

**2017 SUPPORTING STATEMENT
SPECIALTY CROP MARKETING ORDERS
HANDLER ASSESSMENT FORMS FOR FEDERAL MARKETING
ORDER FOR PECANS
FINAL RULE
OMB No. 0581-0303**

NOTE TO REVIEWER: Forms contained in this collection enable the newly established Federal marketing order for pecans, as well as the industry council that administers the marketing order under the Agricultural Marketing Service’s (AMS) supervision, to conduct business. The Office of Management and Budget (OMB) previously approved the referendum and nomination forms that were used in the establishment of the program and assigned OMB No. 0581-0291 “Pecans Grown in AL, AR, AZ, CA, FL, GA, KS, LA, MO, MS, NC, NM, OK, SC and TX.” Upon approval, AMS will request the two forms in this collection, OMB No. 0581-0303, be merged into the parent OMB No. 0581-0291 containing the previously approved forms. AMS will submit a request to discontinue OMB Control Number 0581-0303 once approval is received in an effort to keep all forms in one collection for this marketing order.

A. JUSTIFICATION

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

Under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. § 601 *et seq.*; Act), the U.S. Department of Agriculture (USDA) has authority to promulgate and oversee marketing orders to regulate the handling of an agricultural commodity placed in interstate or foreign commerce. Marketing orders are proposed and voted in by producers, and apply to handlers who place the product in commercial channels. Handlers are those companies that typically purchase products from producers for the purpose of packaging, processing, and transporting the product for commercial or retail sales. Section 608d(1) of the Act provides that information necessary to determine the extent to which a marketing order has effectuated the declared policy of the Act shall be furnished at the request of the Secretary of Agriculture (Secretary).

AMS oversees the marketing order through the American Pecan Council (Council) made up of industry-nominated and USDA-appointed members, and any administrative rules and regulations issued under the proposed program. The marketing order authorizes data collection, research and promotion activities, and grade, size, quality, pack and container regulation. The pecan industry entered into the marketing order in 2016 to increase demand, stabilize grower prices, create sustainable handler margins, and provide a consistent supply of quality pecans for consumers. The program is funded by assessments, or fees, paid by pecan handlers to the Council. Section 986.61 of the marketing order requires handlers to pay those assessment, while section 986.78

authorizes the Council to collect reports and information from handlers needed to enable the Council to perform its duties.

2. INDICATE HOW, BY WHOM, HOW FREQUENTLY, 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 rules and regulations in 7 CFR Part 986, effective through final rule published August 4, 2016 and effective August 5, 2016 (Federal Register Vol. 81, No. 150, Pages 51298-51312), authorize USDA and the Council to collect certain information from handlers on the volume of pecans moving through their operations and into commercial channels. Collection of that information enables the Council to annually calculate assessments owed by each handler. According to §986.60, the Council meets before the start of each fiscal year beginning October 1 to develop a budget based on estimated pecan production and program costs. The Council uses those numbers to calculate an assessment rate to be paid by each handler to finance Council activities. According to §986.61 (h), handlers remit assessment funds to the Council on August 31 each year. AMS would make the following forms available to industry members to collect information and data:

- a) Inter-handler Transfer Form 4 (§986.62, §986.77 and §986.162):** Pecan handlers will file this form with the Council monthly, if inter-handler transfers took place. The information collected on this form includes the date of transfer, the type of pecans (shelled or inshell), weight, who is responsible for assessments, transferring and receiving handlers, and signatures of both the transferring and receiving handlers. The transferring handler fills out the form and submits a paper copy to the Council by the tenth day of the month following the transfer. Submission of the form will be made by postage mail to the Council's new office that is located in Texas. Once nationwide handlers become accustomed to completing the form that is new to all of them under the recently implemented marketing order, Council staff intends to offer an option to complete the form on computer and submit the form via email. Both handlers making the inter-handler transfer are responsible for maintaining a copy of the completed form for their records.
- b) Year-End Inventory Report; Form 7 (§986.75 and §986.175):** Pecan handler will file this form with the Council once annually by September 10. It will document the date, crop year, type of pecan inshell, type of pecan shelled and total inventory. Submission of the form will be made by postage mail to the Council office that is located in Texas. Once nationwide handlers become accustomed to completing the form that is new to all of them under the recently implemented marketing order, Council staff intends to offer an option to complete the form on computer and submit the form via email.

