

SUPPORTING STATEMENT
OMB NO. 0579-0076
Endangered Species Regulations
and Forfeiture Procedures

JUSTIFICATION

February 2012

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.

The United States Department of Agriculture (USDA) is responsible for preventing plant pests from entering the United States, preventing the spread of pests, and noxious weeds not widely distributed within the United States, and eradicating plant pests when eradication is feasible. The Plant Protection Act authorizes the Department to carry out this mission.

The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) directs Federal departments to utilize their authorities under this Act to conserve endangered and threatened species. Section 3 of this Act specifies that the Secretary of Agriculture is authorized to promulgate such regulations as appropriate to enforce the Act.

The regulations contained in 7 CFR 355 are intended to carry out the provisions of the Endangered Species Act. Plant Protection and Quarantine (PPQ), program within USDA's Animal and Plant Health Inspection Service (APHIS), is responsible for implementing these regulations.

Specifically, Section 9(d) of this Act authorizes 7 CFR 355.11, which requires a general permit to engage in the business of importing or exporting terrestrial plants listed in 50 CFR Parts 17 and 23.

U.S. Department of the Interior regulations contained in 50 CFR 17 and 23 specify requirements for validating documents at the time of importation or exportation. The documents are needed to determine that the movement is in accordance with Section 9 of this Act.

Section 9(d)(2) of this Act requires recordkeeping activities as well as the production of reports from these records. These requirements are spelled out in 7 CFR 355.23.

Section 11(e)(5) of this Act authorizes requirements for a claim, bond, and petition for remission of forfeiture. This provides the mechanism for obtaining title to items moved in violation of the provisions.

APHIS is asking the Office of Management and Budget (OMB) to approve for an additional 3 years, the use of these information collection activities, associated with its effort to prevent the spread of plant pests and diseases into the continental United States.

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.

APHIS uses the following information activities to prevent plant pests from entering the United States, and to prevent the spread of pests, and noxious weeds not widely distributed within the United States.

PPQ Form 621 (General Permit) - Any individual, nursery, or other business wishing to import, export, or re-export terrestrial plants listed in the CITES regulations (endangered species plants) is required to obtain a general permit. This includes importers, exporters, or re-exporters who are nursery or plant dealers and who intend to engage in the sale or resale of the plants, as well as hobbyists who collect endangered plant species. To obtain a general permit, these individuals or entities must complete an application (PPQ Form 621) and submit it to PPQ for approval. The application must contain such information as the applicant's name and address, whether the applicant is affiliated with a business, and the address of all the applicant's business locations. Upon approval of the permit, any endangered species plants shipped via mail must be sent to an authorized port of entry and must be accompanied by appropriate supporting documentation.

Unmailed species must also be accompanied by supporting documentation, and must be inspected at the port of arrival prior to being moved from the Customs inspection area.

Appeal of Denial or General Permit: If the owner's petition is denied, then the owner may appeal this decision by filing a supplemental petition with APHIS that states all of the facts and circumstances concerning why the owner's original petition should not have been denied.

Request for return of property; bonded release: The owner of endangered species terrestrial plants that have been seized may submit to us a bond or other security (in the amount of the value of the seized property) in order to re-acquire the property. The bond must be accompanied by a written request that the property be returned. The shipment will only be released to the owner, however, if we determine that the terrestrial plants in question do not pose a risk of introducing plant diseases or insect pests into the United States.

Marketing and Notification Requirements: Promptly upon arrival at a port of import (listed in 50 CFR part 24, or, if allowed by the U.S. Department of the Interior, at a nondesignated port) of any terrestrial plant which is imported by means other than mail and which may be imported under 50 CFR part 17 or part 23 only if accompanied by

documentation, the importer will notify Plant Protection and Quarantine of the arrival and of the genus and species of the plant by such means as a manifest, Customs entry document, commercial invoice, waybill, broker's document, or a notice form provided for that purpose.

