

REPORT TO CONGRESS

Senate Committee on Agriculture, Nutrition, and Forestry
Senate Committee on Environment and Public Works,
House Committee on Agriculture,
and the House Committee on Natural Resources

With Respect To

Implementation of the 2008 Amendments to the Lacey Act

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1. INTRODUCTION AND OVERVIEW OF THE LACEY ACT

a. Introduction

The Lacey Act (16 U.S.C. 3371 et seq.), first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. The Act combats trafficking in illegally taken wildlife, fish, and plants. The Food, Conservation, and Energy Act of 2008, effective May 22, 2008, more commonly known as the 2008 Farm Bill, amended the Lacey Act by expanding its protections to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices).

As amended, the Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant taken in violation of any Federal, State, tribal, or 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 3372 of the 2008 amendments makes it unlawful to import certain plants and plant products without the submission of an import declaration. The declaration must contain 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.

The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) is responsible for implementing and administering the declaration requirement under the 2008 amendments. This report details that implementation process, as well as looks at what the data received by APHIS shows.

Implementation of the declaration requirement added by the 2008 amendments has been an evolving process – not just for the Agency, but for those in business and industry who are newly regulated. In implementing the 2008 amendments, APHIS has made it a priority to reduce the challenges business and industry face with compliance. The Agency has conducted outreach with those who would be impacted by the 2008 Amendments and has repeatedly solicited public comments to determine how to implement the declaration requirement in a way that meets the objectives of the Act and is manageable for the regulated community.

APHIS is committed to continuing to work with all its stakeholders as the implementation process moves forward in the future.

b. Review and Report Requirements

Section 3372(f)(4) of the 2008 amendments requires the Secretary of Agriculture to review implementation of each of the requirements imposed on importers who must file an import declaration for covered plants and plant products and the effect of the exclusion for packaging material provided for in Section 3372(f)(3). In conducting the review, the Secretary must provide public notice and an opportunity for comment. In

accordance with that requirement, APHIS published a notice in the Federal Register on February 28, 2011, to invite public comment. APHIS received 285 comments in response to that notice. Those, as well as comments received in response to earlier Federal Register notices relating to the implementation of the 2008 amendments, have been taken into account in the preparation of this report.

Section 3372(f)(5) of the amended Lacey Act requires the Secretary to submit a report to the appropriate committees of Congress that: 1) evaluates the effectiveness of the import declarations, and the various types of information required to be collected, in assisting with enforcement of the Act; 2) evaluates the potential to harmonize the import declaration requirement with other applicable import regulations already in existence; 3) provides recommendations for legislation to assist in the identification of plants that are imported into the United States in violation of the Act; and, 4) provides an analysis of the effect of the expanded prohibitions and the declaration requirement on the cost of legal plant imports and the extent and methodology of illegal logging practices and trafficking.

c. The Lacey Act's Plant Enforcement Provisions

i. Pre-Amendment

Prior to the 2008 amendments, the Lacey Act provided broad authority and strong enforcement tools to combat trafficking in illegally taken fish and wildlife, but only limited enforcement tools with respect to plants. The Act prohibited imports, exports, and other transactions in fish or wildlife taken, possessed, transported, or sold in violation of any State or foreign law. With respect to plants, however, the prohibitions applied only to plants taken, possessed, transported, or sold in violation of State law.

The Act's definition of "plant" was defined narrowly. Previously, it defined "plant" and "plants" as "any wild member of the plant kingdom, including roots, seeds, and other parts thereof (but excluding common food crops and cultivars) which is indigenous to any State and which is either (A) listed on an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), or (B) listed pursuant to any State law that provides for the conservation of species threatened with extinction." Thus, the pre-amendment Lacey Act only applied to plants native to the United States, which were listed in one of the three appendices to CITES or protected by a State law that conserves species threatened with extinction.

ii. Post-Amendment

The 2008 amendments added provisions making it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant or plant product taken, possessed, transported, or sold: (i) in violation of any law or regulation of any State, or any foreign law that protects plants or that regulates a variety of plant related offenses; (ii) without the payment of appropriate royalties, taxes, or stumpage fees; or (iii) in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants. In addition, the

definition of the term plant was changed to no longer require that a plant be indigenous to the United States and otherwise listed in CITES or a State endangered species law to be covered. Under the Act as amended, “plant” means: “Any wild member of the plant kingdom, including roots, seeds, parts or products thereof, and including trees from either natural or planted forest stands.”

There are three categories of plants that are exempt from the provisions of the Act: (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; and (3) plants that are to remain planted or to be planted or replanted. For exemptions (2) and (3), the amendments to the Lacey Act, including the declaration requirement, are still applicable if the plant is listed in an appendix to CITES; as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

Section 3376(a) of the 2008 amendments gives the Secretary of Agriculture and the Secretary of the Interior the authority to issue regulations necessary to carry out the Act. Section 3376(c) further requires the Secretary of Agriculture and the Secretary of the Interior, after consultation with appropriate agencies, to promulgate regulations to define certain terms used for the purposes of enforcement of the Act. Pursuant to that authority, on August 4, 2010, APHIS published a proposed rule in the Federal Register to establish definitions for “common cultivar” and “common food crop.” At the request of industry and interested organizations, APHIS extended the comment period on the proposed rule an additional 30 days beyond the initial period, and accepted comments through November 29, 2010. APHIS reviewed and addressed those comments as the agency prepared a final rule. The final rule is currently under review.

2. BACKGROUND AND OVERVIEW

a. The Import Declaration

i. Statutory Requirements

Section 3372(f) (1) of the 2008 amendments requires importers of certain plants and plant products to submit an import declaration upon importation of the product. The import declaration must contain the scientific name (genus and species) of any plant contained within the import, as well as a description of the value of the importation and the quantity, including the unit of measure, of the plant. Additionally, importers are required to provide the name of the country from which the plant was taken – which, with respect to plants, is defined by the Act as captured, killed, collected, harvested, cut, logged, or removed.

Section 3372(f)(2) provides, in cases where the species of plant making up the plant product being imported varies and the species used to produce the plant product is unknown, that the import declaration must list each possible species that may have been used to produce the plant product. Secondly, if the plant product being imported is made of plant species commonly harvested in more than one country, and the country from which the plant was taken and used to produce the plant product is unknown, the declaration must include the name of each country from which the plant may have been harvested. For paper and paperboard products with recycled plant content, the importer is not required to specify the species or country of harvest with respect to the recycled plant product component, but must provide the average percent recycled content in the product. If the product also contains non-recycled plant materials, the general import declaration requirements still apply to that component of the product.

Section 3372(f)(3) provides an exclusion from the import declaration requirement for plants used to produce packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported.

ii. Development of PPQ Form 505

Shortly after enactment of the 2008 amendments, an interagency group composed of representatives from various agencies having responsibilities relating to implementation or enforcement of the Lacey Act, as well as other interested agencies, began to meet. The interagency group discussed implementation of the Lacey Act's requirements, as well as a strategy for providing information and outreach on the Lacey Act's requirements to industry, interested nongovernmental organizations, and foreign governments. USDA designated APHIS as the lead agency with respect to implementation of the import declaration requirement for plants and plant products.

In consultation with other agencies, APHIS began to develop the declaration form: "PPQ Form 505 - Plant and Plant Product Declaration Form" (see Appendix A). It was quickly apparent that APHIS would need to collect more than the original four data fields

(scientific name, value, quantity, and country of harvest) in order to make the data useful for statistical and enforcement purposes. APHIS analyzed related governmental forms to determine the types of data needed to make the declaration function correctly, and to harmonize the requirements of the import declaration with existing Federal import requirements to the maximum extent possible.

