

**2011 SUPPORTING STATEMENT  
MARKETING ORDER NO. 920  
FOR  
KIWIFRUIT GROWN IN CALIFORNIA  
OMB No. 0581-NEW  
(Proposed Rule)**

**Note to Reviewer:** Upon OMB approval, this application will be merged into OMB No. 0581-0189, “Generic OMB Fruit Crops” generic information collection, which includes Kiwifruit Grown in California, and will expire on December 31, 2013.

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**Justification**

**20816. EXPLAIN THE CIRCUMSTANCES THAT MAKE THE COLLECTION OF THIS 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. The Agricultural Marketing Service (AMS) is publishing a proposed rule which would add two new forms to the reporting requirements for the purpose of allowing the Kiwifruit Administrative Committee (Committee) to collect details on price, shipment, and grower information. Previously, the required information for these forms was reported through the California Kiwifruit Commission (Commission), which will cease to exist as of September 2011.

The information would provide data for grower nominations, verify shipments for assessment collections, and inform the annual report and the marketing policy.

Marketing Order No. 920 (7 CFR Part 920), covering kiwifruit grown in 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). 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 improving returns to producers. The Act provides in section 608(d)(1) that certain 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).

Marketing Order No. 920 (order) became effective in 1984, following public hearings in accordance with formal rulemaking procedures specified under the Act. Growers approved the marketing order in referendum, as specified by the Act. The order authorizes the issuance of grade, size, pack, and container requirements. Currently, all requirements are being used. Seasonal pack and container requirements have been issued since 1985. The order was established to create a reputation for quality produce by preventing poor quality kiwifruit from being shipped to market. Regulatory provisions apply to kiwifruit shipped both within and out of the production area to any market, except those specifically exempt.

**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 two new forms, the End-of-Season F.O.B. Sales Report and the Final Packout Report, will be due within 30 days after all fruit has been shipped for the current season. Both forms would collect pertinent contact information and provide data to conduct grower nominations, verify shipments for assessment collections, and prepare the annual report and annual marketing policy. The information required under the marketing order is gathered on the following forms and is used as outlined below:

- a) **The End-of-Season F.O.B. Sales Report (Section 920.160):** This form would collect data on gross f.o.b. sales value and number of containers for fresh market shipments by fruit size and pack style for the crop year.
- b) **The Final Packout Report (Section 920.160):** This form would collect information on containers shipped by pack style for fresh market shipments, for each grower entity during the crop year, as well as the grower and farm name, entity mailing address, the county where the farm is located, and total acreage.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs regional and headquarters staff, and authorized employees of the Committee employees. Authorized Committee employees will be the primary users of the information and AMS is the secondary user. Such information would be kept confidential in accordance with the Act and the marketing order.

**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 electronic mail, 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.**

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

**5. IF THE COLLECTION OF INFORMATION HAS SIGNIFICANT IMPACT ON A SUBSTANTIAL NUMBER OF SMALL BUSINESSES OR OTHER SMALL ENTITIES (ITEM 5 OF THE OMB FORM 83-1), DESCRIBE THE METHODS USED TO MINIMIZE BURDEN.**

This collection burden does not have a significant impact on small business. Information collection requirements have been reduced to the minimum requirements of the order. Based on Committee data, there are approximately 27 handlers of kiwifruit subject to regulation under the marketing order and 176 kiwifruit growers in the production area; approximately four handlers handle only organic kiwifruit, and four handle both conventional and organic kiwifruit. The California Agricultural Statistical Service (CASS) reported total California kiwifruit production for the 2009-10 season at 26,000 tons with an average price of \$1,470 per ton. Based on the average price, shipment, and grower information provided by the CASS and the Committee, the

majority of kiwifruit handlers would be considered small businesses under the SBA definition. In addition, as the average annual grower revenue is less than \$750,000, the majority of California kiwifruit producers may also be classified as small entities. These two annual end-of-season reports are not expected to disproportionately increase the handlers' record keeping burden, or incur significant additional costs as the data is already routinely recorded and maintained by handlers.

**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.**

Since 1984, the Commission, has collected end-of-season price, shipment, and grower information (grower/farm name, entity mailing address, location of farm by county, shipments by pack style, and acreage), and shared this information with the Committee. The Committee uses this information to conduct grower nominations, verify shipments for assessment collections, and prepare the annual report and the annual marketing policy, as required under the order. Without this information, the Secretary of Agriculture (Secretary) could not determine the extent to which an order has effectuated the declared policy of the Act.

**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 OR 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.**

A 60-day notice, which was embedded in the proposed rule, was published in the Federal Register on August 9, 2011, which invited comments through October 11, 2011.

**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.**

**CONSULTATION WITH REPRESENTATIVE 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 meets throughout the year to assess the marketing order's regulatory and informational needs. The Committee assesses the type of information that is collected, keeps close contact with industry representatives and trade associations to ensure their utmost efficiency, and endeavors to consult with representatives from whom the information is to be obtained at least every three years. In addition, notices of Committee meetings are sent to all those associated with the respective industry, and any concerns regarding onion issues are welcomed.

