

Revised November 2013

SUPPORTING STATEMENT
Federally Recognized State Managed Phytosanitary (FRSMP) Program
(Formerly the Official Control Program)
OMB No. 0579-0365

NOTE: The title of this collection has changed from “Official Control Program” to “Federally Recognized State Managed Phytosanitary Program” due to several consultations between APHIS management and trading partners. APHIS decided this program would be better understood by the trading partners if the title reflected the Federally Recognized State Managed Phytosanitary Program.

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

The Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ), has established the following procedures for States (through the National Plant Board (NPB)) to petition the Agency to recognize State-level plant pest regulations and associated actions taken as meeting the international criteria for official control and accepted measures to protect an area that would economically or environmentally endangered by the introduction of a pest. The International Plant Protection Convention (IPPC) defines “official control” as the active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or for the management of regulated non-quarantine pests. APHIS also intends to recognize state level regulations to exclude such pests from areas that would be endangered by their introduction.

Under the Plant Protection Act (7 U.S.C. 7701 – et seq.), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States.

APHIS is continuing to work toward full implementation of this program so that when established, the FRSMP Program will contribute to the accomplishment of APHIS’ Mission (Priority #1: to strengthen its safeguarding system domestically and in other countries; and Priority #3: to facilitate safe agricultural trade through effective management of sanitary and phytosanitary issues, as stated in APHIS’ Strategic Plan (2007-2012)).

APHIS and the Department of Homeland Security (DHS), Customs and Border Protection (CBP), take action on imported products when quarantine pests are found upon inspection. Quarantine pests include those that pose a risk to agriculture or the environment but: (1) do not exist in the United States, (2) exist in the United States but are under Federal domestic quarantine under 7 CFR 301 or by Federal Order, (3) exist in the United States but were recently detected and whose regulatory status is under consideration, or (4) exist in the United States but are under State-level quarantine that has been approved by APHIS as providing a level of protection equivalent to a Federal domestic quarantine. APHIS has taken action on pests that meet the 4th criteria for years based on informal requests by States in the interest of supporting our State cooperators and industries within those States. However, APHIS is not yet in full compliance with U.S. regulatory and trade policy to treat goods and risks in a consistent, transparent, and science-based fashion, but is working toward that goal. In addition, APHIS is not able to adequately justify the actions taken on the States' behalf at ports of entry if challenged under the World Trade Organization (WTO) because APHIS does not have adequate information on the State programs to do so. As such, APHIS is establishing the program described in the attached policy (PPQ's Policy for the Federal Recognition of State Managed Phytosanitary Programs) to ensure that for whatever action APHIS takes at ports of entry on the States' behalf, APHIS is able to conclusively show that the State program has been evaluated and meets our standards, and thus can be defended against a WTO challenge. In short, APHIS needs this information collection to ensure it has adequate support for continuing to protect States against pests that exist in other U.S. States when those pests are found during port of entry inspections. Without this information, APHIS will likely be forced to stop taking action on these pests (because continuing to regulate them would be inconsistent with its obligations under international phytosanitary trade agreements), and thus APHIS would no longer be able to provide the protection that States desire.

Currently, there is no associated regulation that explains this collection in more detail. This is an administrative process between APHIS and the States. However, there are guidelines for submitting a petition which are also attached as a supplemental document (USDA/APHIS Guidelines for Federal Recognition for a State Managed Phytosanitary Program). In addition, a program manual is posted on the APHIS website for when the program becomes operational, and this document is also attached (USDA/APHIS National Plant Board FRSMP Petition Template). In addition, APHIS is currently drafting a revision to 7 CFR 330 that will include a regulatory framework for FRSMP.

APHIS is asking the Office of Management and Budget (OMB) to approve, for 3 additional years, the use of these information collection activities associated with its efforts to eradicate, exclude, or contain regulated plant pests within the United States.

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.

PPQ is requesting this information which establishes a relationship between APHIS and State Departments of Agriculture. The State Plant Regulatory Official (SPRO) of a State or States will be eligible to petition APHIS for recognition of qualifying State programs. Upon initial implementation of the program, PPQ will create a General Permit to be located on the FRSMMP website at:

http://www.aphis.usda.gov/plant_health/plant_pest_info/frsmp/index.shtml.

The permit will be populated with information gathered from petitions that PPQ approves.

APHIS is in the process of finalizing the criteria by which petitions will be evaluated and status will be granted. A copy of the draft criteria is attached as supplemental information.

Granting the status helps APHIS accomplish its goals by recognizing State-managed phytosanitary programs at the Federal level. The United States will more fully comply with its obligations under the IPPC, an international agreement on plant health with 172 current signatories. Signatory countries are expected to apply equivalent measures to import and domestic plant health (phytosanitary) regulations. When fully established, the FRSMMP Program will contribute to the accomplishment APHIS' Mission (Priority #1: to strengthen safeguarding systems domestically and in other countries, and Priority #3: to facilitate safe agricultural trade through effective management of sanitary and phytosanitary issues, as stated in APHIS' Strategic Plan (2007-2012)).

Respondents will know how and where to submit this information and what to report because it will be posted on the APHIS Web site. The National Coordinator for Official Control will continue to reach out to States. In the past, the Coordinator delivered presentations at regional plant board meetings, conducted conference calls with the SPROs, released articles for States in the APHIS news, and worked with National Plant Board representatives of the FRSMMP Program.

Respondents will become aware of this collection because the National Plant Board will act as a clearinghouse when a petition is initiated. Designated representatives will communicate with the membership.

