



U.S. Customs and Border Protection



Animal and Plant Health
Inspection Service

Amendments to the Lacey Act Farm Bill 2008

“Section 8204. Prevention of Illegal Logging Practices”

October 14, 2008

Agenda

- Background and Context
- Changes and New Requirements
- Commodities and Products Covered
- Violations
- Current Status of Implementation

Background: The Lacey Act

- The nation's oldest wildlife protection statute
 - First enacted in 1900 to combat impact of:
 - hunting to supply commercial markets,
 - interstate shipment of unlawfully killed game,
 - introduction of harmful exotic species and
 - killing of birds for feather trade
 - Significantly amended in 1981 and 1988
- A tool to combat trafficking in “illegal” wildlife, fish or plants

The Food, Conservation and Energy Act of 2008

- *Section 8204. Prevention of Illegal Logging Practices*
 - Expands Lacey protection to broader range of plants
 - Extends the statute's reach to encompass products, including timber, that derive from illegally harvested plants
 - New declaration requirement relating to plant products
- Passed May 22, 2008 (effective immediately)

The Lacey Act, as amended

- The Lacey Act, as amended, is an important new tool that will help the United States to support the efforts of other countries, and its own States, to combat illegal logging.
- The Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken or traded in violation of the laws of a U.S. State, or most foreign laws.
- The Lacey Act also makes it unlawful to make or submit any false record, account or label for, or any false identification of, any plant.
- It will be unlawful as of December 15, 2008 to import any covered plant or plant product without a declaration.

Why fight illegal logging?

- Illegal logging robs countries, impoverishes forest communities, depresses global timber prices, and puts money in the pockets of criminals.
- It undermines the rule of law and sustainable forest management, destroying forests, watersheds, and habitat.
- It unfairly competes with legal production and trade.
- Profits from illegal logging have been used to fuel conflict and purchase arms.

Examples of Illegal Logging:

- Theft of timber, including from parks and protected areas
- Harvesting without permission
- Failure to comply with harvesting regulations
- Failure to pay royalties, taxes or fees

The Lacey Act provides legal authority to take action when products associated with illegal logging enter the United States.

New Declaration Requirement Relating to Plant Products

- Declaration must be made at time of importation
- Declaration must contain:
 - Scientific name of **plant** (including genus & species)
 - Value of importation
 - Quantity of the **plant**
 - Name of the country in which the **plant** was harvested
 - For paper and paperboard products with recycled content, state the average % recycled content without regard for species or country of harvest
- Declaration requirement does not apply to packaging material used to support, protect or carry another item (unless the packaging material itself is the item being imported)

Definition of “plant”

- “Plant” means:
 - “Any wild member of the plant kingdom, including roots, seeds, parts or product thereof, and
 - “Trees from either natural or planted forest stands”

What if Information is Unknown?

- If species varies and is unknown:
 - Declare the name of each species that may have been used to produce the product
- If the species is commonly harvested in more than one country, and the country is unknown:
 - Declare the name of each country from which the plant may have been harvested
- There is no “de minimis” provision

Exclusions

- Excluded from Lacey Act coverage
 - Common cultivars* (except trees)
 - Common food crops*
 - Scientific specimens for research
 - Plants to remain planted or be replanted

**U.S. Departments of the Interior and Agriculture are working together to define these terms.*

Exceptions to the Exclusions

- The Lacey Act nevertheless applies if the plant is listed in
 - Convention on International Trade in Endangered Species of Wild Fauna and Flora
 - Endangered Species Act of 1973
 - Any State law that provides for the conservation of species...
- EXCEPT common cultivars (other than trees) or common food crops, which are excluded from coverage

Covered Products

A wide variety of products, to the extent that they contain covered plant products, are now covered by the Lacey Act. Examples include:

- Lumber, wood pulp, paper and paperboard
- Furniture, tools, umbrellas, sporting goods
- Printed matter
- Musical instruments
- Products manufactured from plant-based resins
- Boats, cars, trains, planes
- Pharmaceuticals
- Textiles

Draft Paper Declaration Form

- Vast majority of users will never file a paper form and will file declarations electronically instead.
- Today's draft form is subject to revision.
- Paper form illustrates the manner in which information will likely be required in the electronic system.
- Use of paper form will be voluntary beginning December 15, 2008.
- Opportunity to comment on the form and Paperwork Burden associated with the form will be provided prior to that date.

Violations

- The Lacey Act provides for both civil and criminal penalties for failure to comply.
- Regardless of civil or criminal prosecution, the unlawful plants or products are subject to seizure and forfeiture.
- Forfeiture of vehicles and equipment is authorized in criminal convictions.

Federal Agencies Involved

- USDA's Animal and Plant Health Inspection Service (APHIS) has the lead
- Customs and Border Protection (CBP), APHIS and the U.S. Forest Service (USDA), U.S. Trade Representative (USTR), Department of Justice, Department of State, U.S. Fish and Wildlife (Department of the Interior) and other agencies are working together for implementation
- The Import Safety & Interagency Requirements Division, Office of International Trade, has been designated as the lead for CBP

Current Status of Implementation

- May 22, 2008: Effective date of new provisions
- Dec.15, 2008: Declaration requirement effective by Statute
- Reporting methodology is being developed
 - Declaration and instructions will be available prior to Dec. 15th
 - An electronic filing process is planned
- Definitions of "common cultivars" and "common food crops" will be provided via rulemaking
- Extensive national and international outreach has begun

Phased-in Declaration Requirement

- We have proposing phased-in enforcement of the declaration requirement, as described in October 8, 2008 Federal Register notice.
- In the initial phase (starting December 15th), the declaration would be voluntary; however, the truthfulness of any declaration is immediately enforceable.
- Phased-in enforcement of the declaration requirement will begin when forms can be collected electronically.
- Importers need to be prepared to comply with the declaration requirement by the dates stipulated in the Federal Register Notice.

Proposed Phase-In Schedule of Enforcement of the Declaration Requirement for Goods of, or containing, Plants or Plant Products* (Specific goods may be exempt**.)

| I present – March 2009 | II April 1, 2009 (or as soon thereafter as an electronic system is available) | III July 1, 2009 (approximate) |
|---|--|--|
| <p>PPQ Plant Import Declaration Form will be available on website, and accepted after Dec 15</p> <p>Domestic & International Outreach</p> | <p>HTS Chapters: Ch. 44 (wood & articles of wood) Ch. 6 (live trees, plants, bulbs, cut flowers, ornamental foliage, etc.)</p> | <p>HTS Chapters: Ch. 47 (wood pulp) Ch. 48 (paper & articles of) Ch. 92 (musical instruments) Ch. 94 (furniture) PLUS PHASE II</p> |

NOTE: Chapter descriptions are for ease of reference only.

* Declaration requirement is effective as of Dec.15, 2008. All declarations submitted must be accurate; false statements are enforceable. Failure to submit a declaration will not be prosecuted and customs clearance will not be denied for lack of a declaration until after the phase-in date above.

** Example: In HTS Ch. 6, most live plants not listed under CITES, the ESA or certain State laws would be exempt from this declaration requirement. See the Lacey Act regarding further exemptions.

Information on the Internet

www.aphis.usda.gov/plant_health/lacey_act

www.cbp.gov

To look up genus/species, go to:

<http://plants.usda.gov/classification.html>



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