**SUPPORTING STATEMENT**
**Marketing Order No. 984 for Walnuts Grown in California**
**OMB Number 0581-NEW**

**Note to Reviewer:** Once approved by the Office of Management and Budget (OMB), the Agricultural Marketing Service (AMS) will submit a request to incorporate the new form into OMB Number 0581-0178 Vegetable and Specialty Crops that includes other forms related to the walnut 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.

B. This is a request for OMB review and approval of a new information collection related to the implementation of voluntary reporting for California walnuts exempt from assessments under the California walnut marketing order (M.O. No. 984). This form would allow walnut handlers to voluntarily report deliveries of walnuts exempt from assessments. The new form will be merged with the forms currently approved under OMB No. 0581-0178 Vegetable and Specialty Crops.

Marketing Order No. 984 (7 CFR Part 984) regulates the handling of walnuts grown in California and 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 to improve returns to growers. Section 608 (d)(1) of the Act provides the Department of Agriculture (USDA) with the authority to request from the regulated handlers such information as is deemed necessary to determine the extent to which a marketing order has effectuated the declared policy of the Act.

Marketing Order No. 984 became effective in 1948, following public hearings in accordance with formal rulemaking procedures specified under the Act, and is locally administered by the California Walnut Board (Board). Growers approved the marketing order in referendum, as specified by the Act. The marketing order authorizes quality regulations and research and promotion programs for walnuts grown in California.

On October 28, 2021, the Board recommended multiple proposed amendments to the Secretary, including the elimination of mandatory inspection and certification of walnuts and the creation of a new mechanism for determining and collecting handler assessments. After reviewing the proposals and other information submitted by the Board, USDA concluded the Board's proposals will tend to effectuate the declared policy of the Act and conducted a public hearing on April 19-20, 2022. During the hearing, USDA proposed that § 984.67 be amended to include exemptions that were inadvertently omitted in a previous revision. On August 21, 2023, the Final Rule published in the **Federal Register** [88 FR 56745], with an effective date September 20, 2023.

Under the program, handler assessment obligations are incurred at the time of certification, and provisions under § 984.67 exempt certain walnut sales from assessments and quality regulations. Therefore, walnuts considered exempt are not inspected, certified, and

assessed. Under the new mechanism of determining and collecting assessments, handler assessments would be based on walnuts received rather than walnuts certified. Accordingly, effective September 20, 2023, walnut receipts for deliveries that previously would have been exempt, as those walnuts would not be inspected and certified, may now be subject to assessment. To ensure that those walnuts continue to be exempt from assessment and/or that handlers can receive a refund against their current year assessments for walnut deliveries exempt under § 984.67, the Board recommended the establishment of the new information collection form described below. The form designated as OMB No. 0581-NEW is voluntary and is titled (CWB Form No. 2) Report of Walnuts Exempt from Assessments. Depending on when handlers submit the form, submission would either ensure that walnuts that are exempt from assessment are not assessed or if they are assessed, handlers would be able to receive a refund..

**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 marketing order is administered by a 10-member board, comprised of 5 growers, 4 handlers, and 1 public member. For each member, there is an alternate member. Each member serve a two-year term that begins September 1. Producer and handler members are nominated by mail ballot.

The marketing order, and rules and regulations issued thereunder, authorize the Board to require growers and handlers to submit certain information, as provided in Sections 900.14, 984.37, 984.56, 984.59, 984.64, 984.71, 984.72, 984.73, 984.76, 984.456, 984.437, 984.459, 984.464, 984.471, 984.472, 984.473, and 984.476.

As previously explained, a final rule was issued by AMS, allowing walnut handlers to voluntarily report deliveries of walnuts exempt from assessments. Under the marketing order handler assessment obligations are incurred at the time of certification, and provisions under § 984.67 exempt certain walnut sales from assessments and quality regulations. Therefore, walnuts considered exempt are not inspected, certified, and assessed. Under the new mechanism of determining and collecting assessments, handler assessments would be based on walnuts received rather than walnuts certified. Accordingly, effective September 20, 2023, walnut receipts for deliveries that previously would have been exempt, as those walnuts would not be inspected and certified, may now be subject to assessment. To ensure that those walnuts continue to be exempt from assessment and/or that handlers can receive a refund against their current year assessments for walnut deliveries exempt under § 984.67, the Board recommended the establishment of the new information collection form described below.

a. Report of Walnuts Exempt from Assessments: CWB Form No. 2 (§ 984.67): Respondents would submit this form to the Board to apply for an exemption from paying assessments. Depending on when handlers submit the form, submission would either ensure that walnuts that are exempt from assessment are not assessed or if they are assessed, handlers would be able to receive a refund.

