

Revised March 18, 2010

**Supporting Statement
Implementation of Revised Lacey Act Provisions
OMB No. 0579-0349**

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

The Lacey Act, first enacted in 1900 and significantly amended in 1988, is the United States' oldest Wildlife Protection Statute. The Act combats trafficking in "illegal" wildlife, fish, or plants. The Food, Conservation and Energy Act of 2008, which took effect May 22, 2008, amended the Lacey Act by expanding its protection to a broader range of plants and plant products (Section 8204. Prevention of Illegal Logging Practices). As of May 22, 2008, the Lacey Act made it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of the laws of the United States, a State, an Indian tribe, or any foreign law that protects plants. The Lacey Act now also 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.

Under the amended Lacey Act, Section 3 of the Lacey Act, as amended (16 U.S.C. 3372), beginning December 15, 2008, importers are required to submit a declaration for certain plants and plant products. The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested. For paper and paperboard products with recycled plant content, the importer will not be required to specify the species or country of harvest with respect to the recycled plant product component, but will be required to provide the average percent recycled content. If the product also contains non-recycled plant materials, the basic declaration requirements still apply to that component of the product imported.

APHIS is asking OMB to approve, for an additional 3 years, the use of this information collection activity associated with its efforts to prevent the spread of plant diseases and plant pests from entering into the United States.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

Plant Import Declaration – Importers will have to submit a declaration for all plants containing the scientific name of the plant, value of the importation, quantity of the plant, and name of country from which the plant was harvested. For paper and paperboard products with recycled content, the importer will not be required to specify the species or country of harvest, but will be required to provide the average percent recycled content. If species varies or is unknown, importers will have to declare the name of each species that may have been used to produce the product.

The purpose for collecting this information is to reduce and prevent illegal logging practices around the world. This information is being collected by the Department of Homeland Security's Customs and Border Protection (CBP) Agency electronically for APHIS, and via hard copy filing through the mail for those importers who do not have access to the CBP Automated Broker Interface electronic filing system. This information will then be used to support investigations into illegal logging practices by the Justice Department and also acts as a deterrent to illegal logging practices worldwide. Due to the limited resources available for implementation, the amount of incoming information, as well as the expected increase in filings with each subsequent phase in of tariff codes needing to be reported, the ability to work with the information is severely constrained.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

At the present time, approximately 80% of the Lacey Act information being collected is through the CBP Automated Broker Interface. The remaining 20% is collected via the mailing of the original copy of the PPQ Form 505 directly to APHIS. With the hard copy, the current system in place requires the importer to print the form, fill it out manually and mail it to APHIS. It is anticipated that with the next phase beginning on April 1, 2010, there will be a significant increase in mailed filings for a couple of reasons. First, the increased number of commodities for which it will be required to file an APHIS PPQ form 505, and second, some industries have indicated that from a cost standpoint related to the Automated Broker Interface system, it will be less costly to file by mail rather than electronically. The current expectation is that the number of mailed hard copies will increase from approximately 1000 per month to well over 5000 per month. APHIS is requesting OMB's permission to continue to post this form on the web at www.aphis.usda.gov/library/forms

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose described in item 2 above.

The information APHIS collects is exclusive to its mission by expanding its protection to a broader range of plants and plant products within the United States and is not available from any other source.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The information APHIS collects is the minimum needed to protect the United States from destructive plant pests while strengthening its safeguarding system domestically. APHIS has determined that approximately 60 percent of the respondents in this information collection are small entities.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If the importers of plants and plant producers failed to report this information, they would be at risk for violating requirements of the the Act. Nevertheless, while the initial phases of implementation were not very burdensome to importers due to the simple composition of the commodities being imported, the next phases of commodities are significantly more complex in their make-up and it will be much more difficult, if not impossible in some cases, for importers to accurately identify the genus, species and country of harvest. One large importer noted that CBP has a 2000 data line cap for Lacey Act information on an entry transmission for its Automated Broker Interface system and at the present time, this firm regularly has single entries with 900 entry lines. With regard to some of the codes being contemplated for future phases, this firm expects to exceed 100,000 lines of data for many of its single entries (100,000 lines = more than 1000 pages). With the 2,000 data line cap the firm would be required to either split this one entry into 79 separate entries or print a Lacey declaration that would be approximately 1050 pages long. This company has also identified one article, which is believed will fall in a future phase, for which reporting the Lacey information at a component level will require approximately 3500 data lines. At an industry average of 50 to 125 dollars per entry, taking an average of \$85 per entry, this firm's 79 split entries would add an additional cost of \$6715; this is not including the carrier costs for splitting the bill of lading into 79 bills, or the entry fees to Customs.