Petition - Protocol for Quarantine Pests of Concern

To obtain a program's designation as a Federally Recognized State managed Phytosanitary Program, States (through the National Plant Board) must petition APHIS-PPQ to recognize their established or proposed programs to eradicate or contain a regulated plant pest. The State should provide the following supporting information and documentation:

- 1. Presence** – Evidence the pest does not exist in the State, or if it does exist, that it is being contained or there are programs in place for eradication. Include appropriate survey data; define the infested area(s), endangered area(s), and protected area(s), and the procedures used for establishing containment or eradication.

2. **Possible entry and establishment** - Evidence that the pest could become established or widespread in the State.
3. **Economic/environmental harm** - Evidence that the pest could cause economic and/or environmental harm in the State.
4. **Maintenance/Verification** - A description of the State actions used to maintain and monitor for pest freedom upon eradication, or limit distribution by containment, including a description of monitoring programs.
5. **Quarantine regulations** – A copy of the State or local quarantine regulations that provide for enforcement of the appropriate programs.

Petition - Protocol for Regulated Non-Quarantine Pests

The State should provide the following supporting information and documentation:

1. **Economic harm/Vulnerability** – Evidence that a particular pest could cause significant harm to plants for planting if the pest was not managed through a certification program.
2. **Quarantine regulations/Testing** – Evidence the State has regulatory authority and a program established to manage the levels of the pest in plants for planting that are the hosts for the pest, and a copy of the State, local, or quarantine regulations that provide for the enforcement of a management program and testing protocols. Provide a description of recent State actions taken under these regulations and the testing protocols used in the program.
3. **Management/Verification** – A description of State actions to manage the level and/or producers' management of pests in the plants for planting where the pest is maintained below a level that can affect production, health, or marketability of plants for planting and cause an unacceptable economic impact to those plants.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, 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 FRSMP Program will rely on the Integrated Plant Health Information System (IPHIS) to manage its data/automation needs. The IPHIS has recently migrated to a full production environment. A request has been made to prototype a module to facilitate the FRSMP Program.

APHIS and the states will use IPHIS to report program information after a petition is approved. Exactly what the program information is will be determined by APHIS and may vary depending on the operational parameters of each program. The collection of the petition package itself will not be accomplished through IPHIS. APHIS will ask that 100 percent of the collection be in electronic format, whether through IPHIS database reporting, email, or another application. APHIS originally thought this might be a hardship for some States, but moving forward, this seems to be a valid option.

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.

The information that APHIS collects is exclusive to its mission of gathering information to assist Plant Health Programs in its overall performance as a regulatory agency in regards to plants and plant products and is not available from any other source.

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

The information APHIS collects is the minimum needed to protect the United States from destructive plant pests while strengthening its safeguarding system domestically. APHIS has determined that there are no small entities involved with this information collection.

6. Describe the consequences 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 was not collected or if it was collected less frequently, APHIS would be less effective in establishing procedures that are used to contain regulated plant pests within the United States.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the general information collection guidelines in 5 CFR 1320.5.

- **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, governmental contract, grant-in-aid, or tax records for more than three 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 statute 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.**

No 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. 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. 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.

In 2013, APHIS held productive consultations with the following individuals concerning information collection activities associated with the FRSMP:

Michael Cooper
 Plant Industries Division
 Idaho State Department of Agriculture
 P.O. Box 790
 Boise, ID 83701
 (202) 332-8620

Aurelio Posadas
 Executive Secretary
 National Plant Board
 P.O. Box 847
 Elk Grove, CA 95759
 (916) 709-3484

Carl P. Schulze, Director
Division of Plant Industry
New Jersey Dept. of Agriculture
PO Box 330
Trenton, NJ 08625-033
609-406-6939

On Wednesday, May 29, 2013, pages 32230-32231, 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.

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

This information collection activity involves no 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.

The confidentiality of information is protected under 5 U.S.C. 552a.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and others that are 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.

This information collection activity asks no questions of a personal or sensitive nature.

12. Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.

- **Indicate the number of respondents, frequency of response, annual hour burden, and 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-I.**

See APHIS Form 71 for hour burden estimates.

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

The estimated annual cost to respondents is \$39,172 and was computed by multiplying their estimated average hourly wage (\$28.00) by the total number of hours of burden (1,399) needed to complete this work. See APHIS Form 71.

13. Provide estimates 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). 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 zero annual cost burden associated with capital and start-up costs, maintenance costs, and purchase of services in connection with this program.

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

The estimated cost to the Federal Government is \$50,994. (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.

There has been an adjustment in all figures for this collection. The total burden hours decreased from 106,000 to 1,399 (a difference of 104,601) due to an overestimate of the number of respondents and the number of responses. The total number of respondents dropped from 106 to 53 (a difference of 53) because the respondents were inadvertently counted twice 3 years ago. The annual responses dropped from 1,325 to 17 (a difference of 1,308) because there was an overestimate of the number of respondents and the number of responses when the program first started. PPQ originally overestimated all figures. The new figures in this collection are now much more accurate.

As previously mentioned, PPQ changed the name of this collection from the Official Control Program to the Federally Recognized State Managed Phytosanitary Program because after consultations with trading partners, APHIS decided trading partners would better understand this collection if the title reflected the Federally Recognized State Managed Phytosanitary Program. To try and avoid any confusion, please note this does not mean that the term “official control” will never be used again.

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

APHIS has no plans to tabulate or publish the information 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.

There are no forms associated with this collection of information. However, there are three supplemental documents attached which have already been referenced: (1) PPQ's Policy for the Federal Recognition of State Managed Phytosanitary Programs, (2) a National Plant Board FRSMP Petition Template, and (3) Guidelines for Federal Recognition of a State Managed Phytosanitary Program.

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

APHIS is able to certify compliance with all the provisions in the Act.

B. Collections of Information Employing Statistical Methods

Statistical methods are not employed in this information collection activity.