

Lacey Act Primer

United States Department of Agriculture
Animal and Plant Health Inspection Service
Plant Protection and Quarantine

Acknowledgements

- Department of Justice
- Office of the U.S. Trade Representative
- USDA
- Special thanks to George Balady

Presented by: Gary Lougee

Objectives

- Give a brief history of the Lacey Act
- Summarize the Lacey Act
- State the Lacey Act purpose
- Introduce the Lacey Act declaration requirement implementation schedule
- List the exemptions to the declaration requirement
- Discuss violations, penalties, and enforcement
- What constitutes due care and give examples
- Introduce the Blanket Declaration program

Objectives (continued)

- Delineate the processes for paper, electronic and blanket declarations
- Declaration geographic analysis demonstration
- Introduce the APHIS Lacey Act Website

History of the Lacey Act



- Oldest wildlife protection statute in the US
- It was first enacted in 1900 to combat impact of:
 - hunting to supply commercial markets
 - interstate shipment of unlawfully killed game
 - introduction of harmful exotic species
 - killing of birds for feather trade

History of the Lacey Act



- Significantly amended in 1981 and 1988
- Amended again in 2008
- A tool to combat trafficking in “illegal” wildlife, fish or plants

History of the Lacey Act



The 2008 Farm Bill (the Food, Conservation and Energy Act of 2008)

- Section 8204. Prevention of Illegal Logging Practices expands Lacey protection to broader range of plants
- Now encompasses products, including timber, derived from illegally harvested plants
- New declaration requirement for plant products
- Passed May 22, 2008

Purpose of the Lacey Act Amendment



- Prevent trade in illegally harvested lumber
- Prevent trade in wood products made from illegally harvested lumber

The Lacey Act makes it . . .

- Unlawful to trade in any plant that is taken, possessed, transported, or sold in violation of the laws of the United States, a State, Indian Tribe, or any foreign law that protects plants.
 - Applies to interstate and foreign commerce
- Unlawful to falsify documents, accounts or records of any plant covered by the Act
- Unlawful to import certain plants and plant products without an import declaration

In Plain English . . .

- Make sure your shipments were obtained legally
 - Make sure your shipments' documentation and records are true and accurate
 - Make sure your shipment is properly declared under the Lacey Act declaration requirement
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- Full text available in the Federal Register
Docket No. APHIS-2008-0119

PHASE-IN SCHEDULE OF ENFORCEMENT OF THE DECLARATION REQUIREMENT FOR GOODS OF, OR CONTAINING, PLANTS OR PLANT PRODUCTS*

Phase II April 1, 2009	Phase III October 1, 2009	Phase IV April 1, 2010
<p>HTS Chapters:</p> <p>Ch. 44 Headings (wood & articles of wood)</p> <ul style="list-style-type: none"> • 4401—(Fuel wood) • 4403—(Wood in the rough) • 4404—Hoopwood; poles, piles, stakes) • 4406—Railway or tramway sleepers) • 4407—(Wood sawn or chipped lengthwise) • 4408—(Sheets for veneering) • 4409—(Wood continuously shaped) • 4417—(Tools, tool handles, broom handles) • 4418—(Builders' joinery and carpentry of wood). 	<p>HTS Chapters:</p> <p>Ch. 44 Headings (wood & articles of wood)</p> <ul style="list-style-type: none"> • 4402—Wood charcoal • 4412—Plywood, veneered panels <ul style="list-style-type: none"> ○ except 44129906 and 44129957 • 4414—Wooden frames • 4419—Tableware & kitchenware of wood • 4420—Wood marquetry, caskets, statuettes. 	<p>HTS Chapters:</p> <p>Ch. 44 Headings (wood & articles of wood)</p> <ul style="list-style-type: none"> • 4421—Other articles of wood <p>Ch. 66 Headings (umbrellas, walking sticks, riding crops)</p> <ul style="list-style-type: none"> • 6602—Walking sticks, whips, crops <p>Ch. 82 Headings (tools, implements)</p> <ul style="list-style-type: none"> • 8201—Hand tools <p>Ch. 92 Headings (musical instruments)</p> <ul style="list-style-type: none"> • 9201—Pianos • 9202—Other stringed instruments <p>Ch. 93 Headings (arms and ammunition)</p> <ul style="list-style-type: none"> • 9302—Revolvers and pistols • 93051020—Parts and accessories for re-volvers and pistols <p>Ch. 94 Headings (furniture, etc.)</p> <ul style="list-style-type: none"> • 940169—Seats with wood frames <p>Ch. 95 Headings (toys, games, & sporting equipment)</p> <ul style="list-style-type: none"> • 950420—Articles and accessories for billiards <p>Ch. 97 Headings (works of art)</p> <ul style="list-style-type: none"> • 9703—Sculptures <p>PLUS PHASES II & III.</p>
	<p>PLUS PHASE II</p>	

* Declaration requirements were effective as of December 15, 2008. All declarations submitted must be accurate; false statements may be referred for enforcement. 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.