As indicated in the "Note to Reviewer" section of this Supporting Statement, upon approval of these two forms in OMB No.0581-0303, AMS intends to merge them into

OMB No. 0581-0291 “Pecans Grown in AL, AR, AZ, CA, FL, GA, KS, LA, MO, MS, NC, NM, OK, SC and TX” so all forms pertaining to this marketing order are contained in one forms collection. It is important to keep OMB No. 0581-0291 in effect because it contains ballots that USDA will use during upcoming industry-requested referenda, and background forms future nominees will complete when applying to become a member of the Council. Those type of forms were used during the formation of the marketing order and the Council, and will continue to be used at certain intervals, such as when USDA uses the ballots to determine the level of grower support for future marketing order amendments proposed by the Council on the industry’s behalf. USDA will also use the ballots to conduct a required continuance referendum every five years to determine the industry’s level of support for continuing the marketing order. Also included are forms handlers complete and submit so the Council can track import and export shipments of pecans, and that is an ongoing desire for the industry in an effort to collect valuable trade and marketing data it had not previously been able to obtain without the marketing order. AMS will seek to discontinue OMB No. 0581-0303 once the forms are part of OMB No. 0581-0291.

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, the Council will use the forms to facilitate assessment collection and provide valuable reports to the industry, including the annual marketing policy required by the marketing order. AMS is initially submitting the paper version for approval and eventually intends for pecan handlers to insert their respective product volume with a function that auto-calculates their assessment. AMS expects to subsequently submit the electronic version for OMB’s approval at a future date during the three-year renewal cycle.

The Council’s initial use of these forms would be handled through postage mail, facsimile and email to afford opportunities to all handling operations conducting business in the marketing order’s production area. The Council does not possess a system through which handlers would log numbers into a website to accommodate filing requirements. Council staff is relying on handlers to submit their paper forms via postage mail or facsimile, or a scanned Adobe PDF form via email. USDA, which is making most forms available on its website for “fillable” purposes, would reference the forms when conducting periodic compliance reviews and related oversight activities.

The Council will mail packets of forms to all handlers at the beginning of each marketing season for them to complete and submit by the required due dates. One of the Council’s goals is to design and launch a password-protected web-based portal through which handlers can gain access and submit data contained on most forms electronically.

The Council wants to achieve that goal in the next two years. Because any web-based portal is a vehicle for information collection, AMS will follow standard protocol to obtain OMB's required approval before the system can be launched.

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 collections will be periodically reviewed by USDA and the Council to ensure they are understood by industry members, are easy to complete, and place as small a burden as possible on the respondents.

USDA and the Council will use these two additional forms in this information collection. Consequently, the information needs are unique to the Federal program and do not exist elsewhere. There will be no duplication in effort among the companion marketing orders. The Council will continue creating new forms and will then work to ensure an efficient and non-duplicative collection of information from industry members.

5. IF THE COLLECTION OF INFORMATION HAS SIGNIFICANT IMPACT ON A SUBSTANTIAL NUMBER OF SMALL BUSINESSES OR OTHER SMALL ENTITIES (ITEM 15 OF THE PAPERWORK REDUCTION ACT SUBMISSION FORM), DESCRIBE THE METHODS USED TO MINIMIZE BURDEN.

The information being collected has been reduced to the minimum requirements of the marketing order. The forms require a minimal amount of information, which can be supplied without data processing equipment or a trained statistical staff. The primary sources of data respondents use to complete the form are routinely available in their individual business transactions. Thus, the information collection and reporting burden is relatively small. Based on information presented at the hearing, approximately 80 percent of the estimated 250 commercially viable pecan handling, shelling and accumulating operations are considered small businesses as defined by the Small Business Administration. Requiring the same reporting requirements for all eligible handlers will not significantly disadvantage any handler that is smaller than the industry average.

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

If this information collection were not conducted, not only would the Secretary lose the ability to administer the marketing order, but the Council would have no way to collect funds to finance its activities or monitor handler compliance with the handling regulations.

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;**

The following form in this information collection requires respondents to report information on a monthly basis, if transactions took place, by the tenth day of each month:

Inter-handler Transfer Form 4 (§986.62): Pecan handlers will file this form with the Council on a monthly basis if such transfers occurred in the course of doing business. The information collected on this form includes the date of transfer, the type of pecans (shelled or inshell), weight, who is responsible for assessments, transferring and receiving handlers, and signatures of both the transferring and receiving handlers. 7 CFR 986.77 states, "Each handler shall file such reports of their pecan receipts from growers, handlers or others in such form and at such times as may be required by the Council with the approval of the Secretary." The final rule published in the Federal Register on November 28, 2018, specifies monthly filings recommended by the Council and subsequently favored by industry members during the 60-day comment period. The Office of the Federal Register incorporated the newly approved filing timeframes and other details into the accompanying 7 CFR 986 document.