In addition to the data fields specifically required by the statute, APHIS also added a series of fields to collect routine entry and importer information. These data points (Fields 1 through 9) are collected in order to track the shipment and importer information for enforcement purposes. These data correspond with data already required to make formal customs entry, and do not represent an additional requirement for information from importers. The “Description of Merchandise”, “HTSUS Number,” and “Article/Component of Article” fields (10, 11, and 13) are provided for categorization and organization of the data. Among other things, these fields make it possible to match a given plant declaration with a corresponding customs import record. The remaining fields (12, 14 15, 16, 17, and 18) are those specifically required in the statute. Each field was chosen for the statistical and enforcement value which it would provide. The only significant pieces of information APHIS collects on the import declaration that are not part of an existing Federal import requirement are those specifically called for by the 2008 amendments.

iii. Phase-In of Lacey Act Import Declaration

The Lacey Act, as amended, requires that importers of all covered plants and plant products file upon importation a plant import declaration. The quantity and value of imported products that require a declaration under the Lacey Act is large and diverse; goods containing plant material are included in at least 59 of the 99 chapters of the Harmonized Tariff Schedule of the United States (HTS), encompassing an estimated 5,000 types of goods. It is estimated that full enforcement would result in over 1 million import declarations per month. Given this scope, the interagency group recognized the benefits of a gradual approach to enforcement of the declaration requirement in order to allow affected industries and agencies time to comply and to help ensure that the declaration requirement did not, among other things, unintentionally or unnecessarily disrupt legal trade.

An initial plan for phased enforcement of the plant import declaration was published in the Federal Register in October 2008 (see 73 FR 58926), along with a request for public comments. This notice provided background information on the declaration requirement, including the prospective scope, and described a plan to delay enforcement of the requirement to allow for development of an electronic system to collect the data. That system was initially expected to be operational starting April 1, 2009. The notice also presented a “Proposed Phase-in Schedule of Enforcement of the Declaration Requirements for Goods of, or Containing, Plants or Plant Products” for the period December 15, 2008 to September 30, 2009. This schedule included an initial phase of voluntary compliance (phase I) coupled with domestic and international outreach to educate stakeholders about the 2008 amendments, including the declaration

requirement, and two additional phases (separated by three months) to start enforcement of the declaration requirement for goods in selected HTS chapters. The schedule proposed to focus initial enforcement on wood and wood products and certain live plants and related products. The notice also described a plan to expand enforcement to additional HTS chapters after September 2009, based on experience with implementation of the electronic system for collecting data. Finally, the notice announced a public meeting (held October 14, 2008) to provide information, answer questions, and receive comments.

The October 2008 notice generated 124 substantive comments from individuals, non-governmental organizations, commercial entities and associations (both domestic and foreign) and foreign governments. Those comments and further interagency review led to publication of a significantly revised plan for phased enforcement in February 2009 (see 74 FR 5911), with the first phase of enforcement (phase II) scheduled to begin on April 1, 2009. Revisions to the plan included extension of the period for each phase to 6 months from the original 3 months, and identification of the products to be covered in each phase at the HTS subheading level. The interagency group prioritized products for early phases that were comprised of less processed forms of wood as importers were more likely to have known the required information for these products prior to the enactment of the 2008 amendments and it is easier to identify by visual inspection characteristics such as species in less processed forms of wood. The notice also stated the intention to enforce the declaration only for formal consumption entries and only for the specific product being imported in order to exclude the need to file declarations for sundries that accompany products that may include plant material (such as tags, labels, and manuals). This notice generated 41 substantive comments, also from a wide range of domestic and foreign sources, including foreign governments.

Taking into account initial experience with enforcement of the declaration (phase II), as well as public comments on the two previous Federal Register notices, a further revised schedule was published in September 2009 (see 74 FR 45416). That notice provided a schedule for phasing in enforcement for goods in specified HTS headings and subheadings, and included changes to the list of goods scheduled for enforcement beginning in October 2009 (phase III) and April 2010 (phase IV). In particular, the revised schedule removed from the planned phases products composed solely of composite, recycled, or reused materials to take into account numerous comments asserting that identification of the genus and species of wood in such products would be difficult or, in some cases, impossible.

Including the initial voluntary compliance period (phase I), there have been four implementation phases for the plant import declaration to date; the fourth phase began on April 1, 2010. The categories of goods included for each of these phases were based on a recognition of the benefits of initially implementing the declaration for relatively less complex goods (for which the information required in the plant import declaration should be more readily available) and public comments that identified potential implementation problems in providing the information required for certain types of products. The overarching objective has been to implement the declaration consistent with the

requirements and objectives of the statute, while at the same time minimizing the possibility of unintended disruption to legal commerce.

Since phase IV, APHIS has focused on completion of the Common Food Crop and Common Cultivar rulemaking required by the Act, the preparation of this report, and examining ways to lessen the administrative burden on the Agency. APHIS will provide six months advance notice prior to commencing enforcement of the declaration requirement with respect to additional HTS categories of plant products, as per the notice APHIS previously published in the Federal Register.

iv. Data on Declarations Received

Since 2009, APHIS has received approximately 1.4 million import declarations. There are now nearly 40,000 declarations being filed monthly, as compared to about 10,000 declarations per month during the initial enforcement phase. Cumulatively, more than 17 percent of the declarations have been filed as paper documents. The proportion of declarations filed electronically has increased over time, although paper declarations still account for about 13 percent of all declarations filed. An estimated 5 percent of the records included in the declarations are for products that are not currently on the enforcement schedule.

Overall, APHIS has identified significant issues with compliance with the declaration requirement thus far. Based on a review of customs data by HTS code, there appear to be a substantial number of import entries for which Lacey Act import declarations have not been filed as required. Many of the declarations filed contain misspellings, misplaced fields, or other errors. Approximately 15 percent of the electronic declarations appear to be missing information on genus, species, or country of harvest. Similarly, 32 percent of the paper declarations appear to be missing at least one piece of information (e.g., entry number, genus, species, or country of harvest).

When it has identified errors such as these, APHIS has made an effort to work with companies directly to explain the declaration requirement, answer their questions, and assist them with filling out the declaration. APHIS has also participated in many industry and trade outreach events to educate businesses about requirements under the Lacey Act. Some of those are detailed more in Section 2d.

b. Implementation Challenges

While APHIS has made steady progress on the implementation of the Lacey Act declaration requirement, numerous challenges and issues have been identified or alleged, owing to the complexities of the importation process, the need for industry to build transparency into its production and supply chains where it may have not previously existed, the large number of Federal agencies that have a stake in the amendments to the Lacey Act, and the desire to minimize any potential burden to legal commerce, among other issues. APHIS and other members of the interagency group

continue to meet to identify and implement solutions where necessary, as well as to ensure that the phase-in of enforcement occurs as smoothly as possible.

i. Pilot Program on Blanket Declarations

There was an initial concern that the plant import declaration requirement would be an impediment to Customs and Border Protection's (CBP) expedited release program, as certain shipments that are otherwise pre-cleared to cross the border would instead need to be halted while Lacey Act declarations were presented to CBP officials. This concern led to a brief delay (from April 1, 2009 to May 1, 2009) of the first phase of the declaration enforcement schedule. This delay allowed APHIS to establish a pilot program for participants in CBP's expedited border release programs, Automated Line Release (ALR) and Border Release Advance Screening and Selectivity (BRASS). These programs were selected for the pilot program because of the magnitude of relevant imports under these programs (consisting primarily of lumber imported from Canada). The pilot program was intended to test the feasibility and practicality of collecting the information required through the use of a periodic "blanket" declaration, with monthly reconciliation reports.