Exemptions from the Declaration Requirement

- Currently only sections of HTS Chapters 44, 66, 82, 92, 93, 94, 95 & 97 are scheduled to require declaration
- Plants and plant products used exclusively as packing material to support, protect, or carry another item including (but not limited to):
 - Instruction manuals, labels, pallets and crating, etc.
- “Common cultivars” and “common food crops”
 - To be defined by APHIS and FWS in joint rulemaking
- Plants for planting

Lacey Act vs. Declaration Requirement

- The Declaration Requirement is only a small part of the entire Lacey Act
- Even if a shipment is exempt from the Declaration Requirement – the Lacey Act is still in force
- Example: Bagpipes with wooden pipes
 - HTS Section 92059020 – no declaration required
 - The Lacey Act itself still applies to the wooden pipes
 - If the pipes were made from illegally harvested trees then the bagpipe shipment is in violation of the Lacey Act



Lacey Act Violations and Penalties

- Forfeiture – strict liability
- Misdemeanors punishable by 1 year in prison and a fine of \$ 100,000 (\$200,000 for corporations)
 - In the exercise of due care, individual/corporation should have known the plant was illegally taken, possessed, transported or sold
 - Was aware of illegality, but the incident did not involve import or export or commercial conduct with plant value of more than \$350
 - Applicable only to substantive violations, NOT to declaration requirements

Lacey Act Violations and Penalties

- Felonies punishable by 5 years in prison and a \$250,000 fine (\$500,000 for corporations)
 - Knowing violation – knowledge of facts and illegality, not specific law violated
 - Involves import or export or commercial conduct with plant value of more than \$350



Enforcement Basics

- Fact based, not document based
- Government burden to prove to a jury of defendant's peers
- Information gained from
 - Foreign governments
 - NGOs
 - Private citizens
 - Anonymous tips
 - Data analysis - declarations
 - Industry members – whistle blowers & competitors
 - Agents on the border



Enforcement Basics

- The Federal Government will always evaluate and substantiate initial information before launching full investigation
- Enforcement/investigating agencies include USFWS, ICE, CBP, APHIS, USDA OIG, FBI, USFS



Due Care

- Ninth Circuit Pattern Jury Instructions
 - “Due care means that degree of care which a reasonably prudent person would exercise under the same or similar circumstances.”



Due Care

- Legislative History
 - “Due care simply requires that a person facing a particular set of circumstances undertakes certain steps which a reasonable man would take to do his best to insure that he is not violating the law.”



Due Care

- Due care “is applied differently to different categories of persons with varying degrees of knowledge and responsibility.
- For example, zoo curators, as professionals, are expected to apply their knowledge to each purchase of wildlife. If they know that a reptile is Australian and that Australia does not allow export of that reptile without special permits, they would fail to exercise due care unless they check for those permits.
- On the other hand, the airline company which shipped the reptile might not have the expertise to know that Australia does not normally allow that particular reptile to be exported. However, if an airline is notified of the problem and still transships the reptile, then it would probably fail to pass the due care test.”

Tools to Demonstrate Due Care



- Asking questions
- Compliance plans
- Industry standards
- Records of efforts
- Changes in above in response to practical experiences

Recent Case Example for Due Care

- United States v. Virginia Star, C.D. Ca.
- Purchasers not charged – reasonable claim of no reasonable knowledge (for example, new to industry, short term behavior, called and asked about discrepancy and was given a plausible, to a neophyte, explanation)
- Purchasers charged with misdemeanors – lack of due care in consideration of totality of the circumstances (for example, long time in industry, recognized bargain basement price, knew label was wrong, repeated such transactions, prior lack of due care violation involving illegal trade in same industry)
- Purchasers charged with felonies – those for whom it was believed there was affirmative evidence beyond a reasonable doubt that the person acted with personal knowledge of illegality

Some Examples of Common-Sense Red Flags

- Goods significantly below going market rate
- Cash only/lower price for goods without paperwork
- Paperwork facially invalid or otherwise suspect
- Unusual sales methods or practices
- Transactions fit the description of illegal transactions discussed in trade/industry publications
- Inability of suppliers to provide rational answers to routine questions



Other Lacey Act Basics

- The underlying foreign law violation does not have to be a criminal violation, nor one actively enforced in the foreign country.
- The underlying violation need not be committed by the person charged with violating the Lacey Act – a third party might have taken the product illegally.
- The underlying foreign law can be interpreted by U.S. Courts

I Do Declare . . .

