

**2019 SUPPORTING STATEMENT
ACCEPTED USER PROGRAM FOR FEDERAL MARKETING ORDER FOR
ALMONDS (7 CFR Part 981)
OMB NO. 0581-NEW
FINAL RULE**

Note to Reviewer: Once the Office of Management and Budget (OMB) approves the new ABC-30 Accepted User Plan form contained in this collection, the Agricultural Marketing Service (AMS) will submit a request to merge the new form into the Vegetable and Specialty Crops (OMB No. 0581-0178) information collection package. This will ensure the new form related to the Federal marketing order for California almonds is contained in the same package as other forms related to the same program. In a related action, AMS is submitting a Justification for Change worksheet to OMB for conforming modifications to existing forms ABC-8 and ABC-34 and adding a sequential form number for tracking purposes to the currently approved Accepted User Business Data Sheet.

A. 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. 981 (7 CFR Part 81) regulates the handling of almonds grown in California. Enabling legislation is contained in the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; Act). The Act authorizes the promulgation and amendment of marketing orders for certain agricultural commodities and the issuance of regulations thereof for providing orderly marketing conditions in interstate and intrastate commerce and for improving returns to producers. The Act provides in section 608(d)(1) 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. The rules of practice and the procedure governing proceedings to formulate marketing orders are contained in 7 CFR Part 900.

The marketing order for California almonds was originally promulgated in 1950, following public hearings held in accordance with formal rulemaking procedures specified under the Act. Growers approved creation of the marketing order in referendum as specified by the Act. Approval of the marketing order resulted in the formation of the Almond Board of California (Board) that conducts research and promotion activities, as well as establish and enforce quality regulations, on behalf of the industry. Growers have voted their support for continuing the marketing order and the Board during continuance referenda held every five years. The Board is made up of grower and handler members and alternates who are nominated by their industry peers and appointed by the U.S. Department of Agriculture (USDA) for specified terms of office.

Section 981.42 of the marketing order provides authority for quality control regulations. Paragraph (a) of that section obligates each handler to have their almonds inspected to determine the percentage of inedible kernels out of the total kernel weight received. Inedible kernels in excess of two percent of the total represent the handler's "inedible disposition obligation." Handlers are required to dispose of their obligation by delivering it to the Board or an approved accepted user (crusher, feed manufacturer, feeder or dealer in nut waste). Under the Board's Accepted User Program, accepted users would be required to dispose of inedible material within six months of receipt, submit weighmaster certificates within 10 business day of receipt of inedible material, and submit an accepted user plan by July 31 every year. The process would enable the Board to improve the timeliness and proper tracking of handler disposition obligations.

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 new accepted user form will be filled out by accepted users annually to help the Board ensure compliance with program requirements. This new form requires a minimum of information necessary to effectively carry out the requirements of the marketing order. The user plan would provide a detailed description of how the accepted user would receive, store, use and document inedible material received. This would be an additional verification tool during accepted user reviews.

- a) **Accepted User Plan (ABC-30) (981.42(a))**: Handlers are required to dispose of their inedible disposition obligation by delivering it to the Board or an approved accepted user (crusher, feed manufacturer, feeder or dealer in nut waste). Almond crushers, feed manufacturers, feeders and dealers in nut waste would submit this form by July 31 every year to the Board to demonstrate compliance with the Board-requested regulation. The Accepted User Plan comes in four pages and asks for the intended use of the inedible almonds, agreement from the filer to dispose of the inedible almonds in program compliant ways, and information on the end-users of the inedible almonds.

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.

The form is used to submit information directly to the Board, which administers the marketing order. The Board is not part of a Federal agency but is a group of USDA-appointed industry representatives who operate 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 Board's discretion. Current announcements about Board activities are made through the website (www.almonds.com). Respondents submit completed forms to Board staff via postage mail.

Information collection forms are periodically reviewed by the Board to ensure they are understood by industry members, are easy to complete, and place as small a burden as possible on the person filing the information. AMS staff also ensures the forms comply with Section 508 accessibility requirements when they are posted for public access to the agency's Internet site.

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. AMS is requesting OMB's approval of the new form to ensure adherence to proper protocol. 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.

Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms have been defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

There are approximately 6,800 producers of almonds in the regulated area and approximately 100 handlers of almonds who are subject to regulation under the marketing order. AMS does not regulate the producers and does not collect data on their business practices. As such, AMS can only estimate the number of almond producers who are small producers. For the almond industry's most recently reported crop year (2016), NASS reported an average yield of 2,280 pounds per acre and a season average grower price of \$2.44 per pound. A 100-acre farm with an average yield of 2,280 pounds per acre would produce about 228,000 pounds of almonds. At \$2.44 per pound, that farm's production would be valued at \$556,320. The Census of Agriculture indicates that most California almond farms are smaller than 100 acres; therefore, it could be concluded that most growers had annual receipts from the sale of almonds in 2016-17 of less than \$556,320, which is below the SBA threshold of \$750,000. Thus, over 70 percent of California's almond growers would be classified as small growers according to SBA's definition.