The pilot program for blanket declarations, however, does not appear to have proven particularly useful. Although over 120 firms registered for the program at the inception, only 70 registrants have actually filed and reconciled their blanket declarations, and not all of those reconciliations have been consistent with the parameters of the pilot program. While the requirement called for monthly reconciliations, some filers have only reconciled once, and others not at all. Surveys conducted in 2011 by APHIS indicate that many of the participants are unsatisfied with the blanket declaration process and consider it to be a duplication of effort. The program has not accomplished what APHIS or companies had hoped, and APHIS is considering the cancellation of the blanket declarations in favor of allowing BRASS and ALR participants to submit their declarations at the same time they submit their entry information. Should APHIS decide to cancel the program, it would provide a minimum of six months of notice to allow companies time to begin filing under the regular process.

ii. Administrative Challenges

Until Fiscal Year 2012, APHIS had not received funding specific to the implementation of the Lacey Act, and has devoted resources from existing programs, despite the many competing priorities in the Agency, and APHIS' primary mission of protecting American agriculture and natural resources from animal and plant pests and diseases.

Approximately 40,000 declarations are filed per month. APHIS continues to receive, on average, 5,000 paper declarations per month – roughly 240 per work day. The large number of paper forms creates a large administrative burden for APHIS.

Importers are required to file a declaration upon importation, with the option of submitting the import declaration either electronically or through the mail. In the case of an importer

who uses the PPQ 505 paper form, APHIS's instructions on the Lacey Act website advise that importers should make the paper form available should CBP want to review it at the port of entry. After clearing customs, importers are advised to mail the form to APHIS. In practice, most paper declarations are filed promptly, typically within several days, but APHIS has received some declarations weeks and months after the importation.

APHIS has been limited in its ability to manage paper declarations due to the lack of appropriated resources. When APHIS receives a paper declaration, the Agency files it in a storage box, ordered by the date of receipt, not the date of importation. Each box holds roughly 1,000 declarations, and roughly corresponds to one week's worth of declarations. Under this approach, individual paper declarations may be found by searching through just a few boxes at most. The alternative of filing by date of importation would result in substantive filing challenges. The boxes containing the declarations are stored in a secure location on USDA property. Prior to storage, the documents have not been processed or digitally scanned due to a lack of resources. However, if individual declarations need to be found, the arrangement by date enables government personnel to find the declaration submitted for a particular entry. For immediate access, in order to increase their utility for enforcement purposes, these forms would need to be electronically processed, and the Agency is considering this as a possibility now that it has received some appropriated funding. APHIS is also examining the possibility of secure document storage provided by private companies.

As the range of products covered by the import declaration requirement expands, the number of paper declarations will also increase. Handling the large number of paper declarations already is a challenge for APHIS, and a significant increase in paper declarations filed, as will occur under full enforcement of the requirement, would provide a substantial administrative challenge for APHIS in ways – including physical space and staff time – that electronic declarations do not.

Import declarations that are filed electronically are filed through CBP using the Automated Broker Interface (ABI). In FY 2009, APHIS provided CBP with \$325,000 to program the system to accept Lacey Act declaration data elements, and CBP began collecting electronic declarations on May 1, 2009.

Most importers use a customs broker who assists the importer with complying with all import requirements, such as filling out necessary forms properly and handling fees and charges related to the process. A CBP-authorized customs broker assists importers by entering required information into CBP's electronic systems. However, it is a standard practice for many customs brokers to charge importers per line of data submitted. In certain circumstances, submitting a Lacey Act import declaration electronically through a broker can be more costly for an importer than submitting a paper declaration. For example, when an importer does not know the genus and species or country of harvest of a plant product, he or she must provide all possible genera and species or all possible countries of harvest, which may comprise many lines of data and, hence, result in higher fees to be paid by the importer to the customs broker. Costs related to electronic filing in

such instances create an economic disincentive for many importers to file declarations electronically through CBP's system, especially when compared to the minimal costs of compliance incurred when submitting the PPQ 505 paper form.

Every Wednesday, CBP downloads Lacey Act declaration data from its system and physically ships CDs containing the data to APHIS. APHIS, in turn, loads the data onto the computer system APHIS uses to track Lacey Act declarations. There is no instantaneous processing of data from one system to the other; the current process requires several manual steps. Consequently, there is usually a lag between the time a shipment is imported, and the earliest time that APHIS receives information about the import declaration.

As an illustration, assume a shipment is entered with an electronic import declaration on a Thursday, a day after the weekly data download occurred. That entry would not be reflected in the electronic information sent to APHIS until the following Wednesday's data download. Given the time it takes to then transfer the data into APHIS' system, it could be over a week after the shipment is entered before APHIS would be able to examine the data. By that time, the imported good has most likely entered the stream of commerce and tracking it down, should enforcement actions need to be taken, becomes increasingly difficult.

There have been difficulties associated with transferring information electronically between CBP's and APHIS's systems. Initially there were privacy concerns over sharing business information collected by one agency for use by another. There were also difficulties in having the data downloaded from CBP's system available in a format that could work with other computer systems. In late 2010, APHIS discovered that some (approximately 118,000 declarations) of the import declaration data transferred from CBP were missing information. In cases where multiple entries for genus and species or country of harvest were entered into the declaration, the program that transfers the data from CBP's system was not picking up all the available data from each entry. APHIS and CBP have subsequently worked to ensure that the data being shared is consistent with what was filed electronically, and APHIS now receives the correct number of electronic records, and has worked to update incomplete entries previously filed. Furthermore, in the process of fixing the missing records, APHIS and CBP discovered a discrepancy in the collection and/or transmittal of the "Quantity of Plant Material" field. APHIS and CBP have fixed the data transfer issue.

APHIS had available \$775,000 for implementation of the Lacey Act in FY 2012 – the first time the Agency has received appropriated money for the program. In FY 2013, the Agency received \$716,000. APHIS is using these funds to pay for 3 full-time staff and for additional help, as needed. Funding will also allow APHIS to rent a secure, climate-controlled storage facility for the numerous paper declarations that have been filed, and to educate industries and importers affected by the Lacey Act amendments.

The 2014 President's Budget requests additional resources. With these additional dollars, the program will work to implement a web-based system for collecting and maintaining declarations to help eliminate the need for paper-based declarations. In

addition, APHIS plans to reassign staff from other areas to assist with Lacey Act activities and expand the outreach effort. With the requested increase, the program anticipates selecting 2-3 percent of the declarations for review. The remaining declarations will be stored.

iii. Enforcement Challenges

APHIS' role with respect to enforcement of the 2008 amendments relates to the administration and enforcement by collecting declarations and helping to enforce the declaration requirement.

Ideal enforcement of the import declaration requirement requires an enhanced presence at the port of entry. In an ideal system, goods subject to the import declaration would be screened at the port of entry to ensure compliance with the import declaration requirement.

However, APHIS now typically receives the import declaration 5 to 10 days after entry. Then, APHIS files them, and they are available for review by the Agency or by our enforcement partners. Owing to the lack of appropriated dollars before FY 2012, APHIS has monitored a limited number of these declarations for compliance and has sought to assist compliance. The requested increase in the FY 2014 President's Budget would further allow APHIS to expand its ability to monitor and promote compliance.

c. Issues Affecting the Import Declaration

i. Genus and Species

Commenters on APHIS' Federal Register notices have stated that the requirement for importers to provide the scientific name (genus and species) of imported plants and plant products in the Lacey Act declarations has presented challenges. A key issue reported by some commenters has been the difficulty in locating sources of information that provide scientific names for the products being imported and declared. APHIS has provided a list of websites which it considers reliable sources to look up the scientific names of some plants.

