

BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2008-0119]

Implementation of Revised Lacey Act Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Food, Conservation, and Energy Act of 2008 amended the Lacey Act to provide, among other things, that importers submit a declaration at the time of importation for certain plants and plant products. The declaration requirements of the Lacey Act become effective on December 15, 2008. The purpose of this notice is to inform the public about the new Lacey Act provisions, particularly the declaration requirements and the Federal Government's plan to implement and enforce the declaration requirements.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0119> to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2008-0119, Regulatory Analysis and Development, PPD, APHIS, Station

3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0119.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Belano, Assistant Branch Chief, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-8758.

SUPPLEMENTARY INFORMATION:

Background

The Lacey Act, first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. The Act combats trafficking in "illegal" wildlife, fish, and plants. The Food, Conservation, and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act by expanding its protection to a broader range of plants and plant products (Section 8204. Prevention of Illegal Logging Practices). As of May 22, 2008, the Lacey Act makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of the laws of the United States, a State, an Indian tribe, or any foreign law that

protects plants. The Lacey Act also now makes it unlawful to make or submit any false record, account or label for, or any false identification of, any plant covered by the Act.

In addition, Section 3 of the Lacey Act, as amended (16 U.S.C. 3372), makes it unlawful, beginning December 15, 2008, to import certain plants and plant products without an import declaration. The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) is working with a larger interagency group composed of representatives from U.S. Forest Service, Customs and Border Protection (CBP), U.S. Trade Representative (USTR), U.S. Department of Justice, U.S. Department of State, U.S. Fish and Wildlife Service (FWS), Council on Environmental Quality, and Department of Commerce, to implement the new provisions.

Under the amended Lacey Act, beginning December 15, 2008, importers are required to submit a declaration for certain plants and plant products. The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested. For paper and paperboard products with recycled plant content, the importer will not be required to specify the species or country of harvest with respect to the recycled plant product component, but will be required to provide the average percent recycled content. If the product also contains non-recycled plant materials, the basic declaration requirements still apply to that component of the product imported. For plant products (as opposed to plants), if the plant species from which they are made varies and are unknown, importers will have to declare the name of each species that may have been used to produce the product. Similarly, if a plant product is made of plant species commonly harvested in more than one country, and the country is unknown, the importer will be required to declare the name of each country from which the plant may have been harvested.

Violations of the Lacey Act provisions may be prosecuted in three basic ways: 1) Civil-monetary penalties; 2) criminal-fines and penalties and potential incarceration; or 3) forfeiture-dispossession of the plant, fish, or wildlife in question.

Scope of Plants and Plant Products Covered

Under the Lacey Act, as amended, "Plant" means: "Any wild member of the plant kingdom, including roots, seeds, parts or product thereof, and including trees from either natural or planted forest stands." There are three categorical exemptions:

1. Common cultivars, except trees, and common food crops (including roots, seeds, parts, or products thereof);
2. Scientific specimens of plant genetic material (including roots, seeds, germplasm, parts, or products thereof) that are to be used only for laboratory or field research;
3. Plants that are to remain planted or to be planted or replanted.

The amendments, including the declaration requirements, still apply for items described under 2 and 3 if the plant is listed:

- In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249) (CITES);
- As an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (ESA); or
- Pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

All covered plants and plant products will require an import declaration, except for those used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported. Thus, the scope of products that will

require a declaration under the Lacey Act is broad and includes certain live plants, plant parts, lumber, wood pulp, paper and paperboard, and products containing certain plant material or products, which may include certain furniture, tools, umbrellas, sporting goods, printed matter, musical instruments, products manufactured from plant-based resins, and textiles.

USDA and the Department of the Interior have been given authority under the Lacey Act to define the terms “common cultivar” and “common food crop.” APHIS and FWS are currently working on a joint rulemaking that will define those terms, thus clarifying the application of the declaration requirements.

Implementation Plan for Declaration Requirements

CBP already collects some of the information that the Lacey Act amendments require importers to include in their declaration. CBP is currently developing an electronic system that will collect the remaining data required to be declared, and we intend to begin enforcement of the declaration requirements upon completion of the electronic system. CBP anticipates completing the electronic system by April 1, 2009. We will publish a notice in the Federal Register announcing the specific dates in which enforcement of the declaration requirements will begin once the electronic system is near completion.

Once the electronic system is completed, all agencies with Lacey Act enforcement authority will employ a phase-in approach to enforcement of the Lacey Act declaration requirements. Prior to the availability of electronic filing, from December 15, 2008, to April 1, 2009, or as soon thereafter as the electronic system is available, APHIS will make a paper declaration form available for voluntary submission. No agencies with Lacey Act enforcement authority will bring prosecutions or forfeiture actions for failing to complete the paper

declaration form before the electronic system for data collection is available (April 1, 2009, or after); however, any person who submits a form containing false information may be prosecuted.