To estimate the proportion of almond handlers that would be considered small businesses, it was assumed the unit value per shelled pound of almonds exported in a particular year could serve as a representative almond price at the handler level. A unit value for a commodity is the value of exports divided by the quantity. Data from the Global Agricultural Trade System database of USDA's Foreign Agricultural Service showed that the value of almond exports from August 2016 to July 2017 (combining shelled and inshell almonds) was \$4.072 billion. The quantity of almond exports over that time period was 1.406 billion pounds, combining shelled exports and the shelled equivalent of inshell exports. Dividing the export value by the quantity yields a unit value of \$2.90 per pound. Subtracting this figure from the NASS 2016 estimate of season average grower price per pound (\$2.44) yields \$0.46 per pound as a representative grower-handler margin. Applying the \$2.90 representative handler price per pound to 2016-17 handler shipment quantities provided by the Board showed that approximately 40 percent of California's almond handlers shipped almonds valued under \$7,500,000 during the 2016-17 crop year and would therefore be considered small handlers according to the SBA definition.

Information collection requirements have been reduced to the minimum requirements of the marketing order. The forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. The primary sources of data used to complete the forms are routinely used in all business transactions. Thus, the information collection and reporting burden is relatively small. Requiring the same reporting requirements for all handlers, producers, and processors will not significantly disadvantage any handler, producer, or processor that is smaller than 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 the information collection herein was not collected, the Secretary could not ascertain the level of support for the marketing order, nor 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 SECRETS, 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 other special circumstances. The collection of information is conducted in a manner 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 on forms and information collection was published in the Federal Register on July 12, 2019, as part of the 30-day proposed rule on this action. The 60-day notice on the forms and information collection invited comments through September 10, 2019. AMS received no comments on the portion pertaining to information collection. AMS published the final rule in the Federal Register (Vol. 84, No. 228, Pages 64967-64969) on November 26, 2019, with a December 26, 2019 effective date.

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.

The Board meets throughout the year to assess the marketing order's regulatory and informational needs. Board meetings are open to public participation. Board staff disseminate meeting notices to all those associated with the almond industry, and any concerns regarding Board business are welcome. Use of the new form has been discussed with the Board's Richard Waycott, President and CEO, as well as Tim Birmingham, Director of Food Quality and Industry Services, both of whom are reachable by phone at (209) 549-8262, and USDA's Peter Sommers, Marketing Specialist, and Terry Vawter, Regional Director, who maintain regular contact with the Board and its staff and are reachable by phone at (559) 487-5901. Dialogue pertaining to the form ensures content meets the Board's needs, the information on the form is understandable by those completing the form, and the form aligns with the Board's and USDA's purposes.

9. EXPLAIN ANY DECISION TO PROVIDE ANY 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. Reports submitted to the Board are accessible only by the Board manager and staff, AMS field office staff, and certain AMS employees in Washington, D.C. Board members never have access to any handler's reports or assessment records. Board staff is aware of the penalties for violating confidentiality requirements.

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).

Business addresses and approximate volume handled are reported on some of the forms. The information is used strictly to ensure the nominee operates in the marketing order territory and thus is eligible to vote, and to enable the Board staff to weigh the votes according to the nominees' volume of almonds handled. This information is part of the information provided to the Secretary for use in the selection process.

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 83.1.**

The respondents' estimated annual cost of providing information to the Board is approximately \$2,429.28. This total has been estimated by multiplying 48 hours (total burden hours) by \$50.61. This is based on the average median hourly wage rate of \$38.43 with an additional 31.7 percent to account for benefits and compensation, for an hourly wage total of \$50.61. Annual cost for this collection is estimated using the national mean hourly rate of \$38.43 of Farm, Ranch, and Other Agricultural Managers, (<https://www.bls.gov/oes/current/oes119013.htm>), published by the Bureau of Labor Statistics in May 2018. Costs of benefits and compensation guidance provided by Bureau of Labor Statistics News Release issued on December 14, 2018.

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).

- **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, PREPARATIONS 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, 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 start-up or maintenance cost burdens to respondents or record keepers not included in items 12 and 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 estimated annual cost to the Federal government for this information collection and processing is about \$367.04. The cost was developed by estimating the

number of hours that agency employees will spend in the preparation of this information collection package (8 hours) at approximately \$45.88 per hour. This is based on the average median hourly wage rate of \$33.34 with an additional 37.6% to account for benefits and compensation, for an hourly wage total of \$45.88. Costs of benefits and compensation guidance provided by Bureau of Labor Statistics News Release issued on December 14, 2018.

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

This is a new collection.

16. FOR COLLECTIONS OF INFORMATION WHOSE RESULTS ARE PLANNED TO 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.

Information obtained under this information collection is not published.

17. IF SEEKING APPROVAL TO NOT DISPLAY THE EXPIRATION DATE FOR OMB APPROVAL OF THE INFORMATION COLLECTION, EXPLAIN THE REASONS THAT DISPLAY WOULD BE INAPPROPRIATE.

AMS has switched from displaying the month and year when OMB last renewed the forms on each form to instead displaying the month and year that OMB's approval will expire.

18. EXPLAIN EACH EXCEPTION TO THE CERTIFICATION STATEMENT IDENTIFIED IN ITEM 19, "CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS," OF OMB FORM 83-1.

The agency can certify compliance with all provisions under item 19 of OMB form 83-1.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.

The collection of information does not employ statistical methods.