For many goods for which the declaration requirement already is being enforced, declaring the genus and species has not been problematic. This is likely attributable to the fact that we began enforcement of the declaration requirement with respect to relatively less complex products for which there are a relatively small number of species utilized, as well as the relatively small number of affected industries. This has allowed APHIS and its partners to tightly focus outreach and education efforts.

Nonetheless, genus and species information has either not been declared, or has been improperly declared in at least five percent of the overall filings, representing a significant number of declarations. The reasons for these omissions or errors may include problems in identifying the species as well as deliberate misidentification. Regarding problems

with identification, technologies continue to be developed which have the potential to mitigate this problem.

In addition, some commenters have suggested that there will be challenges faced in reporting the scientific name of the plant species for particular products where the genus is obvious, but there are many species potentially used. In this circumstance, the Act requires that all possible species be declared. As plant products in more HTS codes are phased in for enforcement, the commenters assert that there will be instances in which importers may be required to list a large number of possible species on declarations, particularly where multiple genera of plants are used in making the product. Since the fee that brokers charge importers for filing declarations is based on the number of lines of text, importers may find that filing electronic declarations for such products is cost prohibitive, and that it is less costly to simply file paper declarations. Furthermore, since the current electronic declaration form does not provide filers with an unlimited number of lines to report Lacey Act declaration data, some importers would break each shipment into multiple entries, further increasing their costs. As a result, having to identify a large number of potential species used in a product may result in a substantial increase in the number of paper declarations being filed, as well as the size of each of those declarations. Because the current quantity of paper declarations presents a significant challenge for APHIS, any increase in filing of paper declarations would be problematic from an administrative standpoint.

Several commenters suggested that APHIS allow importers to provide only the genus name in circumstances where all possible species would otherwise have to be listed. They contended the long list of possible species would be of little value to the Federal Government and its ability to enforce the broader provisions of the Act, and that it would result in significantly greater filing costs for them.

In response to those types of concerns, APHIS has built flexibility into the implementation process to make it easier for business and industry to comply. For example, APHIS has made a special use code available for one type of common trade grouping: Spruce Pine Fir (SPF). SPF is a common grade of lumber manufactured from varying proportions of spruce, pine, or fir species. SPF imports are a combination of several distinct species, but identifying the particular species in any individual shipment would be difficult. APHIS allows the special use code "SPF" to represent all possible species on the PPQ 505 import declaration form.

APHIS has sought public comments on other possible trade groupings that could be used to streamline the process for importers. APHIS has only received a small number of other suggestions.

Other commenters have asserted that identification of the genus and species or country of harvest of such wood comprising composite wood products such as medium density fiberboard, particleboard, and paper/paperboard may be difficult. To provide industry with time to sort through its sourcing issues in this regard, APHIS has provided guidance to importers on its website advising that if an importer of such materials is unable,

through the exercise of due care, to determine the genus, species, and/or country of harvest of such materials, the importer may use the applicable Special Use Codes set forth in the guidance. Pursuant to the guidance, the genus for such products may be identified as "Special." The species of medium density fiberboard, particle board, and paper/paperboard may be identified as "composite" under current APHIS guidance. APHIS provided similar guidance for recycled, reused, and reclaimed wood materials. The species of recycled plant materials may be identified as "recycled," and the species of reused materials identified as "reused," and the species of reclaimed materials may be identified as "reclaimed."

APHIS also provided guidance for importers of goods manufactured prior to the effective date of the 2008 amendments. If importers of such items manufactured prior to May 22, 2008, are unable, through the exercise of due care, to determine the genus or species of the plant materials contained in that item, the importer should use the Special Use Code "PreAmendment." If a product is not manufactured entirely prior to May 22, 2008, the importer must declare the genus, species, and country of harvest of all product components manufactured after that date.

APHIS noted that importers will know the country of harvest for many such entries and, if so, that information must be provided in the declaration. If circumstances are such that the country of harvest is unknown, each country from which the plant material may have been taken must be listed as required under the statute. However, if this list would include more than 10 countries, a Special Use Code of "***" (two asterisks) may be used.

The guidance document provides that if the Special Use Codes listed in it are used properly (truthfully, accurately, completely, and appropriately pursuant to the guidance) in a declaration form that is otherwise in compliance with the requirements of the Lacey Act, APHIS would probably not refer for prosecution or take any enforcement action with respect to a declaration based on the omission of specific information covered by the guidance.

ii. Country of Harvest

Feedback during outreach events, and other contact with industry has revealed that there is a certain amount of confusion regarding the country of harvest element of the import declaration. The Lacey Act requires country of harvest, but country of origin is a customs-defined requirement for any article being imported into the United States. Country of origin is often determined by where a product is manufactured, rather than where the raw materials were obtained.

APHIS has provided instruction information on the Lacey Act page on the APHIS website, and has communicated the need to provide country of harvest on the Lacey Act declaration to businesses and industry. Nevertheless, based on a review of the import declaration data collected, it appears that in some cases, particularly with respect to more complex HTS headings such as 4421 (miscellaneous items such as blinds, skewers, fencing and edge-glued lumber) and 4418 (items such as doors, shingles, and

certain flooring), importers may be reporting country of origin or manufacture for goods, instead of country of harvest.

On some declarations the indicated country of harvest is clearly not where the reported species was harvested, but may be where the product was manufactured. For example, APHIS has received import declarations declaring products made of American walnut that listed China (where the product was manufactured) as the country of harvest.

Approximately 1.7% of current electronic declarations have a blank value for the country of harvest field. APHIS has noticed that as the declaration is being enforced on more complex products (Phase IV as compared to earlier phases) that the quantity of blank entries for country of harvest appears to be increasing.

For those declarations with information on country of harvest, 86% report a single country, 9% report two countries, and 4% report three or more countries. Thus far, Canada is listed as the country of harvest in the majority of declarations. Beyond the large amount of imports from Canada, in general, this may be due to the phase-in schedule; to date, more products of the type Canada exports (e.g., SPF lumber) occur within the HTS codes as to which the declaration requirement is being enforced.

Of note, the United States is listed second most frequently as the Country of Harvest. This may be explained by the large amount of wood that the United States exports to other countries to be manufactured into goods brought back into the United States.

iii. Value

About 46% of the electronic declarations that APHIS has analyzed are missing accurate information on value. This makes it impossible to accurately reconcile the cumulative value reported on electronic import declarations with the value reported for customs purposes.

A large part of the problem appears to be the result of inaccurate electronic data due to the limitations of the electronic collection system. In some cases, data from adjacent fields appears in the value field. Other possible reasons for the high error rate include repeat value information being listed by importers for multiple products or total shipments, or input errors.

While APHIS has made some effort to isolate the data problem, the extent of the errors is sufficiently large, so as to preclude any meaningful analysis of the value information included in the import declarations submitted to date.

The value of imports for which an import declaration currently is required is estimated at approximately \$3.2 billion per quarter. When enforcement of the import declaration requirement is fully phased in, it is estimated that the quarterly value of imports subject to the import declaration requirement would rise to approximately \$22.4 billion.

iv. Quantity

APHIS initially allowed a substantial amount of flexibility with regard to the reporting of quantity or unit of measure on the Lacey Act import declaration. This was done to ensure consistency, to the greatest extent possible, with quantity reporting requirements for customs purposes, so as to minimize any potential burden on industry.

However, after a period of time, it became clear that there was no direct correlation between quantity units such as the count of items being imported, and the quantity of plant material being reported on the PPQ Form 505. Item counts do not allow for differences in size or weight between items, nor do they accurately reflect the actual plant content in a shipment. In response, and in an effort to create a more uniform and useable database, APHIS provided guidance dated May 6, 2010, stating that quantity units, such as counts of items (pieces, numbers, boxes, etc.) would no longer be accepted as valid units of measure on PPQ Form 505. APHIS requires that plant material quantities be reported on the declaration using standardized metric units (kg, m, m², m³). The values should reflect the actual plant content in the product and not necessarily the product as a whole.