On April 1, 2009, or as soon thereafter as the electronic system for collecting the declaration is available, we will begin enforcement of the declaration for wood and certain wood products and certain live plants and related products (see table below). During the initial few months of phase in for any group of products, enforcement agencies will take into consideration in their actions and decisions any technical issues that may be encountered in the initial process of implementing the electronic filing system. The proposed phase-in enforcement schedule through September 30, 2009, is described in the table below.

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

| I Present – March 2009 | II Beginning April 1, 2009 (or as soon thereafter as an electronic system is available) | III Beginning July 1, 2009 (approximate) |
|---|--|---|
| PPQ Plant Import Declaration Form will be available on Web site, and accepted after Dec. 15, 2008. Domestic and International Outreach | Harmonized Tariff Schedule (HTS) Chapters: Ch. 44 (wood & articles of wood) Ch. 6 (live trees, plants, bulbs, cut flowers, ornamental foliage, etc.) | HTS Chapters: Ch. 47 (wood pulp) Ch. 48 (paper & articles of) Ch. 92 (musical instruments) Ch. 94 (furniture) Plus chapters included in Phase II |

NOTE: Chapter descriptions are for ease of reference only.

*Declaration requirements are 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 these declaration requirements. See the Lacey Act regarding further exemptions.

After September 30, 2009, based on experience with the implementation of the electronic system for declaration data collection, we will phase in enforcement of the declaration requirements for additional chapters containing plants and plant products covered by the Lacey Act, including (but not limited to) Ch. 12 (oil seeds, misc. grain, seed, fruit, plant, etc.), Ch. 13 (gums, lacs, resins, vegetable saps, extracts, etc.), Ch. 14 (vegetable plaiting materials and products not elsewhere specified or included), Ch. 45 (cork and articles of), Ch. 46 (basket ware and wickerwork), Ch. 66 (umbrellas, walking sticks, riding crops), Ch. 82 (tools), Ch. 93 (guns), Ch. 95 (toys, games and sporting equipment), Ch. 96 (brooms, pencils, and buttons), and Ch. 97 (works of art). We will announce a specific phase-in schedule for those chapters in a subsequent Federal Register notice.

Information Collection

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), APHIS is currently seeking Office of Management and Budget emergency approval to collect information that the Lacey Act requires importers to include in the declaration and that is not already being collected for other purposes. APHIS is also requesting emergency approval of a paper form that may be used for declarations. The emergency approval will be valid for 6 months and will allow us to collect the information and make the paper form available for immediate use. Once we have this emergency approval, APHIS will publish a notice in the Federal Register announcing the availability of the paper form and soliciting comments from the public (as well as affected agencies) on these information collection requirements and stating our intention to request an extension of the 6-month approval.

Public Meeting

We are advising the public that we are hosting a public meeting on implementation of the amendments to the Lacey Act on October 14, 2008, from 10 a.m. to 12 p.m. The meeting will be held in the Jefferson Auditorium, South Agriculture Building, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC. Participants should enter the South Agriculture Building through the 7th wing entrance of the building located at Independence Avenue and 14th Street. Valid photo identification is required for clearance by building security personnel. Please arrive 30 minutes prior to the scheduled start of the meeting. The purpose of the meeting is to provide the public with information on the declaration requirements and declaration enforcement phase-in plan, enforcement of provisions that are already in effect, scope, and other related issues, as well as to provide the public with an opportunity to ask questions of the agencies involved in the implementation of the declaration requirements and enforcement of the Act.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

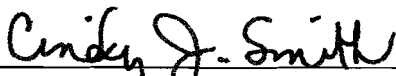
Additional meetings are likely to be held this winter near key port locations in the United States. We will announce the locations and dates of those meetings in the Federal Register.

Additional Information

APHIS will provide the latest information regarding the Lacey Act on our Web site, <http://www.aphis.usda.gov>. The Web site currently contains the Lacey Act, as amended; a Microsoft PowerPoint presentation covering background and context, new requirements, commodities and products covered, information on prohibitions, and the current status of implementation of the declaration requirements of the Lacey Act; frequently asked questions;

and the phase-in implementation plan. The Web site will be updated as new materials become available. Persons interested in receiving timely updates on APHIS' Lacey Act efforts should register for our stakeholder registry at <https://web01.aphis.usda.gov/PPQStakeWeb2.nsf> and select "Lacey Act Declaration" as a topic of interest.

Done in Washington, DC, this 3rd day of October 2008 .



Cindy J. Smith
Administrator, Animal and Plant Health Inspection Service.