

SUPPORTING STATEMENT

Horse Protection Regulations OMB Control Number 0579 - 0056

October 2009

Terms of Clearance:

A. Justification

1. **Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

9 CFR Part 11, Regulations, implement the Horse Protection Act (HPA) of 1970 (P.L. 91-540), as amended July 13, 1976 (P.L. 94-360), and are authorized under Section 9 of the Act. The Horse Protection Legislation was enacted to prevent showing, exhibiting, selling, or auctioning of “sore” horses, and certain transportation of sore horses in connection therewith at horse shows, horse exhibitions, horse sales, and horse auctions. A sore horse is a horse that has received pain provoking practices that cause the horse to have an accentuated, high stepping gait. The regulations delineate procedures relative to: (a) the certification and licensing of Designated Qualified Persons (DQPs) who may be appointed by the management of any horse show, exhibition, sale, or auction as a qualified person in accordance with Section 4 of the Act, (b) responsibilities and liabilities of management (Section 4 (d), and (c) prohibitions and requirement concerning persons involved in transportation of certain horses (Sec 3 (3) and (5)).

A Horse Industry Organization (HIO) wishing to certify a DQP program in order to inspect horses for compliance under the HPA must satisfy United States Department of Agriculture (USDA) requirements and abide by the Act and regulations. After petitioning and receiving USDA certification from the Animal and Plant Health Inspection Service (APHIS), HIOs must maintain an acceptable DQP program and recordkeeping systems as outlined in Sections 11.7, 11.20, 11.21, 11.22, 11.24, 11.40, and 11.41 of the regulations. The intent of “soring” is a process whereby chemical or mechanical agents, or combination thereof, have been applied to the limbs(s) of a horse in order to exaggerate its gait(s). This gait is referred to as the “big lick” within the walking horse industry. The HPA prohibits the showing, sale, exhibition, auction, or transport of sored horses. Sored horses cannot be entered in an event by any person, including trainers, riders, or owners. Exhibitors of a sored horse may obtain unfair advantage over people exhibiting horses that have not been sored. Management of shows, sales, exhibitions, or auctions must identify sored horses to prevent their participation under the Act. In order to eliminate their inspection responsibilities, management can affiliate within an HIO and have a DQP perform these inspections. APHIS works with HIOs on a continuing basis in an effort to provide continuing education and support.

Training session and ongoing conferences throughout the year provide communication and feedback in order to address issues and strengthen enforcement policy under the Act. Data collected throughout the year from within APHIS, the HIOs, and show management provide an accurate account of the performance of the DQP system and progress towards eliminating the sore horse from competition. APHIS has initiated the development of a strategic planning committee. This

committee will periodically review program operations as they affect the industry and Agency enforcement efforts. Also, APHIS has delegated more regulatory authority to all HIOs in an effort to establish a partnership in Horse Protection enforcement. Finally, APHIS has tailored training programs to meet the needs of all HIOs in order to provide needed customer-based service.

The DQP system provides the primary means of detecting sore horses. To ensure consistency and thoroughness of compliance inspection procedures, APHIS reviews (through audits) all management and DQP inspection procedures at selected shows and sales. Because the exhibition or showing of sore horses would affect commerce within the equine industry, and adversely affect State budgets, especially where prominent horse populations exist, State revenues derived from legitimate horse shows/sales would be reduced. The potential affect upon United States and foreign commerce necessitated the passing of this Act by Congress.

- 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.**

Request for Certification of DQP Program and detailed outline of such a program

DQPs can only be licensed through USDA certified programs known as Horse Industry Organizations (HIOs) that have received approval to select, train, and monitor these individuals in the performance of their duties. All HIOs should have this request on file with the Department in order to be certified.

List of DQPs who have successfully completed the certified DQP program and have been licensed under the Act

This is received by the HIOs on a yearly basis or through out the year if changes have been made to their DQPs. This information is used when APHIS performs visits to horse shows to review the performance of the DQPs.

Notification to USDA of changes to licensed DQP list and any warnings or revocations issued to any DQP

This is received by the HIOs on a yearly basis or through out the year if changes have been made to their DQPs. This information is used when APHIS performs visits to horse shows to review the performance of the DQPs.

DQP records of Disqualified or Excused horses

This is received from HIOs or DQPs 30 days after each horse show that they have inspected. This helps us in verifying the HIO applied the proper penalty for the HPA violation to the responsible parties. This also helps us verify if soring is continuing in a specific area or not.