Regarding potential technical fixes, the timing for filing the declaration could be changed from "upon importation" to a requirement to file "with the Secretary, no later than 90 days after importation". This allows for considerable flexibility in both method and timing for filing (enabling, for example, periodic as well as shipment-by-shipment declarations, and the use of low-cost, efficient, internet-based approaches). In addition, the requirement to identify genus and species could be eliminated; the revised declaration would focus only on country of harvest and information that allows the declaration to "stand alone" but also provides a link to the more detailed customs records (through entry

number). A large number of comments identified the requirement to provide genus and species as the most burdensome-as well as least practical-requirement. Both of these technical fixes would require a change in the legislation.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the general information collection guidelines in 5 CFR 1320.5.

This information collection is conducted in a manner consistent with the guidelines established in 5 CFR 1320.5.

8. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting form, and on the data elements to be recorded, disclosed, or reported. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, soliciting comments on the information collection prior to submission to OMB.

APHIS has been engaged in productive consultations with the following individuals in 2008-2009:

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On Monday, January 5, 2009, pages 259-260, APHIS published in the Federal Register a 60-day notice seeking public comments on its plans to request a 3-year renewal of this collection of information. Eight comments from the public were received. Five dealt with perception of unfairness that the Lacey Act places on furniture manufacturers requesting an unreasonable amount of information about the tree origin compositions of the furniture product. Three comments dealt specifically with the information requested on the form; however, no changes are being made to the form. These three comments are included in ROCIS.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

This information collection activity involves no payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

No additional assurance of confidentiality is provided with this information collection. However, the confidentiality of information is protected under 5 U.S.C. 552a.

APHIS's FOIA office advises that a confidentiality statement on the Lacey Act form (PPQ 505) will give the impression that all information will be protected by FOIA when, in fact, FOIA makes decisions regarding FOIA requests on a case-by-case basis.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and others that are considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

This information collection activity asks no questions of a personal or sensitive nature.

12. Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**

See APHIS Form 71 for hour burden estimates.

- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

The annualized cost to respondents is \$313,948,096. APHIS arrived at this figure by multiplying the total hours (13,108,480) by the estimated average hourly wage of the above respondents (\$23.95).

$$13,108,480 \times \$23.95 = \$313,948,096$$

The hourly rate is derived from the U.S. Department of Labor, Bureau of Labor Statistics May 2008 Report – National Compensation Survey: Occupational Wages in the United States. See <http://www.bls.gov/oes>

13. Provide estimates of the total annual cost burden to respondents or recordkeepers resulting from the collection of information, (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start-up cost component annualized over its expected useful life; and (b) a total operation and maintenance and purchase of services component.

There is zero annual cost burden associated with capital and start-up costs, maintenance costs, and purchase of services in connection with this program.

14. Provide estimates of annualized cost to the Federal government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.

The estimated cost to the Federal government is \$58,580,573.99. See APHIS Form 79 for the annualized cost to the Federal government.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.

There is an increase in burden hours and a decrease in the number of respondents for this IC. The increase in burden hours (from 5,029,164 to 13,108,480) is due to using the most recent projections and also because the total hours per response increased (from 1.5 hours to 8 hours per response). The decrease in the number of responses is because of the downturn in the economy which has caused the number of imports to drop drastically (from 3,352,776 to 1,638,560).

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

APHIS has no plans to tabulate or publish the information collected.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

APHIS has no plans to seek approval for not displaying the OMB expiration date on its forms.

18. Explain each exception to the certification statement identified in the “Certification for Paperwork Reduction Act.”

APHIS is able to certify compliance with all the provisions under the Act.

B. Collections of Information Employing Statistical Methods.

Statistical methods are not used in this information collection.