

LEGISLATIVE CHANGES

THE LACEY ACT

The Lacey Act was created in 1900 and then amended in 1981. It is the United States' oldest wildlife protection statute established to prohibit the trafficking of illegal wildlife, fish and plants. The Farm Bill, effective May 2008, amended the Lacey Act by expanding its protection to a broader range of plants and plant products. Beginning December 15, 2008, it is illegal to import certain plants and plant products without an import permit.

Under the Lacey Act, it is also unlawful to make or submit any false record, account or label for, or any false identification of, any plant covered by the Act.

Declaration

The PPQ form 505 is used for declaration purposes. The declaration must contain the scientific name of the plant, the value of the importation, the quantity of the plant, and the name of the country where the plant was harvested.

Under the Lacey Act, the term "Plant" is any wild member of the plant kingdom, including roots, seeds, parts or a product of these, including trees from natural or planted forest stands. There are three exemptions:

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

For paper and paperboard products containing recycled plant, the importer will only be required to provide the average percent recycled content. If the product also contains non-recycled plant materials, the basic declaration requirements still apply to that component of the product imported. For plant products (as opposed to plants), if the plant species from which they are made varies and are unknown, importers will have to declare the name of each species that may have been used to produce the product. Similarly, if a plant product is made of a species from more than one country, and the country is unknown, the importer will be required to declare the name of each country from which the plant may have come from.

Violations

Violations of the Lacey Act may be prosecuted as follows:

- (1) Civil—monetary penalties;
- (2) Criminal—fines and penalties and potential incarceration; or
- (3) Forfeiture—dispossession of the plant, fish, or wildlife in question.

IMPORTER SECURITY FILING “10+2” PROGRAM

On January 2, 2008, Customs published a Notice of Proposed Rule Making which would require importers and carriers to submit additional information pertaining to cargo before the cargo is brought into the U.S. by vessel. On November 25, 2008, U.S. Customs published an interim final rule called “Importer Security Filing and Additional Carrier Requirements” also know as the 10+2 Program.

The name “10 + 2” represents the number of advance data elements CBP was proposing to collect. Carriers would be required to submit two additional data elements such as a vessel stow plan and container status messages, to the other information they are currently already providing electronically. This is the 2 of the 10+2 Program. Importers would be required to submit the other 10 data elements

Existing Requirements

Carriers are currently required to submit advance cargo information such as vessel’s Cargo Declaration, to CBP no later than 24 hours before the cargo is laden aboard a vessel at a foreign port. This information must be sent to CBP via the Vessel Automated Manifest System (AMS). Carriers are currently not required to submit vessel stow plans or container status messages to CBP.

Importers of record are required to file entry information, including CBP Form 3461, with CBP within fifteen calendar days of the date of arrival of a shipment at a U.S. port of entry and entry summary information, including CBP Form 7501, within 10 working days of the entry of the merchandise. Entry and entry summary information is submitted to CBP via the Automated Broker Interface (ABI) or via paper forms. Importers are not currently required to submit advance cargo information to CBP.

New Requirements

CUSTOMS REVIEW

Carriers will need to provide vessel Stow Plan to CBP no later than 48 hours after carrier sailing. The Vessel Stow Plan must include the following information:

- Vessel name
- Vessel operator
- Voyage number
- Container operator
- Equipment number
- Equipment size and type
- Stow position
- Hazmat code (if applicable)
- Port of lading and
- Port of discharge

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Carriers must also submit container status information to CBP daily for any of the following reasons:

- (1) When the booking is confirmed for a vessel that is destined for the U.S.
- (2) When a container destined to the U.S. undergoes a terminal gate inspection
- (3) When a container destined to the U.S. arrives or departs a facility
- (4) When a container destined to the U.S. is loaded on or unloaded from a conveyance
- (5) When a vessel transporting a container, departs from or arrives at a port in U.S.
- (6) When a container destined to the U.S. undergoes an intra-terminal movement
- (7) When a container destined to the U.S. is ordered stuffed or stripped
- (8) When a container destined to the U.S. is confirmed stuffed or stripped and
- (9) When a container destined to the U.S. is shipped for heavy repair

ISF Importers, or their agents, must transmit the Importer Security Filing electronically. ISF Importers, or their agents, must submit 10 elements to CBP for shipments that will be entered into the U.S. and goods destined to an FTZ.

10 elements

- (1) Seller
- (2) Buyer
- (3) Importer of record number/Foreign trade zone applicant identification number
- (4) Consignee number(s)
- (5) Manufacturer (or supplier)
- (6) Ship to party
- (7) Country of origin
- (8) HTSUS number
- (9) Container stuffing location

(10) Consolidator

For shipments consisting entirely of FROB (foreign cargo remaining on board) and shipments entirely of goods for in-bond as an IE or T&E, the Importer Security Filing must consist of five elements as follows:

- (1) Booking party
- (2) Foreign port of unloading
- (3) Place of delivery
- (4) Ship to party
- (5) HTSUS number

As long as importers are making progress towards compliance, CBP will be lenient in enforcing the rule in order to allow for the trade to adjust to new requirements.

Importers

Need to make an effort to comply based on their ability. The policy will last for twelve months after the effective date and will apply to all aspects of the filing rule.

In addition, this rule provides flexibility with respect to certain elements of the ISF such as container stuffing location and Consolidator (stuffer). The ISF Importer must submit these elements as soon as possible and no later than 24 hours prior to arrival to the U.S. port (or upon lading at the foreign port if that is later than 24 hours prior to arrival in a U.S. port).

Four elements will be subject to flexibility as to interpretation. These elements are the Manufacturer/supplier, Ship to party, Country of origin, and HTSUS number. There is no timing flexibility for these elements; they must be filed 24 hours prior to lading. CBP has added flexibility by allowing ISF Importers, in their initial filing, to provide a range of acceptable responses based on facts available at the time, in lieu of a single specific response which may only be available at a later time.

FIRST SALE DECLARATION REQUIREMENT

On May 22, 2008 Congress passed the Food, Conservation and Energy Act of 2008. This act is otherwise known as the “Farm Bill” (19USC 1484 Note). It requires U.S. Customs to collect a declaration for a period of one year which states whether the transaction value of imported merchandise is determined on basis of price paid in the first or earlier sale prior to import of the shipment in to the U.S.

The First Sale Declaration requirement was published on August 25, 2008 as an interim rule to implement the Farm Bill. This requirement states that effective August 20, 2008, for a period of one year, all importers are required to submit a

C U S T O M S R E V I E W

declaration to Customs which states whether a sale is the First or Earlier sale within a series of sequential sales.

An example of a sequential sale is where a sale occurs between a manufacturer and a foreign intermediary and another sale occurs between the foreign intermediary and the U.S. buyer. In this case then, the sale between the manufacturer and the foreign intermediary is considered the First Sale.