APHIS anticipates that actual measures of plants or plant products will provide more relevant information for the purposes of the plant declaration, and potentially for enforcement purposes.

v. Paper and Paperboard Which Contains Recycled Material

Section 3372(f) (2) (C) of the Lacey Act provides that a declaration relating to a plant product shall “in the case in which a paper or paperboard plant product includes recycled plant product, contain the average percent recycled content without regard for the species or country of origin of the recycled plant product, in addition to the information for the non-recycled plant content otherwise required by this subsection.” To date, few such declarations have been submitted, since import declarations for paper and paperboard products are not required under the current import declaration schedule. However, when the declaration requirement for paper and paperboard products with recycled plant content is implemented, importers 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.

d. Outreach Efforts

Since the enactment of the 2008 amendments, the U.S. Government has undertaken substantial public outreach efforts, both domestically and internationally, to inform and educate importers, producers, suppliers, and foreign governments on the requirements of the Lacey Act. These efforts are summarized below.

Domestic Outreach: APHIS leads Lacey Act illegal logging outreach efforts in the United States. Serving as the public's primary point of contact on the Lacey Act, APHIS staff answers dozens of telephone and email inquiries a day from members of the public seeking guidance on the Lacey Act. These inquiries help to guide APHIS' outreach efforts, which range from basic explanations of the Lacey Act's requirements to detailed discussions on how to report composite wood products on the import declaration form.

To assist the public in understanding the Lacey Act, APHIS has developed a dedicated website (http://www.aphis.usda.gov/plant_health/lacey_act/), which contains extensive Lacey Act materials. This online library includes an in-depth primer on the 2008 amendments and provides links to relevant documents, including the PPQ 505 import declaration form, relevant Federal Register notices and the import declaration enforcement schedule. The website contains a regularly updated list of FAQs and it provides a point of contact for additional information. The website offers specific guidance on a variety of issues that importers, producers, and consumers have raised in public comments. These include the usage of common trade groupings in the import declaration; guidance on filling out the import declaration for composite, recycled and reused wood products; and a tool to identify the genus and species of wood products.

APHIS and other U.S. Government agencies, including the Department of State, U.S. Agency for International Development (USAID), the Department of Justice (DOJ), the U.S. Forest Service (USFS), U.S. Fish and Wildlife Service (USFWS), CBP, and the Office of the U.S. Trade Representative (USTR) also have participated in a variety of events that broaden the public's understanding of the Lacey Act. Outreach extends to industry trade groups, professional forestry organizations, non-governmental organizations, legal professionals, companies, and other U.S. Government agencies, and includes events that have taken place throughout the United States. Examples include meetings of the Midwest International Trade Association, the Trade Support Network, the Treated Wood Council, the Customs Brokers and Freight Forwarders Association, the Global Forest Trade Network-North America, and the International Wood Products Association. CBP Headquarters and ports of entry personnel respond to inquiries from the trade community on a daily basis, referring importers with non-routine questions to APHIS for official guidance. Other outreach activities include U.S. Government participation in events such as meetings of the Potomac Forum on Illegal Logging and Associated Trade and the Environmental Law Institute.

International Outreach: The U.S. Government has provided extensive international outreach to describe and explain the requirements of the Lacey Act to foreign governments, industry, and civil society. USAID, the State Department, APHIS, CBP, USFS, USTR and DOJ regularly educate foreign government officials, industry associations and companies, non-governmental organizations, and the public on the Lacey Act. This outreach has included meetings with foreign government officials and private sector representatives in the United States, as well as a range of outreach activities overseas, including training programs, seminars, workshops, round tables, commercial trade fairs, environmental and trade meetings, and other similar activities. These activities have taken place in a number of countries, including China, Russia,

Indonesia, Malaysia, Vietnam, Brazil, Mexico, Peru, Guyana, the Democratic Republic of the Congo, Ghana, and several European countries, and at various bodies of the United Nations.

Of particular note, USAID and its partners has provided extensive Lacey Act training through two multi-country, public-private partnerships: the Responsible Asia Forest and Trade (RAFT) program and the ongoing Forest Legality Alliance (FLA).

The RAFT program, initially funded by USAID from 2006-2010, continued with support from the State Department and now funded in a second phase by Australia with U.S. cooperation, works with producers and foreign government officials to improve forest management practices and legal frameworks in eight Asian countries, including China, Indonesia, Thailand, and Vietnam. In 2010, the RAFT program conducted 16 training workshops for foreign government officials, industry representatives, and civil society on the Lacey Act in key cities in China, Indonesia, Malaysia, and Vietnam with the participation of personnel from DOJ, USTR, and USFS. The RAFT program also produced a training guide in five languages and widely distributed the guide in China and a number of countries in South East Asia. The guide contains general information on the Lacey Act, addresses all aspects of supply chain management, and provides practical guidance to exporters on relevant local laws.

The FLA is a partnership between USAID and several U.S. industry associations, companies, and non-governmental organizations, which USAID launched in 2010. These partners work jointly on developing technical tools and sourcing strategies that can be implemented across sectors involved in forest products trade. These tools include a wood legality guide in several languages, a risk management information tool for buyers, and a Lacey Act import declaration tool to facilitate Lacey Act compliance for importers. The FLA also supports case studies, conducts public training sessions, and provides recommendations to the private sector on meeting Lacey Act requirements.

In addition, USAID has provided funding to USFS to carry out Lacey Act workshops in Africa and Asia to share information on the latest advances in wood identification technology and traceability. The State Department has provided funds to USFS to work with universities and the private sector to develop a hand-held, easy-to-use electronic tool to help law enforcement and other users identify wood genus and species more quickly and accurately. USAID and the State Department are supporting additional science-based innovation aimed at expanding our understanding of the viability of DNA technology in wood identification. The development of these wood identification technologies is expected to improve supply chain management and law enforcement, which, in turn, will help promote compliance with the Lacey Act.

With financial assistance from the Department of State and USAID, DOJ has conducted extensive training programs and outreach in several countries, including Indonesia, China, Malaysia, Russia, Peru, Honduras and Brazil, with the purpose of strengthening the capacity of foreign government forestry officials, prosecutors, and other law

enforcement officials to investigate and bring enforcement actions for illegal timber harvesting, thereby promoting compliance with the Lacey Act.

e. Public Input

Throughout the implementation process, APHIS has actively solicited comments from the public on how best to administer the program to balance the needs of businesses and industry with the need to implement the statutory requirements. For example, several times, APHIS has adjusted the phased enforcement schedule to address concerns raised by businesses and industry associations. Section 2a of this report details how APHIS has taken public comments into account in the implementation of the declaration requirements.

Beyond that, APHIS, in its Federal Register notices, has solicited comments on other issues related to Lacey Act implementation. In response to the October 2008 notice, several commenters pointed out possible difficulties in identifying the genus, species, and country of harvest for composite, recycled, or reused material, such as medium density fiberboard and scrap wood. Consequently, we removed those products from the proposed phase-in schedule with the intention of adding them later when we had more time to evaluate options for implementing the declaration requirement for those products.

Several commenters also requested that APHIS consider the use of blanket declarations instead of shipment-by-shipment declarations. Blanket declarations were proposed for routine or repeat shipments. Commenters noted that this type of declaration would reduce the paperwork burden on affected entities, and reduce costs. APHIS developed a pilot program on blanket declarations for participants in CBP's Automated Line Release and Border Release Advance Screening and Selectivity programs, as described in section 2b.