The Committee discussed alternatives to this action, including making no changes to the reporting requirements. However, as no other organized industry group would exist to collect information from handlers essential to carry out the objectives of the marketing order, this alternative was rejected. (The required information for these forms was previously reported through the California Kiwifruit Commission, which will cease to exist as of September 2011.)

Furthermore, use of these forms has been discussed with the following agencies and staff:

- o Kiwifruit Administrative Committee, 1521 “I” Street, Sacramento, CA  
Phone: (916) 441-0678
- o California Kiwifruit Commission, 1521 “I” Street, Sacramento, CA  
Phone: (916) 441-0678
- o Kathie Notoro, California Marketing Field Office, Fresno, CA  
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.**

Section 608(d) of the Act provides that information acquired will be kept confidential. Reports submitted to the Committee are accessible only by the Committee manager, certain employees of USDA’s Agricultural Marketing Service (AMS) headquarters and field office staff.

**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.**

Questions of a sensitive nature are not included on the two annual end-of-season reports.

**12. PROVIDE ESTIMATES OF THE HOUR BURDEN OF THE COLLECTION 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 83-1.**
- **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 total estimated burden time would be 40.50 hours (27 respondents x 2 responses x 0.75 hours per response), see attached AMS-71 grid. The respondents' estimated annual cost of providing information to the Committee is \$1,260.77 (40.50 x \$31.13) the national mean hourly wage of Farm, Ranch, and Other Agricultural Managers, according to the U.S. Department of Labor Statistics. (National Compensation Survey: Occupational Employment and Wages, May 2009; <http://bls.gov/oes/current/oes119011.htm>.)

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).**

**THE COST ESTIMATE SHOULD BE SPLIT INTO TWO COMPONENTS; (a) A TOTAL CAPITAL AND START-UP COST COMPONENT (ANNUALIZED OVER ITS EXPECTED USEFUL LIFE); AND (b) A TOTAL OPERATION AND MAINTENANCE AND PURCHASE OF SERVICES COMPONENT. THE ESTIMATES SHOULD TAKE INTO ACCOUNT COSTS ASSOCIATED WITH GENERATING, MAINTAINING, AND DISCLOSING OR PROVIDING THE INFORMATION. INCLUDE DESCRIPTIONS OF METHODS USED TO ESTIMATE MAJOR COST FACTORS INCLUDING SYSTEM AND TECHNOLOGY ACQUISITION, EXPECTED USEFUL LIFE OF CAPITAL EQUIPMENT, THE DISCOUNT RATE(S), AND THE TIME PERIOD OVER WHICH COSTS WILL BE INCURRED. CAPITAL AND START-UP COSTS INCLUDE, AMONG OTHER ITEMS, PREPARATION FOR COLLECTING INFORMATION SUCH AS PURCHASING COMPUTERS AND SOFTWARE; MONITORING, SAMPLING, DRILLING AND TESTING EQUIPMENT; AND RECORD STORAGE FACILITIES.**

**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, MAKE: (1) PRIOR TO OCTOBER 1, 1995, (2) TO ACHIEVE REGULATORY COMPLIANCE WITH REQUIREMENTS NOT ASSOCIATED WITH THE INFORMATION COLLECTION OR KEEPING RECORDS FOR THE GOVERNMENT, OR (4) AS PART OF CUSTOMARY AND USUAL BUSINESS OR PRIVATE PRACTICES.**

There are no capital/start-up or ongoing operation/maintenance costs associated with this information collection.

- 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 annual cost for providing oversight and assistance for this marketing order program is estimated at \$19,658.99 the first year and for subsequent year it is estimated to be \$19,046.19, assuming increased overhead costs.

A breakdown of the costs for the first year is the following:

Salaries/Benefits/Awards	\$2,659.05
Travel	2,000
Printing/Copying/Mailing/Postage	\$1,400
Federal Register Notices	\$2,400
OGC (Legal Services)	\$8,000
Supplies/Equipment	\$3,200
TOTAL	\$19,659.05

**15. EXPLAIN THE REASON FOR ANY PROGRAM CHANGES OR ADJUSTMENT REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-1.**

This is a new collection. Upon OMB approval, this application will be merged into OMB No. 0581-0189, “Generic OMB Fruit Crops” generic information collection, which includes Kiwifruit Grown in California.

**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 Committee office orders forms well in advance of the marketing year, so forms are mailed to handlers and growers in a timely manner. It is desirable to order forms in quantities large enough to obtain a price discount. If the Committee office needs to order more forms prior to an OMB submission for extension of approval, there is no guarantee that a requested expiration date will be used by OMB. There is also some confusion to respondents thinking their handler reports are good for the length of time noted in the expiration date, rather than expiring at the end of the marketing season. Therefore, it is desirable not to display the expiration date rather than having a supply of forms on hand displaying an inaccurate expiration date.

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

No exceptions are requested to the certification statement identified in Item 19 of OMB Form 83-I.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

The collection of information does not employ statistical methods.