- Paper Declaration Process
- Electronic Declaration Process
- Blanket Declaration Process

Paper Declarations

- Mailed to APHIS
- (Have copy of the declaration available at the border for CBP)
- Envelope opened, importer noted, determination whether new, resubmitted, or Estimate.
- Declaration vetted for accuracy and compliance.
- Importer contacted if vetting reveals errors.
- Declaration entered into Excel by Data Entry Personnel.
- Entered data quality checked for completeness and accuracy.
- Data moved into master database.
- Analysis, etc.
- Paper declarations archived for 6 years.



Electronic Declaration

- Declaration entered into Customs Automated Broker Interface (ABI).
- CD of one weeks' worth of declarations mailed to APHIS.
- Data converted to Excel format.
- Declarations vetted for accuracy and compliance.
- Importer contacted if vetting reveals errors.
- Data moved into master database.
- Analysis, etc.
- Future data in ACE?

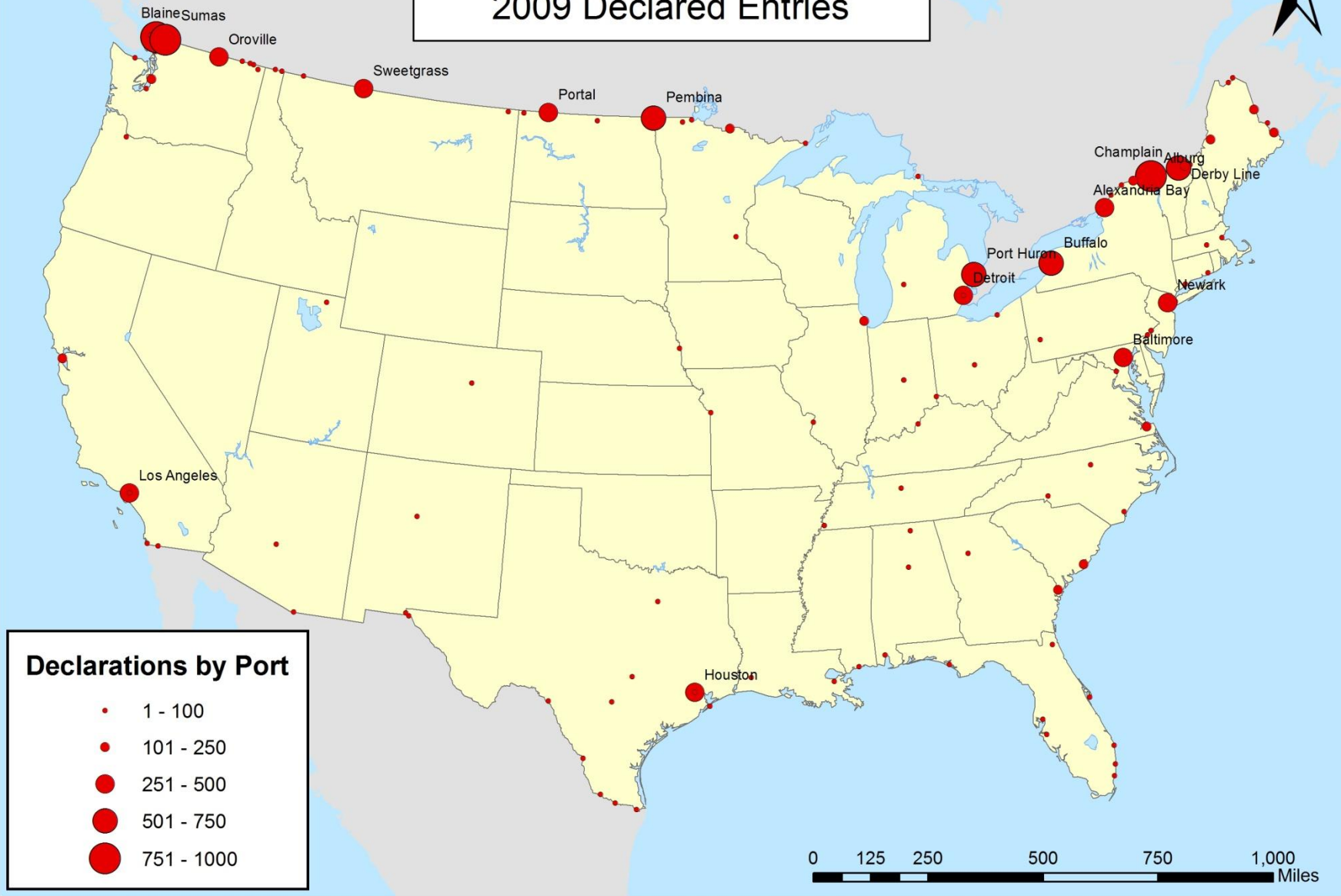


Blanket Declaration

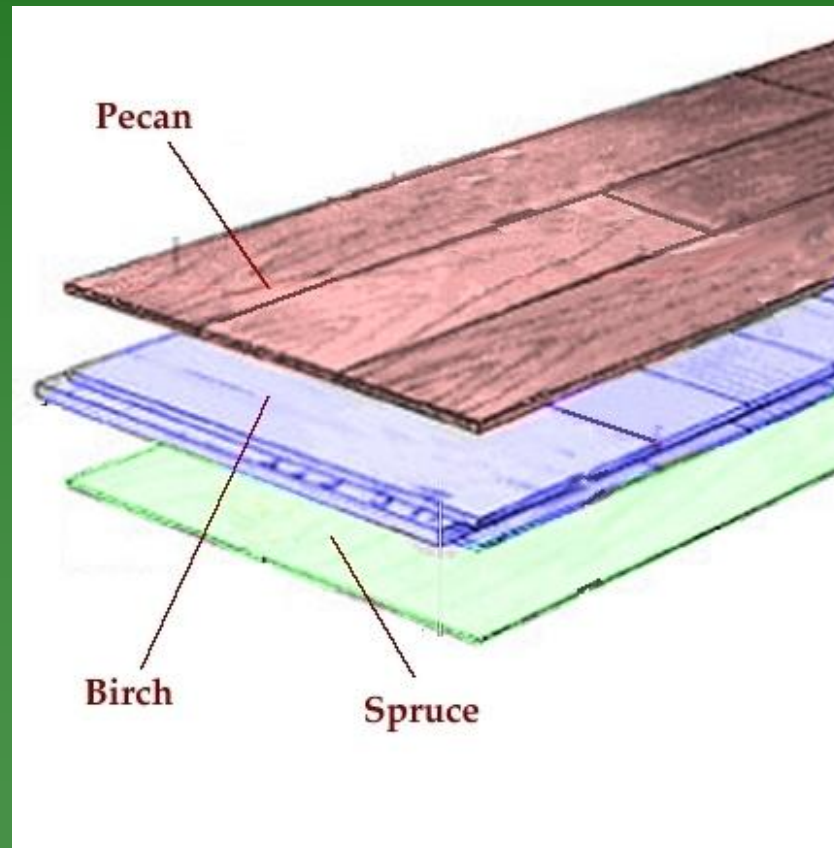
- Only open to certain group of importers (currently BRASS and ALR participants)
- Importer applies for membership to program.
- Application reviewed.
- Importer mails Estimated 505 by 1st of month to be declared.
- Importer sends Excel spreadsheet of reconciled data by 15th the following month.
- Declarations vetted for accuracy and compliance.
- Importer contacted if vetting reveals errors.
- Data moved into master database.
- Analysis, etc.
- Applications, Estimates, etc. archived.



Lacey Act Declaration 2009 Declared Entries



Sample Declaration



Suggested Best Practices

- Ask your overseas supplier for Genus/species