Other commenters suggested that APHIS allow importers to provide only the genus name in circumstances where the individual species may be numerous or allegedly difficult to identify. Some contended that trying to identify individual species can sometimes be impossible, and that there are genera that would require the listing of dozens or even hundreds of possible species. In some comments, commenters asked that APHIS allow for the use of common nomenclature for species identification. It was recommended that APHIS develop a list of shorthand designations that would satisfy the requirement to provide genus and species information for common nomenclature groups. APHIS considered the recommendation, and developed guidance on the usage of common trade groups, which is discussed in Section 2c.

Section 3372(f)(4) of the Lacey Act, which requires the Secretary to conduct a review of implementation of the declaration requirement, also specifies that the Secretary shall provide the public with notice and the opportunity for comment on the review. In accordance with that provision, APHIS published a Federal Notice on February 28, 2011, (76 FR 10874) to solicit comments.

APHIS received 26 comments on this Notice, and a summary of the comments received is included in Appendix B. A number of commenters asked that specific products be exempt from the declaration requirement.

Several stakeholders raised the need for a de minimis exemption to the declaration requirement of the Lacey Act. APHIS published an Advanced Notice of Proposed Rulemaking on June 30, 2011, that requested input on how to advance a de minimis exemption. The Agency is currently reviewing those comments and deciding how to proceed.

There has also been considerable attention to issues surrounding the date of manufacture and the requirement that products manufactured after the date of enactment require compliance with the Act, even if they were made from plants harvested before the law's enactment. As an example of this issue, APHIS has heard regularly from luthiers who manufacture artisan stringed instruments. Many of them have stores of tropical hardwoods that were imported into the United States before the 2008 amendments to the Lacey Act were enacted, and they are concerned about the applicability of the Lacey Act declaration requirements and enforcement provisions to musical instruments made out of such wood.

With respect to the applicability of the declaration requirement to such wood, since the wood was in the country prior to enactment of the 2008 amendments, the owners of such wood need not file a Lacey Act declaration for it. Furthermore, if the wood is made into a musical instrument and the owner of the instrument travels internationally and re-enters the country with the instrument as part of his or her personal baggage, that owner would not need to submit a Lacey Act declaration for the instrument upon entry into the United States because APHIS is not requiring the submission of a Lacey Act declaration for such informal entries.

It is also important to note that both DOJ and the USFWS have issued statements that citizens traveling with their musical instruments are not an enforcement priority. Finally, with respect to the applicability of the Lacey Act's enforcement provisions to stockpiles of wood harvested and imported into the United States prior to the 2008 Lacey Act amendments, it is true that the statute does in fact apply to all wood illegally harvested prior to the 2008 amendments if someone "imports, exports, sells, receives, acquires, or purchases" such wood after May 22, 2008. Enforcement agencies are currently examining this issue to determine if there are administrative steps that they might take to address concerns with respect to wood purchased and imported prior to the 2008 amendments.

3. STATUTORY REPORTING REQUIREMENTS

The Lacey Act, as amended, sets forth four topics that this report is to address: (1) an evaluation of the effectiveness of each type of information required in the import declaration in assisting enforcement; (2) an evaluation of the potential to harmonize the plant declaration requirements with other applicable import regulations; (3) recommendations for such legislation as the Secretary determines to be appropriate to assist in the identification of plants that are imported into the United States in violation of the Act; and (4) an analysis of the effect of the import prohibition and the import declaration on the cost of legal plant imports, and the extent and methodology of illegal logging practices and trafficking.

a. Effectiveness of Each Type of Information Required in the Import Declaration in Assisting Enforcement

The import declaration requires the following four pieces of information: (1) genus and species of plant materials; (2) country of harvest; (3) quantity of plant material; and (4) value of the import. Any evaluation of the effectiveness of each type of information for enforcement at this point is limited by three factors previously discussed: (1) enforcement of the declaration requirement is being phased in, resulting in a limited set of products for which any information has been collected to date; (2) software glitches and other start up difficulties have further limited the ability to analyze the compilations of the existing data with any degree of certainty; and (3) Privacy Act concerns delayed the sharing of data among implementing Agencies.

Genus, species and country of harvest: The limiting factors previously identified have made it impossible to analyze the compiled information on genus, species, and country of harvest included in all of the declarations filed to date and to form meaningful conclusions about the utility of the data as a whole in assisting enforcement. However, it is possible to provide examples of how data set forth in individual declarations is useful for enforcement of the Lacey Act even within the current analysis limitations. First, it is possible to flag for further review or investigation specific shipments as to which questions arise based on information provided in the declarations filed for those shipments. For example, importers have sometimes identified the genus, species, and country of harvest of a plant product being imported on the Lacey declaration, and government officials could flag the declaration because the designated country of harvest is known to contain neither wild nor plantation populations of the identified species of plant. Such a discrepancy is of particular concern where other countries in the region may have placed restrictions on trade or harvest of the particular species of plant that was identified, and may indicate that illegally harvested timber is being “laundered” through the country of export. Enforcement agencies can use information on declarations to target their limited enforcement resources on imports with a higher likelihood of illegality. For instance, the inclusion of the information on a declaration in an attempt to conceal the actual country of harvest would likely trigger action on the part of the enforcement agencies.

Thus, while we are currently limited in providing a more comprehensive analysis of the data submitted on Lacey Act declarations identifying genus, species, and country of harvest, we are able to state that enforcement officials can target particular investigations based on inclusion of these data on Lacey Act declarations.

Quantity of plant material and value of import: The effectiveness of the quantity information cannot be assessed for two reasons. First, importers were initially provided broad discretion in the unit of measure that they used to identify quantity, resulting in declarations using a count of the number of items (desk, plank, etc.) being imported as the unit of measure, rather than identifying the weight or volume of plant materials contained in the import. This lack of uniformity in how to identify the quantity of plant material being imported was remedied through new guidance from APHIS.

Second, one of the software glitches that has been recently identified revealed that where more than one species or country of harvest was listed on an electronically filed declaration and a separate quantity was listed for each identified species or country of harvest, only the quantity identified for the first listed genus or country of harvest was being captured for APHIS's data purposes.

The value of the import is of less importance overall because it is, per the language of the statute, being provided for the shipment as a whole, not just the plant material therein and because it is redundant of information provided in other customs documents.

b. Evaluation of the Potential to Harmonize Each Requirement in the Import Declaration with Other Applicable Import Regulations

In developing the import declaration, APHIS looked to other similar forms to harmonize the requirements as much as possible so as to minimize the burden on business and industry. For electronic declarations, APHIS was able to build the import declaration into CBP's existing systems. With respect to paper declarations, a separate form must still be filled out, as is the case with other types of entry paperwork, such as CITES permits, wildlife declarations, or phytosanitary documentation. Given the eventual increased volume of paper declarations, alternative systems for electronic filing, such as the electronic customs harmonized system within ITDS, will need to be utilized. See Section 2(a) ii for more details on how APHIS harmonized required declarations data with existing Federal import requirements.

c. Recommendations to Assist in the Identification of Plants that are Imported into the United States in Violation of this Section

As discussed in Section 2c of this report, some importers have discussed the difficulty they have had with identifying plants and plant products. That section also details the efforts we have made to simplify the declaration process, where appropriate, to ensure the 2008 amendments do not hamper legitimate trade. As discussed in that section, the special use designation allow commonly traded products traded under a specific and recognized shorthand name to be listed as a species grouping on the import declaration,

instead of requiring a long list of all possible genus and species. Additionally, the special use guidance assists with the importation for composite, recycled, reused or reclaimed materials further simplifying the identification process for some importers. APHIS will continue to use its existing flexibilities to make the effects of the 2008 Amendments easier on legal trade and industry, and accordingly, we have no recommendations to assist with identification at this time.

d. Effect of the Prohibition and Import Declaration on the Cost of Legal Plant Imports and Effect of the Prohibition and Import Declaration on the Extent and Methodology of Illegal Logging Practices and Trafficking

No specific cost figures are available regarding the effects of the declaration on the cost of legal plant imports. This is in part due to a lack of resources initially to collect the data and conduct the analysis, as well as difficulties in providing a true picture due to the phased in enforcement. Additionally, APHIS did not receive meaningful information related to costs of compliance from affected industries when APHIS solicited public comments for this review.

