

Revised March 22, 2011

**Supporting Statement
Lacey Act Declaration Requirement;
Plants and Plant Products
OMB No. 0579-0349**

TERMS OF CLEARANCE: In accordance with the terms of 5 CFR 1320, OMB approves this information collection for a period of one year. OMB notes that the 2008 Farm Bill, which revised the Lacey Act, directs the Agency to review the implementation of this information collection no later than June 18, 2010. Further, within 180 days of the completion of that review, the Agency (1) must submit a report to Congress, and (2) may promulgate regulations that limit the effect of the statute (Food Conservation, and Energy Act of 2008, Section 8204). Before submitting this collection for reapproval, APHIS must complete the study required by Congress and determine whether to propose a regulation that would limit the effects of the Lacey Act, taking into consideration the costs and the practical utility of the information required by this collection.

Report to Congress: A subgroup of the Interagency group consisting of APHIS, Department of Justice (DOJ), and Office of Management and Budget are working on the report to Congress with input from members of the Interagency Group at large in their respective areas of expertise. Several members have also indicated that their own management structures will wish to review the report before it is sent to Congress. For APHIS' part, the report must be cleared through our Legislative and Public Affairs (LPA) Office, our Chain of Command (PPQ Deputy Administrator, APHIS Administrator, etc), and eventually be approved by the Secretary of Agriculture before it can be submitted to Congress. In addition, APHIS' Interagency Group counterparts have requested some level of approval from their own agency management before the report is submitted.

Regulations:

- a. Regulations are being promulgated on *de minimis* both for declaration purposes and the amended statute (DOJ is the lead).
- b. Regulations are being promulgated on the definition for Common Food Crop and Common Cultivar. These definitions are the prime exclusions from the declaration requirement and the statute itself (APHIS and FWS are the leads).
- c. Preliminary discussions on the creation of a definition for Plant Derived Products are ongoing (APHIS, FWS, and Forest Service are the leads). This would be another category excluded from the requirements of the Lacey Act.
- d. Definitions for the words "commercial" and "tree" as they relate to the Lacey Act are also being created to clarify the requirements of the Act (APHIS, FWS, and Forest Service are the leads).

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.

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.

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 of recycled content. If the product also contains non-recycled plant materials, the basic declaration requirements still apply to that component of the product imported. Paper and paper products do not currently require declaration, but this provision has been made for future implementation.

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 and Plant Product Declaration Form (PPQ 505) – 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. 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.

Plant and Plant Product Declaration Supplemental Form (PPQ 505B) – This supplemental form is to provide the declarer additional space to enter the required information if needed. Most declarations will require only one page which will be the PPQ 505. However, in some cases of large and/or complicated shipments, a PPQ 505B will allow the importer to append the information without needing to repeat the shipping information. This supplemental form can be used as many times as necessary to complete the required information for each shipment. This form will only be used when the PPQ 505 does not provide enough space for the declarer. 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 of recycled content. Paper and paper products do not currently require declaration, but this provision has been made for future implementation.

Records of Declaration Forms – Records of the Plant and Plant Production Declaration Form and Supplemental Form (PPQ 505 and 505B) must be kept for at least 6 years. The records must be made available to APHIS for review upon request.

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 85 percent of the Lacey Act information being collected is through the CBP Automated Broker Interface. The remaining 15 percent 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. On April 1, 2010, the new phase began, and there was a significant increase in mailed filings for a couple of reasons. First, the increased number of commodities requiring the filing of an APHIS PPQ Form 505, and second, some industries indicated that from a cost standpoint related to the Automated Broker Interface system, it is less costly to file by mail rather than electronically. The number of mailed hard copies increased from approximately 1,000 per month to nearly 5,000 per month. The form can now be saved as a pdf file no matter what software

version the user has. This will make it easier for the user to save each submission and update it for the next submission. APHIS is requesting OMB's permission to continue to post the PPQ 505 on the web at www.aphis.usda.gov/library/forms and also add the Plant and Plant Product Declaration Supplemental Form (PPQ 505B) to the same website.

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.

Failure to collect the PPQ Form 505 will result in a direct violation of the Lacey Act as amended under The Food, Conservation, and Energy Act of 2008. The statute clearly states in Title 16 USC Chapter 53, Section 3372(f)(1) "... it shall be unlawful for any person to import any plant unless the person files upon importation a declaration ...". APHIS was designed as the agency responsible for collecting and enforcing the declaration requirement.

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.

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**

- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**

The Plant and Plant Product Declaration and Supplemental forms (PPQ 505 and 505B) must be maintained for a minimum of 6 years. This recordkeeping will provide APHIS with historical documentation to ensure that accurate records are being maintained to verify that businesses are not in violation of the Lacey Act.

- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no other special circumstances associated with this information collection. This 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 2010-2011:

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On Wednesday, September 29, 2010, pages 60065-60066, 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. Eleven comments from the public were received. All comments referenced the reporting process; however, none of them dealt with the layout of the form, or specific information required. Taking all comments into account, APHIS did not make any further changes to the PPQ Form 505 at this time. However, APHIS did condense the form's content into one page and provided a separate supplemental form (PPQ 505B) for reporting additional information that does not fit on the PPQ 505. The 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 forms (PPQ 505 and PPQ 505B) 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 \$5,330,572.90. APHIS arrived at this figure by multiplying the total burden hours (203,846) by the estimated average hourly wage of the above respondents (\$26.15).

$$203,846 \times \$26.15 = \$5,330,572.90$$

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 \$192,072. See APHIS Form 79.

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

APHIS has been collecting declarations since May 2009. Based upon customer surveys, internal testing, and analysis, APHIS has determined that it actually takes an average of 30 minutes per response instead of the previously estimated 8 hours. This adjustment resulted in a burden reduction of 12,904,634 hours.

Based on current data collection information, the actual number of annual responses in 2010 for the PPQ Form 505 is 1,211,168 less than the previously approved estimate. In addition, the actual number of respondents is 20,352 instead of the previously approved 81,928. These adjusted reductions reflect the actual number of respondents, declarations received, and burden hours as opposed to past estimates based on expected implementation of USDA's declaration requirement.

To further explain APHIS' rationale for the change in burden on the Plant and Plant Product Declaration, PPQ 505, APHIS reviewed the Fish and Wildlife Service Declaration for Importation or Exportation of Fish or Wildlife (USFWS Form 3-177) which requires similar information to the PPQ Form 505. The USFWS Form 3-177 indicates that the time required to complete their form will average 15 minutes by hand or 10 minutes electronically. Collection of the USFWS 3-177 has been ongoing since 1970.

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.