- Check botanical resources (e.g. GRIN Taxonomy)
 - Confirm validity of scientific names
 - Confirm geographic distribution
- Check with Foreign Ministries of Agriculture
 - Confirm source companies operate legally (licensed/certified)
 - Request pertinent wildlife protection laws (country of harvest)
- Keep complete records of your efforts
- When in doubt – Call APHIS!

Dealing with the Rumor Mill . . .



- The Lacey Act continues after the Congressional Report in 2010

APHIS Lacey Act Website

- http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml

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Plant Health

Lacey Act

The Lacey Act combats trafficking in "illegal" wildlife, fish, and plants. The 2008 Farm Bill (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.

The Lacey Act now, among other things, makes it unlawful, beginning December 15, 2008, to import certain plants and plant products without an import declaration. This page will serve as a clearinghouse for all information related to the implementation of the Lacey Act declaration requirement and will be updated promptly as new information becomes available.

Related Topics

- Overview
- Plant Pest Program Information
- Pest Detection
- Pest Identification
- Plant Import and Export
- Permits
- Crop Biosecurity and Emergency Response
- Spotlights for PPQ

What you will find there . . .

- Link to PPQ Form 505: Plant and Plant Product Declaration Form
- Links to Lacey Act Federal Register Notices
- Links to other Lacey Act related Documents
- Link to look up for plant genus and species
- Link to Lacey Act Declaration email address
- Link to PPQ Stakeholder Registry

Please refer Lacey Act inquiries to:



lacey.act.declaration@aphis.usda.gov