There are no other special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR Section 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 was published in the Federal Register on 07/21/2017 (Vol. 82, No. 139, pages 33829 through 33833, which invited comments from interested persons through 09/19/2017. One comment in favor of these regulations was received.

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 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.

- Byron Gossett, Acting Executive Director, American Pecan Council, Dallas/Fort Worth, Texas; Phone: (817) 887-8056
- Michael Adams, Chairman, American Pecan Council, and President, American Pecan Board, 10600 State Highway 21 E, Caldwell, TX 77836; Phone: (903) 649-2077

The number of Council and industry members involved in designing forms will increase once Council leadership hires a fulltime administrative staff.

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

Respondents are not provided with gifts or payments for providing information.

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. Council staff would be the primary users of this new set of forms. USDA employees would be the secondary users. Information submitted to the Council is accessible only by the Council managers and staff, and certain USDA employees in Washington, D.C. and Winter Haven, FL. The Council will report trade data in end-of-year marketing policy reports without identifying the amount of individual handling operation's confidential information. Neither the Form 4 or Form 7 ask handlers to provide home address, birthdates, Social Security Numbers or other pieces of information that would be categorized as Personal Identifiable Information. Council members are made aware of the penalties for violating confidentiality requirements.

The proposed forms are being cleared in accordance with the Privacy Act of 1974 (U.S.C.522a) and the Paperwork Reduction Act of 1995. The authority for requesting this information to be supplied on these forms is the Agricultural Marketing Agreement Act of 1937, Secs. 1-19, 48 Stat.31, as amended, (7 U.S.C. 601-674). Furnishing the requested information is necessary for the administration of the marketing order program.

Section 608(d) of the marketing order-authorizing Agricultural Marketing Agreement Act of 1937 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. Confidential information is 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 ATTITUDE, 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 found in this information collection.

- 12. PROVIDE ESTIMATES OF THE HOUR BURDEN OF THE COLLECTION OF INFORMATION. THE STATEMENT SHOULD:**

The number of respondents required to file these forms was estimated based on current records maintained by the Council in consultation with regional groups existing throughout the U.S. pecan industry.

Form	No. of Respondents	No. of Annual Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Inter-handler Transfer Report (Form 4)	30	12	360	0.1670	60.12
Year-End Inventory Report (Form 7)	250	1	250	0.5000	125.00
Total			610		185

AMS-71 Grid (Excel spreadsheet) outlining details of respondents, responses and burden hours is included with the Supplementary documents.

- **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.**

The respondents' estimated annual cost of providing information to USDA is approximately \$6,741.40. This total has been estimated by multiplying 185 total burden hours, by \$36.44, the national mean hourly wage of Farmers, Ranches, and other agricultural workers, according to the U.S. Department of Labor Statistics. (National Compensation Survey: Occupational Employment and Wages, May 2016; <http://www.bls.gov/oes/current/oes119013.htm>.)

13. PROVIDE AN ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS OR RECORD KEEPERS RESULTING FROM THE COLLECTION OF INFORMATION. (DO NOT INCLUDE THE COST OF ANY HOUR BURDEN SHOWN IN ITEMS 12 AND 14).

There is no capital/startup or ongoing operation/maintenance costs associated with this information collection.

1. 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, OPERATIONS 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 costs for providing oversight of, and assistance for, this information collection is estimated at \$12,830.48 for the first year, and \$13,215.39 for subsequent years, assuming higher overhead costs. A breakdown of the oversight costs for the first year is as follows:

Salaries/benefits/awards	\$1,650.48
Travel	\$5,000
Printing/Copying/Mailing/Postage	\$300
Federal Register Services	\$1,680
OGC (legal services)	\$4,000
Supplies/equipment	\$200
TOTAL	\$12,830.48

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

The two forms under consideration are new to the Federal forms package and, as a result, do not have previous burden numbers associated with them. Once approved, AMS will request they be merged into the currently approved OMB No. 0581-0291 “Pecans Grown in AL, AR, AZ, CA, FL, GA, KS, LA, MO, MS, NC, NM, OK, SC and TX.” The Federal Register notice for the Proposed Rule mistakenly said the form would take 0.33 hours to fill out. The actual time of 0.5 hours is correctly stated in the Supporting Statement, AMS-71, 83-I, and on the forms.

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.

1. 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. Instead, indicating the month and year when the forms were renewed and approved by OMB enhances internal accounting practices and enables AMS to work with marketing boards, committees and councils to replace obsolete and out-of-date 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 is able to certify compliance with all provisions under Item 19 of OMB Form 83-I.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information does not employ statistical methods.