

2012 SUPPORTING STATEMENT
Pistachios Imported Into the United States
Marketing Order and Agreement Division
(Final Rule)
OMB Number 0581-0278

Note to Reviewer: Upon OMB’s approval of this new information collection, the Agricultural Marketing Service (AMS) will request to merge this collection with the forms currently approved for use under OMB No. 0581-0215, Pistachios Grown in California, Arizona and New Mexico, which was approved by OMB with an expiration date of May 31, 2014.

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 California, Arizona and New Mexico is authorized by the Agricultural Marketing Agreement Act of 1937 (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 to provide orderly marketing conditions in interstate and intrastate commerce. 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, authorizing quality, size, inspection, and reporting requirements, along with aflatoxin standards, for pistachios grown in California. On November 2, 2009, following a favorable vote among pistachio growers, the marketing order was expanded to include Arizona and New Mexico. With essentially all U.S. pistachio production now covered by the marketing order, minimum quality regulations may be established for imported pistachios. The two new forms in this package would be completed by either pistachio importers or laboratory personnel to report information to the U.S. Department of Agriculture (USDA) and the U.S. Customs and Board Protection (Customs) on failed lots due to aflatoxin levels. This new activity is authorized in 7 CFR Part 999.500 and 7 CFR Part 999.600. Once the final rule is published, pistachios would be added to the list of 13 other marketing order products that are authorized by Section 8e of the Act to have a corresponding import requirement.

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.

AMS, an agency of USDA, oversees the Administrative Committee for Pistachios

(Committee) in its local administration of the marketing order. 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. Information collection under this new authority for imports, however, is retained by USDA and Customs as an import enforcement and compliance mechanism that is provided in 7 CFR Part 999.500 and 7 CFR Part 999.600

AMS has developed forms as a convenience for importers who are required to file information. AMS and Customs would use the two reports to track pistachio lots being offered for importation into the United States and follow up on the disposition of failing lots to ensure that pistachios with aflatoxin levels exceeding the maximum tolerance are not shipped to domestic human consumption outlets. The information required under the marketing order is gathered on the following forms and is used as outlined below:

- a) **Imported Pistachios – Rework and Failed Lot Disposition Report FV-251 (Sections 999.500 and 999.600)**: Importers would use this 2-page form to provide required information on the disposition of any failed lots, including those that are reworked to meet the aflatoxin requirements. The original form, which provides information about the quantity of nuts that were accepted and rejected during rework, is sent to Customs, with copies sent to AMS and retained by the importer.
- b) **Imported Pistachios – Failed Lot Notification Report FV-249 (Sections 999.500 and 999.600)**: Laboratory personnel, who perform chemical analysis on the aflatoxin content for imported pistachios, would complete this 1-page form to report any lots that fail aflatoxin testing. The original form, which requests the Customs' entry number, the importer's address and the result of two tests, is sent to Customs, with copies sent to AMS and to the importer.

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 AMS and Customs. AMS and Customs are committed to complying with the e-Government Act, which requires government agencies in general to provide the public with the option of submitting information or transacting business electronically to the maximum extent possible. 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 marketing order. Requesting this information from importers does not pose a significant disadvantage to any of the respondents. None of the 17 respondents is a small business.

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 marketing 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 marketing 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.**

AMS published a final rule in the Federal Register on Monday, August 27, 2012 (Vol. 77, No. 166 and Pages 51686-51693). Previously, the 60-day notice for this information collection was embedded in the proposed rule, which was published in the Federal Register on Friday, October 21, 2011 (Vol. 76, No.204 and Page 65411-65419). AMS received four comments in response to the proposed rule, with each comment addressing the effectiveness of the overall import requirement and not in regards to the forms or information collection.

- **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 are not available anywhere. Use of the forms is 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.

USDA, including AMS, has a strong bond with their Customs counterparts on a number of projects and has updated them on this proposed initiative. If finally implemented, AMS and Customs specialists would work more closely on this project to enhance operational efficiencies and continue on-going dialogue for program enhancements.

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. 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 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 U.S.C. 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.

AMS estimates that there are 10 importers and 7 USDA or USDA-accredited laboratories that would complete the new forms. The number of responding importers is based on national data derived from USDA's Foreign Agricultural Service and U.S. Department of Commerce reports. It is estimated that each of the two forms takes approximately 12 minutes to complete by either the importer or the laboratory. Estimates of the burden of collection of information are summarized on the AMS-71 Form (enclosed).

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 completing these forms is \$211.55. This total has been estimated by multiplying 5.6 (total burden hours) by \$17.72, the average mean hourly earnings of Agricultural and Food Science Technicians, and by multiplying 6 (total burden hours) by \$18.72, the average mean hourly earnings of Cargo and Freight Agents. Data for computation of this hourly wage were obtained from the U.S. Department of Labor Statistics' publication, "May 2009 National Occupational Employment and Wage Estimates United States," found at the website:
http://www.bls.gov/oes/current/oes_nat.htm.

- **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.**

AMS committed resources for drafting and publishing the proposed rule in the Federal Register, giving the public opportunity to consider the requirement on imported pistachios and express their views. Approximately 40 hours of this start-up work is reflected in the Salary/Benefits/Awards section in Item 14.

- 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, and less rulemaking activity documented in Item 13. 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 ADJUSTMENTS REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-1.**

This information collection is new and is the result of an amended authority under the Federal marketing order for pistachios grown in California, Arizona and New Mexico.

- 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 on the information collection. This requirement significantly affects mandatory programs by having to destroy otherwise usable forms when the date expires. Such needless actions are counter-productive to the Administration's goal of increasing program efficiency, as well as the effect that an expiration date could have on the Agency. 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 expiration 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.

Lastly, having an expiration date on forms in addition to the creation date and/or revision date could cause confusion to the users of the forms, which could result in delays in payments for services. A delay in payments from users of program services could lead to additional late payment costs and ultimately to legal challenges by the users, which would increase costs and inefficiencies in the Agency.

- 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.