

considered. Based on hearing record evidence and USDA's analysis of the economic information provided, the proposed order provisions have been carefully reviewed to ensure that every effort has been made to eliminate any unnecessary costs or requirements.

Although the proposed order may impose some additional costs and requirements on handlers, it is anticipated that the order will help to strengthen demand for California pistachios. Therefore, any additional costs would be offset by the benefits derived from expanded sales benefiting handlers and producers alike. Accordingly, it is determined that the proposed order would not have a disproportionate economic impact on a substantial number of small handlers or producers.

A 30-day comment period is provided to allow interested persons to respond to this proposed decision to effectuate a marketing order. Thirty days is deemed appropriate so that any marketing order resulting from this rulemaking process may be implemented as soon as possible at the beginning of the nearest marketing year. A 60-day comment period on the information collection burden is deemed appropriate as any paperwork burden imposed by this action will not become effective until the process is finalized. All written exceptions and comments timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Civil Justice Reform

The marketing agreement and order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed order would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted there from. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or

has his or her principal place of business, has jurisdiction to review the Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request an approval of a new information collection for the marketing order regulating pistachios grown in California.

Title: Pistachios Grown in California.

OMB Number: 0581-NEW.

Expiration Date of Approval: To be assigned by OMB.

Type of Request: Intent to establish a new information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California pistachio marketing order program.

The California pistachio marketing order would authorize standards for quality of pistachios produced and handled in California by establishing a maximum aflatoxin tolerance level, maximum limits for defects, a minimum size requirement, and mandatory inspection and certification. AMS is the agency that would provide oversight of the order, and any administrative rules and regulations issued under the program.

The Department must determine if sufficient producer support exists within the industry to initially establish the proposed marketing order. If the order were established, the USDA could also, given recommendation by the committee and adequate support by the industry, implement formal rulemaking to amend the order. Further, a continuance referendum would be conducted every 6 years to determine ongoing industry support for the order. In all of these instances, ballot information would be collected from producers and compiled in aggregate for purposes of determining producer support for the order (or any amendment to the order).

Upon implementation of the order or during amendatory proceedings, handlers would be asked to sign a marketing agreement to indicate their willingness to comply with the provisions of the new or amended order. AMS would also provide a certificate of resolution for each handler organization to sign, documenting the handler's support of the marketing agreement and order.

If the proposed order is established, handler and producer nomination forms, ballots, and confidential qualification and acceptance statements will be used to nominate and appoint the committee members.

California pistachio producers and handlers would be nominated by their peers to serve as representatives on the committee. Each producer and handler would have the opportunity to submit a nomination form with the names of individuals to be considered for nomination.

Individuals who are nominated and wish to stand for election would be required to complete a confidential qualification and acceptance statement before the election. If qualified, the nominees would be placed on a nomination ballot.

Producers and handlers would vote for the candidate(s) of their choice using the producer and handler nomination ballots. Names of candidates receiving the most votes would be submitted to AMS for appointment as committee members and alternate members. The producer and handler members of the committee would nominate a public member and alternate public member. Each would complete qualification and acceptance statement before being recommended to AMS for appointment.

The forms covered under this information collection request submission of minimum information necessary to ascertain producer support for implementing the proposed order and to appoint initial committee members. Additional reporting and recordkeeping requirements may subsequently be recommended by the committee for its use in administering the order. The burden imposed by any additional requirements would be submitted for approval by the OMB.

The information collected would be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs regional and headquarters' staff, and authorized employees of the committee, if established. Section 608(d)(2) of the Act provides that all information would be kept confidential.

Total Annual Estimated Burden

The total burden for the proposed information collection under the order is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Estimated Number of Respondents: 668 (647 producers, 19 handlers and the public member and alternate nominee).