

Guidance on the Lacey Act Declaration (05/05/2009)

Introduction

The Lacey Act (16 U.S.C. 3371 *et seq.*, the Act) as amended makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken or traded in violation of the laws of the United States, a U.S. State or a foreign country. On February 3, 2009, the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) published a notice in the Federal Register announcing a revised enforcement phase in plan for the Act's requirement for a plant product import declaration (see 74 Fed. Reg. 5911 for details). The revised plan identifies a list of products and the associated Harmonized Tariff Schedule (HTS) Chapter or Heading as to which the requirement for a Plant Product Declaration Form (PPQ 505) is anticipated to be enforced over the next eighteen months.

PPQ 505: Plant Product Declaration

A declaration is required to obtain release of a covered product. Customs and Border Protection (CBP) has automated the process for collecting the PPQ 505 data elements. Data will be transmitted to CBP's Automated Commercial System (ACS) through the Automated Broker Interface (ABI) in the cargo release module. Electronic filing of the PPQ 505 declaration will not preclude remote location filing. Additional information on how to electronically file the PPQ 505 data can be found in the Participating Government Agencies chapter in the Customs and Trade Automated Interface Requirements (CATAIR) on CBP.gov. An importer has the option to complete and present a paper PPQ 505 for each line. If a paper form of the PPQ 505 is used, the importer must mail the form to USDA at the address on the form.

Covered Goods for Enforcement of the Declaration

As described in the February 3, 2009 notice, enforcement of the declaration requirement will begin with the tariff schedule headings shown in the following table. Additional chapters are scheduled for enforcement starting October 1, 2009 and April 1, 2010 (see 74 Fed. Reg. 5911 for details).

HTS Code	Brief Description
4401	Fuel wood
4403	Wood in the rough
4404	Hoopwood, poles, posts, stakes
4406	Railway and 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

Implementation of Enforcement

Acceptance of electronic submission of the required data elements began April 1, 2009. As previously published, enforcement of the data collection requirement will begin on May 1, 2009 for those importers not currently participating in an expedited border release program. The 30-day delay of enforcement has allowed the government time to formulate a plan for integrating the Lacey declaration requirement into CBP's expedited border release programs, Automated Line Release (ALR) or Border Release Advance Screening and Selectivity (BRASS). For current ALR/BRASS participants an additional one month delay of enforcement, until June 1, 2009, will be given to implement the plan presented below.

Pilot Program

The government will begin a pilot program on May 1, 2009, for those entities currently participating ALR or BRASS whose products require a Lacey Act declaration during the current phase of enforcement. Under this pilot, the participant must make a choice as to whether to remain active in the expedited program or to be removed from the expedited program.

If a participant opts to be removed from the expedited program, no further action is necessary. Effective June 1, 2009, that participant's C4 code will be inactivated. If a participant opts to remain in the expedited release program, a two step process must be completed.

Step 1

The participant must file with APHIS an advance estimated PPQ 505. Initially, and for purposes of this pilot, the estimated PPQ 505 must be filed on a monthly basis. It must include all data elements required on the PPQ 505. Genus, species, value, and quantity fields should be an estimation of the participant's planned imports during the next calendar month. The estimated PPQ 505 must be filed on or before the 15th day of the month prior to the reporting period. The deadline for the first estimated PPQ 505 is May 15, 2009, covering expedited release shipments planned for the month of June 2009.

Step 2

The participant must file with APHIS reconciliation within 15 days after the end of the month. This reconciliation will be submitted in a format to be established and made available on the APHIS website. The reconciliation will provide information on the actual shipments made during the previous month. The deadline for the first reconciliation is July 15, 2009.

As an example, if a participant in ALR or BRASS that is required to make a Lacey Act declaration wishes to remain in an expedited program for the month of June 2009, the participant must file an estimated PPQ 505 with APHIS no later than May 15, 2009, for the covered products that the participant expects to import during the month of June. The participant must then also file a reconciled PPQ 505 with APHIS no later than July 15, 2009.

This process must be completed monthly during the pilot. The U.S. government will rely on the collected data in its reports to Congress and in determining possible refinements and extensions to enlarge the process and make it less burdensome for all involved.

For All Importers

CBP expects and urges most importers to use the electronic system to file the declaration. If an entry package is presented to CBP to obtain release, the CBP 3461 form will be annotated in Box 29 to indicate “PPQ 505-Paper” if the declaration is presented in paper or “PPQ 505-ABI” if the declaration information was submitted electronically. If a paper form is submitted to CBP as part of the entry package, the paper form will be returned to the importer (or importer’s representative) for mailing to USDA. CBP will not mail forms to USDA.

As a reminder, providing false or misleading information to the U.S. government can result in civil or criminal actions against any involved party and may result in the seizure and forfeiture of the merchandise.

APHIS has been designated the lead regulatory agency for these new requirements and CBP is assisting APHIS with the electronic collection of data to fulfill the import declaration requirement. CBP will continue to work as part of the interagency working group, consulting with trading partners, importers, exporters, and other interested groups as the provisions of the Act are fully implemented. The most current information on implementation of the amended Lacey Act can be found on the USDA [website](#).

If you have any CBP related questions, please contact Ms. Anne Rothrock, Office of International Trade, at (202) 863-6573.