Certified DQP program report on attended events and identity of disqualified or excused horses

This is received from HIOs or DQPs 30 days after each horse show that they have inspected. This helps us in verifying the HIO applied the proper penalty for the HPA violation to the responsible parties. This also helps us verify if soring is continuing in a specific area or not.

Trainer and owner notification of horses allegedly found in violation of the HPA or regulations
Copies are sent to the Department on a monthly basis to show verification that penalty was applied to the responsible parties by the HIOs.

Certified DQP program written warning to DQP of unsatisfactory performance

This is received by the HIOs on a yearly basis or through out the year if changes have been made to their DQPs. This information is used when APHIS performs visits to horse shows to review the performance of the DQPs.

Request by DQP to USDA to appeal license cancellation

This is received by DQP within 30 days of notice to conduct an appeal hearing for the DQP to retain their licenses.

Written notification to USDA and certified DQP programs by management of unsatisfactory DQP performance

This is received by show management when DQP performance has failed. This is received within 30 days of event and reviewed by USDA and certified DQP program to take further action or not.

Records of events containing Tennessee Walking Horses or racking horses maintained by management

This is received by HIOs once they are affiliated with a horse show and will be sending DQPs to the horse show for inspection. This is to be received 30 days prior to the event.

Management report to USDA of any horse show, exhibition, auction or sale

This is received within 5 days by HIOs and/or DQPs that have conducted an inspection at a horse show. This report may include disqualified or excused horses and the circumstances involved in their assessed penalties. This is a “check and balance” accounting mechanism built into the regulations in order to accurately account for occurrences in the field.

Certified DQP program annual report, rulebook, and quarterly reports on disciplinary actions

HIOs having certified DQP programs and that sponsor horse shows, sales, exhibitions, or auctions will furnish to the Department: rulebooks, disciplinary procedures, and quarterly reports. These are furnished by March 1 of each year with the exception of the quarterly reports. This data provides for program analysis and to cross-check industry with Department reports. It also serves as a monitoring device whereby disciplinary actions taken against the management of any show, sale, auction, exhibition, exhibitor or DQP can be monitored. Under this provision, management has delegated responsibility under the Act.

Documentation by APHIS personnel concerning persons involved in alleged violations of the Horse Protection Act

A partial list of violations of the Act that may be litigated through USDA appears in 9 CFR 11.2, subcategorized into “general prohibitions” and “specific prohibitions”.

9 CFR 11.3 deals with the “scar rule”, a regulation which intended to identify horses that may or may not be currently suffering pain from soring practices, but whose distal limb (pastern) tissue has changed in response to the application of soring chemicals, devices, or other practices, forming

“scars”. Horses having pastern tissue fulfilling the requirements of the “scar rule” are considered “sore”, per the regulation itself.

Form 7077 provides blank spots into which a description of these violations can be written. These descriptions are later heavily relied upon by Office of General Counsel attorneys as the principal source of documentation of violations of the Act. The Form 7077 is completed by a Veterinary Medical Officer, Investigative and Enforcement Services Investigator or an Animal Care Inspector. The Form 7077 is retained for 3 years for recordkeeping purposes.

Reporting requirements to APHIS upon request concerning persons involved in transportation of certain horses

Each person who ships any horse to be shown, auctioned, exhibited, or sold will assist in the inspection of such horse, if requested, in order to facilitate compliance with the Act. These inspections maintain proper enforcement of the Act, and provide an accurate account of compliance for individuals who come under its purview. Information regarding the owner, trainer, carrier, and the driver should be made available to any APHIS representative, if requested.

- 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.**

A Horse Protection database is in the development stage that should be ready for use in February 2010. This database will allow APHIS to request, not mandate, HIOs to electronically provide all of the information required by the relevant Regulations. This will expedite the process of receiving information from the HIOs which will help APHIS in enforcing the Act.

A Horse Protection Web site is also being used to transmit information to the public concerning the enforcement of the Act. This Web site has a listing of industry inspectors (DQPs) for the public to use at horse shows. Any information placed on the Web site has been verified by the HIOs. The Web site is: www.aphis.usda.gov/animal_welfare/hp

APHIS is also looking into making the APHIS form 7077 electronic for APHIS personnel to use.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose described in item 2 above.**

APHIS is the only Federal Agency responsible for the enforcement of the Animal Welfare Act. The information APHIS is collecting is its only source for the information and is not being collected through other forms or reports.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

The information collection and recordkeeping requirement are the minimum needed to comply with the law and to minimize the public burden. All respondents are considered small businesses.