PPQ Form 368 (Notice of Arrival): The importer of an endangered species terrestrial plant must notify PPQ of the impending arrival of the shipment, and the port of entry at which the shipment will arrive. This notification alerts us to the fact that a shipment is eminent, and allows us to ensure that PPQ inspectors will be on hand to inspect and process the shipment when it arrives. The primary responsibility of the PPQ inspector is to ensure that the shipment is not harboring insect pests.

Notice of Exportation: The exporter of an endangered species terrestrial plant must notify PPQ of the impending exportation of the shipment, and the port from which the shipment will depart. This notification alerts us to the fact that an exportation of endangered species will be occurring, and allows us to ensure that PPQ inspectors will be on hand to process the shipment. The primary responsibility of the PPQ inspector is to ensure that the shipment's accompanying documentation accurately reflects the nature of the contents in the shipping container.

Marking Requirements: Any endangered species terrestrial plants that are imported or exported must be shipped in a container that bears the following information: the genus and species of the plants and the quantity of each; the region of the world where the plants originated; the name and address of the person shipping the plants; the name and address of the person receiving the plants, a mark that identifies the shipper; and the serial number and type of document (permit or certificate) issued for the plants' importation or exportation. It is the importer's or exporter's responsibility to ensure that containers are properly marked.

Validation of Documents: The documents accompanying any endangered species terrestrial plants for import or export must be validated by a PPQ inspector at the port. It is the responsibility of the individual importing or exporting the plants to provide these documents to the PPQ inspector. The primary responsibility of the PPQ inspector is to ensure that the plants in question are eligible for importation or exportation.

Recordkeeping: Any person engaged in the business of importing or exporting endangered species terrestrial plants must keep records of each importation and exportation and make them available to PPQ inspectors upon request. These records must include shipping documents, a description of the plants, the number of plants in the shipment, the plants' region of origin, the date and place of import or export, and the name and address of the individuals who received the plants. Records must be kept for at least 5 years. These records will provide important information to PPQ inspectors who must conduct a traceback investigation in the event that exotic plant diseases or insect pests are introduced into the United States.

Submission of Reports: Any person engaged in the business of importing or exporting endangered species terrestrial plants must submit a report (if requested by PPQ) concerning any of the records mentioned above. The report must be submitted within 60 days of our request.

PPQ Form 623 (Waiver of Forfeiture Procedures): Waiver of forfeiture procedures by owner of seized property: When PPQ personnel at a port of entry seize a shipment of endangered species terrestrial plants, the owner of the shipment has the option of waiving the usual procedures that must be followed and simply allow us to appropriately dispose of the shipment. In order to abandon the shipment in this manner, the owner must sign the PPQ Form 623 (which is completed by PPQ port personnel). The form describes the shipment, the date and place it was seized and the reason it was seized. This form serves as the official record that the owner understands all of his/her options in the matter, and is voluntarily waiving any further rights or interests in the seized shipment.

PPQ Form 625 – (Claim and Bond): If the owner of a seized shipment of endangered species terrestrial plants does not believe the shipment should be destroyed and wishes to challenge APHIS' decision in this matter, he/she may file a claim to the property and a bond in the amount of \$250. By filing this claim, the owner is requiring PPQ to initiate formal procedures that must be followed before property can be condemned and destroyed. If the shipment ends up being condemned and destroyed after these procedures are followed, then the \$250 is used to pay the costs and expenses associated with conducting the procedures.

Bonded Release: The Deputy Administrator may accept a bond or other security, in the amount of the value of the property as determined under § 356.3, in place of any property specified in § 356.1 and release the property to the owner or agent of the property, if such action would not frustrate the purposes of the Act and Convention.

PPQ Form 626 (Petition for Remission or Mitigation of Forfeiture): Petition for remission or mitigation of forfeiture. The owner of a seized shipment of endangered species terrestrial plants files this petition in an effort to prevent forfeiture from occurring. (Essentially, the owner is attempting to prevent the loss of his/her property.) This form describes the seized property, provides the name and address of the owner, and states the facts and circumstances upon which the owner is relying to justify his/her request that forfeiture of the property not take place.

