

January 15, 2016

**Supporting Statement**  
**Plant Pest Regulations; Update of Provisions**  
**APHIS Docket No. 2008-0076**  
**OMB No. 0579-XXXX**

**A. Justification**

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

The United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), is responsible for preventing plant pest diseases or insect pests from entering the United States, preventing the spread of pests and noxious weeds not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. The Plant Protection Act authorizes USDA to carry out this mission.

Under the Plant Protection Act (7 U.S.C. 7712 et seq., referred to below as the Act), the Secretary of Agriculture has authority to carry out operations or measures to detect, control, eradicate, suppress, prevent, or retard the spread of plant pests. The Act gives USDA the flexibility to respond appropriately to a wide range of needs and circumstances to protect American agriculture against plant pests. In addition, Section 412(a) of the Act provides that the Secretary may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of, among other things, any biological control organism if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination of a plant pest or noxious weed within the United States.

APHIS' regulations implementing these aspects of the Plant Protection Act are contained (in part) in Part 330 of Title 7, Code of Federal Regulations (7 CFR 330).

APHIS is proposing to revise: (1) regulations regarding the movement of plant pests; (2) criteria regarding the movement and environmental release of biological control organisms, and proposing to establish regulations to allow the importation and movement in interstate commerce of certain types of plant pests without restriction by granting exceptions from permitting requirements for those pests; and (3) regulations regarding the movement of soil. This proposal would clarify the factors that would be considered when assessing the risks associated with the movement of certain organisms and facilitate the movement of regulated organisms and articles in a manner that also protects U.S. agriculture.

This proposed rule will allow respondents to complete various documents. Much of this burden is not new. Businesses and individuals who import plant pests or biological control organisms will, for the most part, continue to be required to apply for and obtain

permits. Additionally, permits themselves may continue to require permittees to enter into compliance agreements and retain records. This rule will, however, establish petition processes that allow persons to request exemptions from permitting requirements for certain plant pests or biological organisms. These new petitions are included in the information collection process.

APHIS is asking the Office of Management and Budget (OMB) to approve these information collection activities, for 3 years, associated with its efforts to facilitate the movement of regulated organisms and articles in a manner that also protects U.S. agriculture.

**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.**

APHIS will use the following information collection activities to allow respondents to complete a petition process which, if approved, may reduce the number of needed permits and associated burden items already in use:

**7 CFR 330.202 Petition to Add Biological Control Organisms to the List of Organisms Granted Exceptions from Permitting Requirements (individuals) (business)** - Any person may request that APHIS add a biological control organism to the list of exempted organisms by submitting a petition to APHIS via email to [pest.permits@aphis.usda.gov](mailto:pest.permits@aphis.usda.gov) or through any means listed at [http://www.aphis.usda.gov/plant\\_health/permits/index.shtml](http://www.aphis.usda.gov/plant_health/permits/index.shtml). The petition must include the following information:

- (1) Evidence indicating that the organism is indigenous to the continental United States throughout its geographical or ecological range, or evidence indicating that the organism has produced self-replicating populations within the continental United States for an amount of time sufficient, based on the organism's taxon, to consider that taxon established throughout its geographical or ecological range in the continental United States.
- (2) Results from a field study where data was collected from representative habitats occupied by the biological control organism. Studies must include sampling for any direct or indirect impacts on target and non-target hosts of the biological control organism in these habitats. Supporting scientific literature must be cited.
- (3) Any other data, including published scientific reports, that suggest that subsequent releases of the organism into the environment of the continental United States will present no additional plant pest risk (direct or indirect) to plants or plant products.

**7 CFR 330.204 Petition to Add Plant Pests to the List (individuals) (business)** - Any person may petition APHIS to have an additional plant pest added to the list of plant pests that may be imported into or move in interstate commerce within the continental

United States without restriction. To submit a petition, the person must provide, in writing, information supporting the placement of a particular pest in one of the categories listed in this section.

(1) Information that the plant pest belongs to a taxon that is established throughout its entire geographical or ecological range within the United States must include scientific literature, unpublished studies, or data regarding: (a) the biology of the plant pest, including characteristics that allow it to be identified, known hosts, and virulence; (b) the geographical or ecological range of the plant pest within the continental United States; and (c) the areas of the continental United States within which the plant pest is established.