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 collection was conducted less frequently, APHIS would not be able to accurately measure the enforcement of the program which will be based on industry self-regulation. With self-regulation, industry would have greater regulatory authority under the Act.

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;**
Monthly reporting is necessary in order to obtain data that otherwise would not be available from a show, sale, auction, or exhibition on a quarterly basis. This information is vital to the review of the program and is not retained by management or industries for prolonged periods of time.

No other special circumstances exist that would require this collection to be conducted in a manner inconsistent with the general information collection guidelines in 5 CFR 1320.5.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, 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.

On Monday, April 6, 2009, pages 15430-15431, APHIS published in the Federal Register, a 60-day notice seeking public comments on its plans to request a **3-year renewal** of this collection of information. No comments from the public 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 form, and on the data elements to be recorded, disclosed, or reported.

In 2009, APHIS consulted the following individuals:

Kentucky Walking Horse Association

Gayle McCammon, DQP Coordinator

P.O. Box 175

McKinney, KY 40448
Phone: 606-346-5354
E-mail: gaylem111@windstream.net
Kenny Smith, Chairman
E-mail: buzzardview@alltel.net

National Walking Horse Association

Martha M. Day, Ed.D.,
Director of Designated Qualified Persons and Animal Welfare
National Walking Horse Association
PO Box 147
Pleasant View, TN 37146
Phone: 615-319-1099
E-mail: dayconsulting@gmail.com
Vanessa D. Crowe, Executive Director
E-mail: execdir7@nwha.com

United Mountain Horse, Inc.

Bruce Crowe, Promotions Director
P.O. Box 640
Clay City, KY 40312
Phone: 859-842-0270
Fax: 859-842-0884
E-mail: bruce@unitedmountainhorse.org
Douglas Barlow, DQP Coordinator
E-mail: douglaswbarlow@aol.com

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

There are no payments of gifts provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

No assurance of confidentiality is provided to any respondent.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or 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.

There are no questions of a sensitive nature asked of the respondents.

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. 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.**

See APHIS Form 71 for hour burden estimates.

- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

APHIS estimates the total annualized cost to the above respondents to be \$37,000. APHIS arrived at this figure by multiplying the hours of estimated response time (2266 hours) by the estimated average hourly wage of the above respondents (\$16.17).

\$16.17 is the hourly rate derived from the U.S. Department of Labor, Bureau of Labor Statistics May 2008 Report - Occupational Employment and Wages in the United States. See <http://www.bls.gov/news.release/ocwage.t03.htm>

13. Provide estimates 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 estimates 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.

There is no additional cost burden to the respondents.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.

The annual cost for the Federal Government is \$13,359. (See APHIS Form 79).

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.

In the previous submission, some of the respondents were counted twice. We have corrected this error from the previous total of 1,573 to 1,514 respondents reflecting a decrease of -59 respondents. This decrease did not affect other totals.

This submission corrects the recordkeeping multiplication error for APHIS Form 7077 previously reported as 90 hours to 30 hours for a decrease of -60 burden hours. Also, the number of recordkeepers were not included in the responses total. This correction increases responses 820 from 2788 to 3608.

Also, in this submission we are correcting the missing decimal point in burden hours for "Certified DQP Program annual report, rulebook, and quarterly reports on disciplinary action" from 34 to 3.38 which results in a decrease of 31 hours.

With these adjustments, this submission reflects a decrease of 91 burden hours.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

APHIS has plans to publish this information collection, particularly the HIO suspension lists for HPA violations. These will be published on the USDA Horse Protection Web site and updated on a monthly basis. These suspension lists are frequently asked for through FOIA requests. Therefore in order to fulfill these requests and promote transparency of the program, the Animal Care management staff decided to publish these beginning of FY2010. No minor information is included in the suspension lists.

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.

When e-Signature becomes available, APHIS form 7077 will be automated and the expiration date will be updated every 3 years.

18. Explain each exception to the certification statement identified in Item 19 "Certification for Paperwork Reduction Act."

APHIS certifies compliance with all provisions of the Act.

B. Collection of Information Employing Statistical Methods

There are no statistical methods associated with the information collection activities used in this program.