

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

TERMS OF CLEARANCE: “Before this ICR is resubmitted, USDA should convert PPQ Form 368 to a common form.” APHIS has many forms eligible for conversion to common forms. This has become a priority for the Agency and it anticipates making material progress on the project.

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.

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. 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. USDA's Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ) program 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.

The United States Department of 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 explained in 7 CFR 355.23.

Section 11(e)(5) of this Act authorizes requirements for a claim, 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 help conserve endangered and threatened species of terrestrial plants.

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 conserve endangered and threatened species of terrestrial plants:

Application for Protected Plant Permit to Engage in the Business of Importing, Exporting or Re-Exporting Terrestrial Plants (PPQ Form 621); (7 CFR 355.11); (Business)

Businesses wishing to import, export, or re-export terrestrial plants listed in the CITES endangered species plants regulations must obtain permits from the USDA. These include importers, exporters, or re-exporters who are nursery or plant dealers and who intend to engage in the sale or resale of the plants. Application for the 2-year permit is made using PPQ Form 621 and submitting it to PPQ for approval. Each application for a protected plant permit must be accompanied by a check or money order for \$70 made payable to Plant Protection and Quarantine. The fee is refunded unless the application is denied or abandoned.

Appeal of Denial of General Permit; (7 CFR 355.11(e)); (Business)

If a protected plant permit is denied, the applicant will be notified of the reason. The applicant may then request a hearing, and/or submit a rebuttal in writing to PPQ, within 60 days of the receipt of denial notification.

Marking and Notification Requirements; (7 CFR 355.20(a); .21(a), (b)); (Business)

Any terrestrial plant which is to be imported, exported, or reexported shall plainly and correctly bear on the outer container or on a tag, invoice, packing list, or other document accompanying the plant, the genus and species, quantity of each (if a hybrid, genus of each parent, and quantity of each hybrid), country and locality where collected from the wild or where produced from cultivated stock, name and address (in the United States if exported or reexported) of shipper, owner or person shipping or forwarding the plants, name and address (in the United States if imported) of consignee, identifying shipper's mark and number, and serial number and type (e.g., permit, certificate) of document issued for the importation, exportation, or reexportation of the plant. It is the importer's or exporter's responsibility to ensure that containers are properly marked. Promptly upon arrival at a port of import, the importer shall notify PPQ 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 notice form provided for that purpose.

Notice of Arrival (PPQ Form 368 or equivalent); (7 CFR 355.20(b)); (Business)

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 PPQ that a shipment is eminent and allows the scheduling of inspectors to inspect and process the shipment when it arrives. Inspection ensures the shipment is not harboring insect pests.

Notice of Exportation; (7 CFR 355.20(c)); (Business)

The exporter of an endangered species terrestrial plant must notify PPQ of the impending exportation of the shipment and the port from which it will depart. This notification alerts PPQ that an exportation of endangered species will be occurring and allows it schedule inspectors to process the shipment. Inspection ensures the shipment documentation accurately describes the contents of the shipping container.

Validation of Documents; (7 CFR 355.22); (Business)

Importers and exporters are responsible for providing at the port the documents accompanying any endangered species terrestrial plants for import or export to PPQ inspectors for validation and to ensure the plants are eligible for importation or exportation.

Waiver of Forfeiture Procedures by Owner of Seized Property (PPQ Form 623); (7 CFR 356.4(b)); (Business)

For shipments of endangered species terrestrial plants seized by the USDA at the port of entry, the owner of the shipment may accept and sign a PPQ Form 623 waiving procedures and authorizing government disposal of the shipment. The waiver describes the shipment, the date and place it was seized, and the reason it was seized, and serves as the official record that the owner understands his/her options in the matter and voluntarily waived any further rights or interests in the seized shipment.

Claim (PPQ Form 625); (7 CFR 356.4(c)(2)); (Business)

While filing a claim and bond (PPQ Form 625) is no longer required by the Civil Asset Forfeiture Reform Act (CAFRA), the activity remains in the CFR. The activity is listed in the information collection with 1 response and 1 hour of burden as placeholders.

Request for Return of Property; (7 CFR 356.5); (Business)

Any request for the return of property shall be submitted in writing to PPQ. The request must include evidence to establish that the person making the request is the sole owner of the property or is the agent of the sole owner of such property. PPQ will return a response in writing granting or denying the request.

Petition for Remission or Mitigation of Forfeiture (PPQ Form 626); (7 CFR 356.7(a)); (Business)

The owner of a seized shipment may prepare PPQ Form 626 and petition for remission or mitigation of a pending forfeiture. The 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.

Reports and Recordkeeping: (7 CFR 355.23(a-d)); (Business)

Any entity engaged in the business of importing or exporting endangered species terrestrial plants must keep records of each importation and exportation and make the records available to PPQ inspectors within 60 days upon request. The records provide important information to PPQ inspectors conducting traceback investigations when exotic plant diseases or insect pests are accidentally introduced into the United States. The 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, and they must be kept for at least 5 years.

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 Forms 368, 621, 623, 625, and 626 are available in fillable PDF format from the APHIS forms website at https://www.aphis.usda.gov/aphis/resources/forms/ct_ppq_forms. The PPQ Form 621 permit application may also be prepared and submitted online via the APHIS ePermits portal reachable at https://www.aphis.usda.gov/aphis/resources/permits/ct_learn_epermits.

PPQ is developing a new system for respondents to submit the PPQ Form 621 electronically and when available the new system will replace the online APHIS ePermits portal.