As part of the rulemaking process for the common food crop and common cultivar rule, the Agency developed an economic analysis that included the estimated cost of compliance of the declaration requirement. Although APHIS, because of the phased implementation approach, does not currently require declarations for the majority of these types of products the analysis found that 5 percent of the declarations APHIS currently receives include those types of products. Based upon the labor costs related to collect and maintain data to complete and review the declaration, the costs of filing the declaration – whether through postage or electronic fees – as well as the government's costs in processing those declarations, the analysis found that the costs associated with the declarations for these products is between \$900,000 and \$2.8 million per year. Presumably some of these costs are being passed on to consumers or being absorbed by industry as an additional business expense. As the common food crop and common cultivar rule clarifies the responsibility of importers, and clearly removes these costs, the removed costs can be viewed as a benefit of the rulemaking.

Information on the effect of the prohibition and the import declaration on the extent and methodology of illegal logging practices and trafficking is very limited. Although the 2008 amendments have generated considerable interest, there is no resource available which provides verifiable information that could be used to determine whether the Act has led to a reduction in the level of illegal logging and trafficking.

As discussed in Section 2d, the U.S. Government has engaged in extensive outreach activities regarding the amended Lacey Act. This outreach has included numerous meetings and consultations with foreign governments, industry, and the public. Through this engagement, it is apparent that the enactment of the amendments to the Lacey Act has raised awareness of the significance of illegal logging and associated trade, and actions by both government and the private sector to combat it. In addition, anecdotal reports indicate that entities that trade in imported wood and other plant products are

increasing their efforts to understand the source and legality of the wood products that they trade in, and to ensure that their wood products are legally sourced, leading to increased transparency in the international trade in wood products. Moreover, some individual commercial entities, industry associations, and non-governmental organizations have conducted additional outreach activities to businesses and industry.

On July 2010, Chatham House, a British research institution, published a study that attempts to measure the scale and effectiveness of efforts over the last decade to respond to the problem of illegal logging worldwide. While this report does not evaluate the merits of the Chatham House study, the study suggests that passage of the 2008 amendments may have had an impact by shifting buyers toward less high-risk sources of supply. As evidence, it cites a significant increase in the number of entities participating in wood sourcing certification programs or related responsible forest use programs since passage of the Lacey Act amendments although other portions of the analysis, from which is drawn its conclusions, contains information that pre-date the enactment of the amendments.

4. FUTURE OF THE 2008 AMENDMENTS

APHIS has not introduced a new phase of the implementation schedule since April 2010, over two years ago. During that time, the Agency has focused on the analysis and completion of this report, soliciting input from the public on ways to improve the administration of the 2008 amendments, development of the common food crop and common cultivar rule, as well as discussions on how to deal with the administrative challenges of implementing the Act.

While APHIS has not yet announced additional phases as part of the implementation process, the Agency has had some interdepartmental discussions about what types of additional products and corresponding HTS codes could be included in the next phase of enforcement that would present the least potential burden on legitimate trade and the Agency. APHIS still commits to provide a minimum of six months' notice before further phases are implemented.

Meanwhile, the Agency plans to complete the rule defining common food crops and common cultivars, which will greatly benefit industry, by clarifying the existing statutory exclusions. The exclusions cover approximately 500,000 imports per month. APHIS is also considering how to proceed with input received from the June 2011 Advance Notice of Proposed Rulemaking on de minimis exceptions to the declaration requirement, in particular with developing a de minimis standard for the amount of plant material that must be present in a product for the declaration requirement to apply.

The Agency intends to continue to implement the 2008 amendments balancing the legitimate needs of industry with the requirements of the Act. For this to be a successful effort, APHIS will continue its commitment to listening to the public, business and industry, seeking their input and implementing the Act in a way that addresses their concerns in the best possible way, while still following the direction of Congress.

Appendix A: PPQ Form 505

According to the Paperwork reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0579-0349. The time required to complete this information collection is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB APPROVED
05/29/0349
Exp. Date:

SECTION 1 - Shipment Information

1. ESTIMATED DATE OF ARRIVAL: (MM/DD/YYYY)
2. ENTRY NUMBER:
3. CONTAINER NUMBER: <input type="checkbox"/> See Attachment
4. BILL OF LADING:
5. MID:

Plant and Plant Product Declaration Form

Section 3: Lacey Act Amendment (16 U.S.C. 3372)



U.S. DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE

6. IMPORTER NAME:	7. IMPORTER ADDRESS:
8. CONSIGNEE NAME:	9. CONSIGNEE ADDRESS:
10. DESCRIPTION OF MERCHANDISE:	

SECTION 2 - Compliance with Lacey Act Requirements (16 U.S.C. 3372(f))

For each article or component of an article, provide the following:							
11. HTSUS NUMBER: (no dashes/symbols)	12. ENTERED VALUE:	13. ARTICLE/COMPONENT OF ARTICLE	14. PLANT SCIENTIFIC NAME: Genus Species	15. COUNTRY OF HARVEST:	16. QUANTITY OF PLANT MATERIAL:	17. UNIT:	18. PERCENT RECYCLED:

I certify under penalty of perjury that, to the best of my knowledge and belief, the information furnished is true and correct.

Preparer's Phone Number and Area Code	Signature	Type or Print Name	Date
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Knowing my making a false statement in this Declaration for importation may subject the declarant to criminal penalties in accordance with 16 U.S.C. 3372(d).

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Version 08-15-2011-0856
PPQ FORM 505
AUGUST 2011

15. Country of Harvest: Enter the country where the plant was harvested (example: See below). If the country of harvest varies, and is unknown, enter all countries from which the plant material in the product may have been harvested. This is NOT the country of manufacture/origin.

16. Quantity of Material: How much plant material is in the shipment (example: See below).

17. Unit: This is the Unit of Measure of the Plant Material. Use the drop down box on the form to enter the units for #17. (example: See below).

kg - kilograms
m - meter
m² - square meters
m³ - cubic meters

18. % Recycled Material: If the product is paper or paperboard, enter the percentage of recycled material it contains (0 - 100%). If the percentage of recycled material varies, enter the average percentage of recycled material used in the product (example: If the percentage of recycled material used is between 25% and 45%, enter 35%).

11. HTSUS Number	12. Entered Value	13. Article/Component of Article	14. Plant Scientific Name		15. Country of Harvest	16. Quantity of Plant Material	17. Unit	18. Percent Recycled
			Genus	Species				
9401 692010	1354	Bentwood Seats Made of Oak	Quercus	lineata	Indonesia	500	kg	0
4407950000	8442	European ash lumber (2" x 4")	Fraxinus	excelsior	Switzerland	52	M3	0

Submission of Paper Declaration: Importers should have a copy of the form available for Customs and Border Protection (CBP) to review at the port of entry. After CBP clears the shipment, the importer must mail the original form to the USDA at the following address:

The Lacey Act
c/o U.S. Department of Agriculture
Box 10
4700 River Road
Riverdale, MD 20737


Note: You may use Form PPQ 505B should more space be required. Make as many copies as necessary.
Failure to include any and all of the required information will result in the rejection of your declaration.

