

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

February 2019

TERMS OF CLEARANCE: In accordance with the terms of 5 CFR 1320, OMB approves this collection of information for a period of 2 years. We note that the Animal and Plant Health Inspection Service (APHIS) has submitted a draft rule on this topic for review to OMB. We ask that APHIS consider the comments associated with this ICR and respond to each of them as it determines how to proceed with a final rule that would make changes to this program.

The draft rule OMB is referring to in the Terms of Clearance above was an Interim Final Rule that APHIS published in July 2013 establishing the definitions of several terms used in the Lacey Act including: (1) common cultivar; (2) common food crop; (3) commercial scale; and (4) tree. As described, members of the public can send written requests to add or remove taxa or commodities from the Lacey Act common cultivar/common food crop list. The written request should include the scientific name of the plant, common or trade name, annual trade volume, and any other information, such as countries or regions where grown, estimated number of acres or hectares in commercial production, etc., to help APHIS make the determination. APHIS received and reviewed two comments to the Interim Final Rule. Those comments are addressed in APHIS' Affirmation to the Final Rule which was published on January 25, 2016. One of the two comments was fully supportive. The other comment rehashed issues from the proposed rule, such as whether certain specific plant products could be considered common cultivars.

We explained in the interim final rule that the list of common cultivars and common food crops is intended to be illustrative, not exhaustive. The list is available on the APHIS Web site at http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml. We note that the effect of the rule is to exclude whole categories of products from the paperwork requirement mandated by the statute. Now that all Terms of Clearance have been addressed, APHIS is requesting a 3-year clearance for this program.

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 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.

In addition, Section 3 of the Lacey Act, (16 U.S.C. 3372), makes it unlawful for importers to import certain plants and plant products without submitting an import declaration. 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 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 (HTS Chapters 47, 48, and 49) do not currently require declaration, but this provision has been made for future implementation.

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.

APHIS uses the following activities to allow, the import of plant and plant products into the US while preventing the spread of plant diseases and plant pests from entering into the United States.

Plant and Plant Product Declaration Form (PPQ Form 505) - (Business)

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 the species vary or are 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 via the Automated Commercial Environment, by APHIS' Lacey Act Web Governance System, and via hard copy filing through the mail for those importers who do not have access electronic filing systems. This information is used to support audits and investigations into illegal logging practices by federal enforcement partners, and also acts as a deterrent to illegal logging practices worldwide. The data also support program reviews of declarations to identify non-compliance and software design changes to further streamline the submission process.

Plant and Plant Product Declaration Supplemental Form (PPQ Form 505B) - (Business)

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 (HTS Chapters 47, 48, and 49) do not currently require declaration, but this provision has been made for future implementation.

Record Keeping of Declaration Forms - (Business)

Records of the Plant and Plant Production Declaration Form and Supplemental Form (PPQ 505 and PPQ 505B) must be kept for at least 5 years. The records must be made available to APHIS for review upon request.

Importers/Stakeholders Letters of Inquiry - (Business)

The public may also send inquiries about specific taxa or commodities and requests to add taxa or commodities to the list, or remove them from the list, by writing to The Lacey Act, ATT: Common Cultivar/Common Food Crop, c/o U.S. Department of Agriculture, Box 10, 4700 River Road, Riverdale, MD 20737 or by email to lacey.act.declaration@aphis.usda.gov and including the following information:

- Scientific name of the plant (genus, species);
- Common or trade names;
- Annual trade volume (e.g., cubic meters) or weight (e.g., metric tons/kilograms) of the commodity; and
- Any other information that will help make a determination, such as countries or regions where grown, estimated number of acres or hectares in commercial production, and so on.

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.

The PPQ 505 and PPQ 505B are both posted on the APHIS website at <https://www.aphis.usda.gov/library/forms/pdf/ppq505.pdf> and <https://www.aphis.usda.gov/library/forms/pdf/ppq505b.pdf> in addition to the LAWSG website at <https://lawgs.aphis.usda.gov/lawgs>.

The form information can be submitted by the public three different ways, two of which are electronic: (1) the Department of Homeland Security's Customs and Border Protection (CBP) electronically collects these forms for APHIS with the Automated Commercial Environment; and (2) APHIS' Lacey Act Web Governance System (LAWGS) which allows importers to file the form information electronically (the registration information collection is accounted for in OMB Control Number 0503-0014, "USDA Registration Form to Request Electronic Access Code"). APHIS developed this system to reduce the amount of information that is submitted via hard copy and to streamline the filing process. LAWGS can be viewed at <https://lawgs.aphis.usda.gov/lawgs>. Importers who do not have access to either of the other two electronic filing systems can file a hard copy through the mail to APHIS.

At the present time, approximately 95 percent of the Lacey Act information is being collected electronically. The remaining 5 percent is being collected via the mailing of the original copy of the forms 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. 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.

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 it 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 ensure that plant and plant product importations are in compliance with the Lacey Act requirements. APHIS has determined that approximately 60 percent of the business 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 3 years;**

The Plant and Plant Product Declaration and Supplemental Form (PPQ 505 and 505B) must be maintained for a minimum of 5 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 secrets, 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 regarding the scientific name of the plants, value of the importation, quantity of the plants, and name of country from which the plants were harvested.:

Michael Ford, Chief Compliance Officer

BDP International Global Logistics
510 Walnut Street
Philadelphia, PA 19106
215-629-8924

Mary Jo Muoio, Senior Vice President of Barthco Trade
BARTHCO International
The Navy Yard
5101 South Broad Street
Philadelphia, PA 19112
215-238-8600

Calvin Leong, Chief Trade Officer
American President Lines
9 North Buona Vista Drive
#14-01 The Metropolis Tower 1
Singapore 138588
Tel: (65) 6278 9000

On Wednesday, December 26, 2018, pages 66240-66241, Volume 83, 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. No comments were received.

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. Any and all information obtained in this collection shall not be disclosed except in accordance with 5 U.S.C. 552a.

APHIS's FOIA office advises that placing 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 burden for collections of information, identifying and using appropriate wage rate categories.

APHIS estimates the total annualized cost to the above respondents to be \$20,346,179.80. APHIS arrived at this figure by multiplying the total burden hours (338,990) by the estimated average hourly wage of the respondents ($\$40.00 + 19.02 = 60.02$).

$338,990 \times \$60.02 = \$20,346,179.80$

The hourly rate is derived from the U.S Department of Labor, Bureau of Labor Statistics May 2018 Report Occupational Employment and Wages in the United States. See http://www.bls.gov/oes/2017/may/oes_nat.htm#b11-0000

Benefits = wages X 46.4% ($40.00 \times 0.464 = \$19.02$)

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.

For Fiscal Years 2017 and 2018, \$1,941,000 was appropriated to APHIS for implementation and enforcement of the Lacey Act amendments of 2008.

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 \$19,745,666.60. 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.

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	703,189	0	1	182,559	0	520,629
Annual Time Burden (Hr)	338,990	0	1	86,970	0	252,019
Annual Cost Burden (\$)	0	0	0	0	0	0

There is a program change increase of +1 response resulting in an increase of +1 burden hour. This increase to APHIS now accounting for the Importer/Stakeholder Letter of Inquiry, which is a new requirement.

There is an adjustment increase of +8,904 respondents and +182,559 responses resulting in an increase of +89,970 burdon hours. This increase is due to an increase in trade resulting in more declarations.

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.

Not applicable. APHIS will display the expiration date.

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.