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. It 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.

APHIS estimates 40 percent of the respondents are small entities. The information APHIS collects is the minimum needed to protect the United States against destructive plant pests and plant diseases, and the improper trade of protected terrestrial plants.

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.

Without the collected information, APHIS would not be able to carry out its responsibilities under The Endangered Species Act, and the United States would not be able to fulfill its responsibilities as a signatory to the Convention on International Trade in Endangered Species (CITES) Treaty. The consequences of either would directly impact the protection of endangered plant species around the world.

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;**

For shipments of endangered species terrestrial plants seized by the USDA at the port of entry, the owner of the shipment may accept and sign a PPQ Form 623 waiving procedures and authorizing government disposal of the shipment. The waiver describes the shipment, the date and place it was seized, and the reason it was seized, and serves as the official record that the owner understands his/her options in the matter and voluntarily waived any further rights or interests in the seized shipment.

Otherwise, when property valued at \$10,000 or less is processed for forfeiture, PPQ shall publish a copy of the notice of seizure and proposed forfeiture for 21 days in a conspicuous place accessible to the public at the Plant Protection and Quarantine Enforcement office nearest the place of seizure. The time and date of posting shall be indicated on the notice. Upon the execution of such statement and following publication of the notice for 21 days, any interest in such property by such owner shall become forfeited unless someone claiming ownership or other interest in the seized property files a claim before the 21st day.

Any request for the return of property shall be submitted in writing to PPQ before the notice of seizure and proposed forfeiture expires. The request must include evidence to establish that the person making the request is the sole owner of the property or is the agent of the sole owner of such property. PPQ will return a response in writing granting or denying the request.

The owner of a seized shipment may prepare PPQ Form 626 and petition for remission or mitigation of a pending forfeiture. The 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.

- **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 3 years;**

APHIS has specified 5 years as the retention period for records that must be kept in connection with the importation and exportation of endangered species as this is the longest period within which insect pests may manifest themselves or discovery for Endangered Species Act investigations may need to be conducted.

- **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 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. 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 engaged in productive consultations with the following individuals concerning the information collection activities associated with this program. It contacted these respondents by email and phone to discuss the information APHIS collects to administer its equipment import regulations. Discussed were how the Agency and the respondents obtain the necessary data and how frequently; how much data is available; the convenience and clarity of reporting formats and other collection instruments; and the clarity of, and necessity for, any recordkeeping requirements. The consulted individuals had no concerns with any of these items and had no further recommendations.

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On Thursday, May 20, 2021, APHIS published in the Federal Register (86 FR 27364), a 60-day notice seeking public comments on its plans to request a 3-year approval of this collection of information. One comment from the public was received but contained no relevant comments or recommendations about the activities or burdens in this information collection.

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. No information obtained in this collection shall 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. Respondents are businesses wishing to import, export, or re-export terrestrial plants listed in the CITES endangered species plants regulations, and those without permits claiming a business interest in shipments seized at U.S. ports of entry.

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

The respondents in this request are importers, exporters, and forfeiture agents. APHIS estimates the total annualized cost to these respondents to be \$784,250. APHIS arrived at this figure by multiplying the hours of estimated burden hours (15,433 hours) by the estimated average hourly wage of the above respondents (\$35.07) and then multiplying the result by 1.449 to capture benefit costs.

The average hourly rates used to calculate the estimate are for importers, exporters, and forfeiture agents (\$34.80, SOCC 13-1020 buyers and purchasing agents; and \$35.34, SOCC 41-4012 sales reps, wholesale). The rates were obtained from the U.S. Bureau of Labor Statistics website https://www.bls.gov/oes/current/oes_stru.htm and the average salary was calculated using specific occupations identified by their SOCC codes. This revised method resulted in a slightly decreased average salary from that reported in the previous submission.

According to DOL BLS news release USDL-21-0437 released March 18, 2021, employee benefits account for 31 percent of employee costs, and wages account for the remaining 69 percent. Mathematically, total costs can be calculated as a function of wages using a multiplier of 1.449.

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.

Each application for a protected plant permit must be accompanied by a check or money order for \$70 made payable to Plant Protection and Quarantine. The fee is refunded if the application is not denied or abandoned.

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.

See APHIS Form 79. The estimated cost to the Federal Government is \$8,261,382.

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

	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	162,401	0	0	184	0	162,217
Annual Time Burden (Hours)	15,433	0	(5)	184	0	15,254

This request for renewal is for 162,401 estimated responses and 15,433 estimated burden hours, reflecting increases of 184 estimated responses and 179 hours of estimated burden from the previous renewal request. The number of respondents remains the same at 1,097.

Adjustments to the Agency estimates resulted in a increase of 184 estimated responses and 184 estimated burden hours, mainly attributed to a increase in the number of Applications for Protected Plant Permit to Engage in the Business of Importing, Exporting, or Re-exporting Terrestrial Plants.

Discretionary program changes for the activity of Marking and Notification Requirements reflect a decrease of 5 hours due to a calculation error in the previous submission.

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.

The OMB expiration date will be displayed on PPQ Forms 621, 623, and 626.

PPQ is developing a new system for respondents to submit the PPQ Form 621 electronically and, when available, the new system will replace the online APHIS ePermits portal. Once developed, it would not be cost effective to update the form’s OMB approval expiration date every three years. 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 these forms.

The Agency has made it a priority to develop procedures and to convert the multi-ICR forms into common forms.

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.