SPECIAL NOTE: IF YOU HAVE FILED A LACEY ACT DECLARATION ELECTRONICALLY THROUGH THE CUSTOMS SYSTEM, THERE IS NO NEED TO FILE A PAPER DECLARATION.

Plant and Plant Product

Plant and Plant Product Declaration Form

Section 3: Lacey Act Amendment (16 U.S.C. 3372)



U.S. DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE

<p>10. DESCRIPTION OF MERCHANDISE:</p>	
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[illegible]

Page 1

15. Country of Harvest: Enter the country where the plant was harvested (example: See below). If the country of harvest varies, and is unknown, enter all countries from which the plant material in the product may have been harvested. This is NOT the country of manufacture/origin.

16. Quantity of Material: How much plant material is in the shipment (example: See below).

17. Unit: This is the Unit of Measure of the Plant Material. Use the drop down box on the form to enter the units for #17. (example: See below).

kg - kilograms
m - meter
m² - square meters
m³ - cubic meters

18. % Recycled Material: If the product is paper or paperboard, enter the percentage of recycled material it contains (0 - 100%). If the percentage of recycled material varies, enter the average percentage of recycled material used in the product (example: If the percentage of recycled material used is between 25% and 45%, enter 35%).

11. HTSUS Number	12. Entered Value	13. Article/Component of Article	14. Plant Scientific Name		15. Country of Harvest	16. Quantity of Plant Material	17. Unit	18. Percent Recycled
			Genus	Species				
9401692010	1354	Bentwood Seats Made of Oak	Quercus	lineata	Indonesia	500	kg	0
4407950000	8442	European ash lumber (2" x 4")	Fraxinus	excelsior	Switzerland	52	M3	0

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APPENDIX B: Federal Register Comment Summary

Comment Summary for APHIS-2008-0119-0259
Implementation of Revised Lacey Act Provisions
Comment period closed April 14 2011. 26 comments received.

Issue Raised	Commenters	Commodities	Response
Provisions for declaration examination and violation prosecution should be made explicit. Declarations should be made public.	Anonymous	N/A	
Suggestion for exclusion of musical instruments or creation of separate exemption declaration for musical instruments whose component material was acquired before the Lacey Act was implemented.	George Grubn of Grubn Guitars; Ramon Arreola, Jr.; Mary Luehrsen of NAMM	Musical instruments	
First Consensus Statement attached	Stephanie Lester of Retail Industry Leaders Association	Wood	
Second Consensus Statement attached	Cary Moon of the Hardwood Federation	Wood	
Automotive parts and vehicles should be excluded. Alternatives: one year notice be given before requiring declarations from this industry and expansion of blanket declaration program to include this industry.	Paul Ryan of the Association of Global Automakers	Automotive parts and vehicles	
Recommendations: - need for clear definition of tree and hybrid - that recycled plant materials not require species and country of harvest - that products where plant material is 5% or less by weight or <300g be excluded from declaration requirement - need for <i>de minimus</i> of 5% for	Christopher Smith of Ikea Distribution Services	Composite wood	

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composite materials - that a "due care" declaration process be implemented in which only gives country of harvest		
Request for inclusion of pulp wood (HTS47) and paper and paperboard articles (HTS48) in declaration requirements, with "paper" defined.	Holly Hart of United Steelworkers (also undersigned: BlueGreen Alliance, Sierra Club, and Natural Resources Defence Council); Arvind Gupta of Tjiwi Kimia (Asia Pulp & Paper Group also represented); Jacob Handelsman of American Forest & Paper Association	Pulp wood, paper, and paperboard
Composite designation should be extended to composite designation to pulp wood and recycled/reused designation to recycled paper. Suggestion to extend SPF designation, <i>de minimus</i> rules, and blanket declarations to pulp and paper products.	Arvind Gupta of Tjiwi Kimia (Asia Pulp & Paper Group also represented); Alan Oxley of World Growth	Pulp wood, paper, and paperboard
Pulp wood and paper should be excluded from declaration requirements due to use of multiple species. All species should not need to be listed if "spp" is designated; suggestion that Malaysian standard trade names such as Nyatoh and Durian be acceptable. Canadian products should be excluded from requirements due to low levels of illegal logging.	Giuseppe Lobelia of Domtar; Alan Oxley of World Growth Siti Syaliza of Malaysia Timber Council Avrim Lazar of Forest Product Association of Canada; Angela Patterson	Wood Wood Wood

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Alternatives: allow for blanket declarations, use of industry designations such as NBHK, and 5% <i>de minimus</i> .	of Carrier Lumber, Ltd	
Request that "common food crop" definition include seaweed.	Gerald Prout of FMC Corporation	Seaweed
Request that Lacey Act be completely defunded.	Andrew Langer of the Institute for Liberty, Niger Innis of Congress of Racial Equality, George Landrith of Frontiers of Freedom Institute	All
"Fine wooden, stringed musical instruments" should be defined as separate from stringed instruments (must be hand-crafted, using wood >6 years old, and valued at >\$4,000). A Special Use Code should be created for "fine wooden, stringed musical instruments constructed of aged wood acquired prior to amendment, regardless of date of manufacture".	David Schwartz of Thompson Hine LLP	Stringed Instruments
Wood products from negligible-risk countries should only need country of harvest to be documented	Kevin Thompson of the Embassy of Canada	Wood
Request for exclusion of multi-component products and elimination of quantity information.	Cindy Squires of National Marine Manufacturers Association	Boats and boat components
Suggestions: - define "legally harvested" and "due diligence" - that implementation dates for additional tariff codes be extended or eliminated	James O'Conner of Steelease, Inc.	All
Request for Special Use Code for	James O'Conner of	All

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products returning to US from trade shows, expired leases, or international manufacturing.	Steelcase, Inc.; Mary Luehrsen of NAMM	
Special Use Codes should be included in the official 505 instructions.	Mary Luehrsen of NAMM; Erik Autor of National Retail Federation	All
APHIS needs to clarify its current status in defining <i>de minimus</i> , publish the products falling under "common food crop" and "common cultivar" definitions, and clarify when report to Congress will be submitted.	Erik Autor of National Retail Federation	All
Request that cost-benefit analysis of Lacey Act be performed, including implementation cost, global deforestation rates, and risk of entry of products in US.	Alan Oxley of World Growth	All
APHIS should seek more input from shareholders to eliminate technical flaws in design and to provide more resources for the online submission process.	Anne Middleton of Environmental Investigation Agency	All

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Issue Raised	Commenters	Commodities	Response
Provisions for declaration examination and violation prosecution should be made explicit. Declarations should be made public.	Anonymous	N/A	
Suggestion for exclusion of musical instruments or creation of separate exemption declaration for musical instruments whose component material was acquired before the Lacey Act was implemented.	George Gruhn of Gruhn Guitars; Ramon Arreola, Jr.; Mary Luehnsen of NAMM	Musical instruments	
First Consensus Statement attached	Stephanie Lester of Retail Industry Leaders Association	Wood	
Second Consensus Statement attached	Cary Moon of the Hardwood Federation	Wood	
Automotive parts and vehicles should be excluded. Alternatives: one year notice be given before requiring declarations from this industry and expansion of blanket declaration program to include this industry.	Paul Ryan of the Association of Global Automakers	Automotive parts and vehicles	
Recommendations: - need for clear definition of tree and hybrid - that recycled plant materials not require species and country of harvest - that products where plant material is 5% or less by weight or <300g be excluded from declaration requirement - need for <i>de minimus</i> of 5% for	Christopher Smith of Ikea Distribution Services	Composite wood	

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