(2) Information that the plant pest has been attenuated of its pathogenicity must include experimental data, published references, or scientific information regarding such attenuation.

(3) Information that the plant pest is commercially available and raised under the regulatory purview of another Federal agency must include a citation to the relevant law, regulation, or order under which the agency exercises such oversight.

**7CFR 330.204 Petition Process to Remove Plant Pests From the List (individual)**

**(business)** - Any person may petition to have a plant pest removed from the list of plant pests that may be imported into or move in interstate commerce within the continental United States without restriction by writing to APHIS. The petition must contain independently verifiable information demonstrating that APHIS' initial determination that the plant pest belongs to one of the categories listed in this section should be changed, or that additional information is now available that would have caused APHIS to change the initial decision.

**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.**

Petitions can be drafted using word processing software of the petitioner's choosing, and submitted via email ([pest.permits@aphis.usda.gov](mailto:pest.permits@aphis.usda.gov)) or any means listed at [http://www.aphis.usda.gov/plant\\_health/permits/index.shtml](http://www.aphis.usda.gov/plant_health/permits/index.shtml). There is no specific form to be used for submissions.

**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 APHIS collects is exclusive to its mission of preventing the incursion or interstate spread of plant pests and noxious weeds 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 in connection with this program is the minimum needed to ensure that regulated entities (such as importers) do not inadvertently introduce a plant pest or noxious weed into the United States. APHIS estimates that 100 percent of the business respondents are considered small entities.

**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 collection was not conducted or conducted less frequently, our ability to protect the United States from a plant pest or noxious weed incursion would be significantly compromised. APHIS would have no means by which to assess the risk posed by any given item imported into the United States; therefore, it would only be a matter of time before an adverse event occurred that could prove economically damaging to American agriculture.

**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, government 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 matter 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.**

Productive consultations concerning our information collection activities included the following:

Edith E. Smith  
Shady Oak Butterfly Farm  
12876 SW CR 231  
Brooker, FL 32622  
877-485-2458

Robert Rich  
Weedbusters Biocontrol  
5607 Hillview Way  
Missoula, MT 59803  
406-251-4261

James Steadman  
University of Nebraska - East Campus  
406 Plant Sciences Hall  
Lincoln, NE 68583  
402-472-3163

In October 2001, APHIS published in the Federal Register (66 FR 51340-51358) a proposed rule update which would have revised the plant pest regulations. Following the

notice, APHIS received a large number of comments, an Inspector General audit of its permitting programs, and Departmental review of its security processes in light of the terrorist attacks on September 11, 2001. In December 2001, the proposed rule update was withdrawn until the submission of this action.

APHIS' proposed rule (Docket No. APHIS-2008-0076) will describe its information gathering requirements, and also provide a 60-day comment period. During this time, interested members of the public will have the opportunity to provide APHIS with their input concerning the usefulness, legitimacy, and merit of the information collection activities APHIS is proposing.

**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.**

No additional assurance of confidentiality is provided with this information collection. Any and all information obtained in this collection shall not be disclosed except in accordance with 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 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-I.**

See APHIS 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.**

The estimated annualized cost to respondents is \$45,888. This is computed by multiplying the estimated hourly average wage by the total number of hours needed to complete the work.  $\$47.80 \times 960 = \$45,888$ .

The average hourly rate of \$47.80 for respondents who are State employees, individual households, or not for profit organizations was derived from the U.S. Department of Labor, Bureau of Labor Statistics May, 2016 – Occupational Employment and Wages in the United States. <http://www.bls.gov.news.release/ocwage.t03.htm>

**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 and any other expense that would not have been incurred without this collection of information.**

The estimated cost to the Federal Government is \$983,341 (see APHIS 79).

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

This is a new information collection.

**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 collections, explain the reasons that display would be inappropriate.**

There are no USDA forms associated with this collection of information.

**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 under the Act.

**B. Collections of Information Employing Statistical Methods**

Statistical methods are not used in this information collection.