Request for Return of Property: If, at the conclusion of proceedings, seized property is to be returned to the person determined to be the owner or agent thereof, the Deputy Administrator will issue a letter or other document to the person determined to be the owner or agent thereof authorizing its return. This letter will be delivered personally or sent by registered or certified mail, return receipt requested, and will identify the person determined to be the owner or agent, the seized property, and if appropriate, the bailee of the seized property.

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.

PPQ Form 625 is posted at www.aphis.usda.gov/library/forms/pdf/625.pdf. This form is downloadable as a PDF file.

PPQ Form 626 is posted at www.aphis.usda.gov/library/forms/pdf/626.pdf. This form is downloadable as a PDF file.

PPQ Form 621 is posted at www.aphis.usda.gov/permits . This form is downloadable as a PDF file.

PPQ Form 623, Waiver of Forfeiture Procedures, was re-evaluated for possible automation but because it still has low usage (130 respondents), it will not be automated for this renewal. APHIS will revisit the possibility of automation during the next 3-year renewal process.

PPQ Form 368 – APHIS has automated this form and it can be found as a PDF file at:
<http://www.aphis.usda.gov/library/forms/pdf/PPQ368.pdf>
<http://www.aphis.usda.gov/library/forms/pdf/ppq368Instrpdf.pdf>

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 regulating importers and exporters of endangered and threatened species of terrestrial plants, 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 and plant diseases. APHIS has determined that 40 percent of the respondents are 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.

Failing to collect this information would prevent APHIS from carrying out its responsibilities under The Endangered Species Act, and would also prevent the United States from fulfilling its responsibilities as a signatory to the Convention on International Trade in Endangered Species (CITES) Treaty.

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.

This information collection is conducted in a manner consistent with the guidelines established in 5 CFR 1320.6, except APHIS has specified 5 years as the retention period for certain records that must be kept in connection with the importation and exportation of endangered species.

APHIS believes that 5 years is an appropriate retention period for these records, since they would play a critical role in any investigations APHIS may need to conduct to determine if violations of the Endangered Species Act have occurred.

- **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;**

Any claim and bond must be received in such office within 20 days after posting the notice of a proposed forfeiture, and shall state claimant's interest in the property.

- **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 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.

APHIS contacted the following individuals in 2011 to obtain their input on the information collection activities associated with its program to protect endangered species of terrestrial plants:

Kip Howlett
Director of Marketing, Publications and Government Affairs
Hardwood Plywood and Veneer Association
1825 Michael Faraday Drive
Reston, VA 20190-5350
Phone: 703-435-2900

Michael McGuffin
American Herbal Products Association
8484 Georgia Avenue, #370
Silver Spring, MD 20910

Cynthia A. Allen
Regulatory Compliance Specialist
Bayer Crop Science LP
2 W. Alexander Dr.
Research Triangle Park, NC 27709
Phone: 919-549-2655

On Tuesday, May 24, 2011, pages 90030-90031, 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.

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 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.**

7552 hours x \$31.26 average hourly wage = \$236,075.52

\$31.26 is the hourly rate derived from the U.S. Department of Labor, Bureau of Labor Statistics May 2009 Report – Occupational Employment and Wages in the United States. See <http://www.bls.gov/news.release/ocwage.t03htm>.

- 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 start-up, operation, maintenance, and purchase of services.

- 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 for the Federal Government is \$2,155,514. 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.**

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	81,265	0	0	-786	0	82,051
Annual Time Burden (Hr)	7,552	0	0	-981	0	8,533
Annual Cost Burden (\$)	0	0	0	0	0	0

There is an adjustment of -786 responses to this collection. Because of economic conditions, fewer companies requested permits thereby reducing the number of respondents from 16,584 to 16,579. This decrease resulted in reduced total burden hours of -981 hours from 8,533 hours to 7,552.

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 this data.

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.

PPQ Form 368 is used in multiple information collections, therefore, it is not practical to include an OMB expiration date because of the various expiration dates for each collection. APHIS is seeking approval to not display the OMB expiration date on this form.

APHIS has no plans to seek approval for not displaying the OMB expiration date on PPQ Forms 621, 623, 625, and 626.

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

This collection of information does not use statistical methods.