisions of section 1221.112(j), and the delayed initial referendum.

The following is a list of issues raised by one commenter related to reporting or recordkeeping requirements of the Order in that the commenter expressed concerns about the burden of specific Order requirements.

Concerns addressed not resulting in changes to the proposed Order

- Definition of first handler
- Frequency of assessment remittance
- Documentation of State of origin of sorghum
- Recordkeeping retention
- First handler representation on Board
- Non-preemption of State checkoffs
- Time of assessment collection

Concerns addressed that did result in changes to the proposed Order

- Date of sale

AMS made changes to the regulatory text reflected in the final rule as a result of one comment “Date of Sale”. This change was made for clarity. This change did not result in any

change to the estimated burden hours, responses, or number of responses as identified in the AMS-71 summary of information collection grid sheet.

The following comments are ones that are related to reporting or recordkeeping requirements of the Order or, ones in which the commenter expressed a concern about the burden of an order requirement.

Definition of First Handler

A commenter suggested that the definition of first handler be changed because 1,000 bushels is too low of a limit to exclude a handler from their obligation to pay the assessment. This commenter also suggested that grain buyers may not know at the beginning of the year how much sorghum they will buy, thus placing them in the position of either refunding assessments if they don't reach the 1,000 bushel limit or assessing after-the-fact once they reach the trigger. Either way, the commenter suggested, that this would cause an undue burden on the handler.

The definition of first handler is constructed so that every commercial grain elevator, under current industry practices, would exceed the threshold since they typically buy more than the minimum threshold amount of sorghum in a calendar year. Therefore, all sorghum purchased by first handlers would be assessed.

We disagree, the definition of first handler is designed to exclude small cattle feeding operations and dairies that would buy less than 1,000 bushels of grain sorghum or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage. According to NASS data, the average U.S. sorghum production in 2007 was 74.2 bushels per acre. Any commercial grain elevator that purchases 13.5 acres of sorghum will have met the definition. According to the NASS' 2002 Census of Agriculture, the average grain sorghum farm size was 204 acres. If a commercial grain elevator has even one grain sorghum

producing customer, they would likely meet the limit more than 15 times over. Accordingly, USDA believes that the 1,000 bushel limit is appropriate and will not burden to the commercial grain buyers. Accordingly, this suggestion to change the definition of first handler is not adopted.

Assessment remittance

Several commenters requested that USDA consider changing the assessment remittance requirement from monthly to quarterly. An appropriate remittance schedule is critical to the Board's functioning. While no change is made to the final rule, USDA, in consultation with the Board, will review this issue after the program has been fully implemented. Consequently, unless otherwise prescribed in future regulations, assessments are due by the 15th of the following month in which assessments are collected.

State of origin of sorghum

A commenter suggested that the requirement for first handlers to keep records of the State of Origin of their sorghum purchases is a burden that is not part of their regular course of business. This requirement is essential to the Board's determination of representation, which is based on assessment collections for each State. It is also needed for identifying the appropriate State to receive funding allocations. A similar requirement is part of the Soybean Promotion, Research, and Consumer Information Order's recordkeeping requirements and has not proven to be a substantial burden. The burden estimated under this program is minimal and necessary for carrying out the provisions of the Order. Accordingly, this comment is not adopted.

Recordkeeping

One commenter stated that the records retention requirement of section 1221.125(a) to keep records for 2 years beyond the fiscal year of their applicability is in conflict with the

provision to conduct a referendum within 3 years of the date assessments begin. Further the commenter stated that this conflict would present problems for documenting refund requests should the referendum fail. The requirement to keep records for 2 years beyond the fiscal year of their applicability includes 3 fiscal years. Also the responsibility to make refunds will be the Board's responsibility and not the handler's. USDA believes the record retention is appropriate and consistent with other commodity research and promotion programs.

Accordingly, this comment is not adopted.

First handler representation on Board

One commenter criticized the lack of representation of first handlers on the Board stating that first handlers deserved representation because of the disproportionate economic impact they will incur as a result of implementing the checkoff. The representation provisions of the Order are appropriate as they afford representation to those persons who pay the assessments. Accordingly, this comment is not adopted.

