

SUPPORTING STATEMENT
Endangered Species Regulations
and Forfeiture Procedures
0579-0076

A. JUSTIFICATION

August 2008

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.

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.

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.

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 APHIS 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.

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.

Appeal: 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 APHIS 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 APHIS determines that the terrestrial plants in question do not pose a risk of introducing plant diseases or insect pests into the United States.

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.

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 APHIS to the fact that a shipment is eminent, and allows APHIS 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 APHIS to the fact that an exportation of endangered species will be occurring, and allows APHIS 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.

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 APHIS' request.

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 368 (Notice of Arrival) will not be automated at this time due to the low usage, the form not being enforced, and because additional discussions need to be held with the Department of Homeland Security (DHS) to discuss the impact of this form.

PPQ Form 621 is posted at www.aphis.usda.gov/ppq/permits/index.html and downloadable as a PDF file.

PPQ Form 623 (Waiver of Forfeiture Procedures) will not be automated at this time due to the low usage and that additional discussions need to be held with DHS to discuss the impact of this form.

PPQ Forms 625/626 is posted at www.aphis.usda.gov/library/forms/#ppq and is downloadable as a PDF file.

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.

APHIS estimates that 8,292 of the total 16,584 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.

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 2008 to obtain their input on the information collection activities associated with its program to protect endangered species of terrestrial plants:

TBM Hardwoods, Inc.
100 Filbert Street
Hanover, PA 17331
Krista Wolf
(717) 630-0025

Lowes Corporation
1000 Lowes Blvd.
 Mooresville, NC 28117
Bradley Julian
(704) 758-2751

Bron & Sons Nursery Co.
Box 2643
Grand forks
BC VOH1HO
Laurie Clark
240-442-2014

On Monday, April 7, 2008, pages 18733 - 18734, 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. During that time, APHIS received one comment from an interested member of the public. This comment did not deal with information collection issues.

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. However, 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 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.**

$$\$20.00 \times 8,533 = \$170,660$$

\$20.00 is the hourly rate derived from the U.S. Department of Labor Bureau of Labor Statistics June 2005 Report-National Compensation Survey: Occupational Wages in the United States, August 2006. See <http://www.bls.gov/ncs/ocs/sp/ncb10832.pdf>.

- 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 \$84,498.69 (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.**

The number of respondents increased in some of the collection activities due to the increase of containers that were imported or exported by shippers, as well as, the number of validated documents that accompanied the endangered species. Therefore, the total adjustment increase is 3795 hours.

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.

If forms were to be discarded because of an outdated OMB expiration date, but otherwise usable, higher printing costs would be incurred by the Federal Government. Therefore, APHIS is seeking approval to not display the OMB expiration date on its 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.