**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 locally administers the marketing order under AMS's supervision. The Board is not part of a Federal agency, but is a commodity industry board 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 Board's discretion. The Board offers a web-based portal into which all respondents can submit forms. Some respondents continue utilizing fax machines, postal delivery and email to transmit the information to Board staff.

**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 requirements of the order. This form requires only a minimal amount of information which can be supplied without data processing equipment or to oversee each order or agreement. This information collection and reporting burden is relatively small.

**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 voluntarily.

**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.**

The 60-day notice (88 FR 75263) for comments on the new form was published in the Federal Register on November 2, 2023. The 60-day notice invited comments through January 2, 2024. No comments were 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.**

All marketing order committees, including the Board, meet throughout the year to discuss industry developments, marketing conditions, and methods to collect information to address various challenges. The Board assess the type of information that is collected, and also keep close contact with industry representatives and trade associations to ensure their utmost efficiency. The Board consults with representatives from whom the information is to be obtained at least every three years. AMS personnel discuss the use and content of these forms with the following Board staff. During these discussions, the staff identified areas to improve the readability of the forms and incorporate updated Internet and contact information. The new version of the forms addresses those requested changes.

Robert Verloop, Executive Director, California Walnut Board

Rachel Goodhue, Chairperson, California Walnut Board

Josh Wilde, Marketing Specialist, AMS, Portland, OR

Justification for this form was provided through a formal rulemaking action [88 FR 56745]. Therefore, e*x parte* communication prohibitions, specified in § 900.16 (7 CFR Part 900), applied when the proposed rule was issued and continued until the final rule was issued. During this time, there can be no written or oral communication relevant to the merits of the proposed rule between a USDA employee and any person having an interest in the proposal or with any representative of such a person except through the comment process outlined in the proposal. Solicitation of information from respondents outside the parameters of the rulemaking/comment guidelines is not permitted under *ex parte*.

**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 committees are accessible only by their respective managers and staff, AMS field office employees, and certain USDA employees in Washington, D.C. Committee members have access to handler reports and assessment records for the purpose of administering compliance with the marketing orders, and determining assessments, but are under strict orders to maintain the confidentiality of this information by securing these records under lock and key. Each committee staff is aware of the penalties for violating confidentiality requirements. Forms, such as ballots, which request confidential information, contain statements that the information will be held in strict confidence.

**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 are summarized on AMS Form 71 (attached). For the purposes of this information collection, we estimate that the recordkeeping burden for this form is 1.16 hours.

**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 respondents' estimated annual cost of providing information to the Board is $1,934. This total has been estimated by multiplying 48 hours (total burden hours) by $40.29, the average mean hourly earnings of farmers, ranchers, and other agricultural managers. Data for computation of this hourly wage were obtained from the U.S. Department of Labor Statistics' publication, "Occupational Employment and Wages, May 2022," published April 25, 2023. This publication can also be found at the following website: https://www.bls.gov/oes/current/oes119013.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).**

- **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 estimated annual cost to the Federal government for this information collection and processing is about $1,984. The cost was developed by estimating the number of hours that agency employees will spend in the preparation of this information collection package (40 hours) at approximately $49.60 per hour. This is based on the average median hourly wage rate of $35.89 with an additional 38.2 percent to account for benefits and compensation, for an hourly wage total of $49.60. Costs of benefits and compensation guidance provided by Bureau of Labor Statistics News Release issued on June 16, 2023 (https://www.bls.gov/news.release/archives/ecec_06162023.pdf).

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

This is a new information collection.

**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 proposed version of the form indicates XXs for the expiration date. When OMB approves the collection, AMS will add the appropriate expiration date that appears on the Notice of Action completing the approval and renewal.

**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.

C. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This information collection does not employ statistical methods.