Non-preemption of State checkoffs

A commenter asked for clarification regarding the non-preemption of State checkoffs due to concern that recordkeeping for a State and national checkoff would be burdensome. While the national sorghum program imposes certain reporting and recordkeeping requirements, information required under the Order can be completed from records already maintained. Such information is the same or similar to existing State sorghum and soybean programs, as well as the Soybean Checkoff program (7 CFR part 1220). Six States currently have State-legislated sorghum research and promotion programs. Further, the Order's provisions have been carefully reviewed and every effort has been made to minimize any unnecessary reporting or recordkeeping requirements. Accordingly, no change is made as a result of this comment.

Time of assessment collection

A commenter asked for clarification of the term “handled” as it relates to the timing of the assessment collection. While the collection of assessments is on handled sorghum the assessment occurs at the time the producer sells the sorghum and the net market value is established. Also, the commenter suggested that the wording of section 1221.124(1) be changed to clarify that records would only be required for sorghum bushels on which assessments have been collected. We disagree. The information required in subparagraph (a) (1) is needed by the Board to carry out its responsibilities under the Order. Accordingly, no change is made as a result of this comment.

Date of sale

A commenter asked for clarification of the date of sale. The commenter suggested that in the context of the grain trade, a better term might be date of settlement which would reflect the date when the assessment is deducted from the producer’s payment in fulfillment of a contract. USDA believes that this comment has merit, but also believes that prudent more appropriate term would be date on which assessments were paid. Therefore, USDA is changing 1221.125(b)(5) to read as follows: “(5) date on which assessments were paid; and”. Further, this change makes the term consistent with 1221.124(4). The commenter also suggested making a similar change in section 1221.116. However, USDA does not believe any change is necessary in this section.

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 appointed by the Secretary of Agriculture for the purpose of representing the sorghum industry and making decisions for them. The staff would be 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 staff the National Sorghum Producers: Tim Lust, Chief Executive Officer; and Chris Cogburn, Strategic Business Director, telephone number (806) 749-3478.

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.

There are no identified obstacles for consulting with industry members who must submit information to the Board under the Order. Industry members will be consulted on an ongoing basis regarding information collection requirements.

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 Background Information Form AD-755 (OMB Form No. 0505-0001). The form contains questions to ascertain the candidate's qualifications for consideration of appointment to the Board by the Secretary of Agriculture. The questions include length of

time engaged in sorghum production or importation; volume produced or imported, professional affiliation(s) and education; income sources for amounts over \$10,000, personal identification information, including social security number and date of birth. This information is provided to the Board and forwarded to USDA for use in the nomination process.

In addition, Section 515(i) (4) 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 and recordkeeping are summarized on AMS Form 71, which is attached.

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 estimated annual cost of providing the information to the Board by the total estimated number of persons subject to information collection burden (10,216) would be \$325,627 or \$31.87 per respondent. This total has been estimated by multiplying 17,554 (total burden hours) by \$18.55, the mean hourly earnings of first line supervisors and managers of farming, fishing, and forestry workers as obtained from the U.S. Department of Labor Statistics' *National Compensation Survey: Occupational Wages in the United States, June 2006* (NCS Occupational Wages) divided by the total number of respondents (10,216).

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 are 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 this information collection is estimated at \$135,000 the first year and for subsequent years it is estimated to be about \$100,000. AMS is reimbursed 100 percent by the Board for its oversight costs. A breakdown of the oversight costs for the first year is the following:

Salaries/Benefits/FERS Contributions/Awards	\$112,050
Travel	\$4,050
Contracts/Services/Training	\$4,050
Printing/Copying/Mailing/Postage	\$4,050
Rent/Communication/Utilities/FTS	\$4,050
OGC (Legal Services)	\$5,400
Supplies/Equipment	<u>\$1,350</u>

TOTAL

\$135,000

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

There are no significant changes from the proposed rule to the final rule. This is a new information collection for the establishment of a new Sorghum Promotion, Research, and Information Order.

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 would order forms well in advance of the fiscal year, so that forms could be mailed to first handlers in a timely manner. The Board office would order forms in quantities large enough to get a price break. There is also the potential for 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.