

# PUBLIC SUBMISSION

As of: December 02, 2010  
Tracking No. 80b73935  
Comments Due: November 29, 2010

**Docket:** [APHIS-2010-0093](#)

Notice of Request for Extension of Approval of an Information Collection; Lacey Act Declaration Requirement; Plants and Plant Products

**Comment On:** [APHIS-2010-0093-0001](#)

Notice of Request for Extension of Approval of an Information Collection; Lacey Act Declaration Requirement; Plants and Plant Products

**Document:** [APHIS-2010-0093-0003](#)

Comment from Bradford Whitman

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## Submitter Information

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## General Comment

DATE : OCTOBER 7, 2010

PUBLIC COMMENT SUBMITTED TO:

THE ANIMAL & PLANT HEALTH INSPECTION SERVICE (APHIS),  
U.S. DEPARTMENT OF AGRICULTURE,  
DOCKET NO. APHIS 2010-0093

FEDERAL REGISTER NOTICE OF OPPORTUNITY FOR COMMENT:

75 FED REG. 60065 (SEPT. 29, 2010). COMMENT DEADLINE: NOV. 29, 2010

COMMENT SUBMITTER:

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The Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), has solicited public comment on the following issues relating to the Lacey Act, as amended in 2008 to

require, inter alia, an import declaration to be submitted identifying the species of wood (tree) imported, the place of origin/harvest, the volume of the shipment, and other information. The Declaration form is the heart of the entire program that Congress created in 2008 and delegated to APHIS to implement.

The purpose of the Declaration is to enforce the prohibition against importation and trade in plant and tree species and their products taken, possessed, transported, or sold in violation of laws existing in any foreign country as well as in the United States. Obviously, APHIS cannot supply inspectors to monitor the operations on the ground in countries all around the world, and therefore, it must rely on spot inspections, intelligence from domestic and foreign agencies and organizations, and the import declarations. The Lacey prohibition is aimed at preventing the pillaging of tropical and other forests and legally protected reserves where precious, threatened, rare and endangered species grow and are currently being destroyed at an alarming rate and in alarming quantities by entities engaged in foreign trade. Unless Lacey is enforced vigorously, immediately and with major resources to accomplish a competent job, many of these species and their particular ecosystems will cease to exist.

APHIS has framed the issue for comment as including whether the collection of information is “necessary for the proper performance of the functions of the Agency, including whether the information will have a practical utility”, whether the information collection places an undue burden on the industry, and whether APHIS needs to enhance the clarity, utility and quality of information collected.

The Declaration Form PPQ 505, as amended in response to comment during prior rulemakings, is as concise, simple, straightforward, and unburdensome as any reporting form could possibly be without flatly violating the mandate of Congress. If an importer cannot report the information demanded by this form, then he or it is incapable of doing business in a responsible, competent manner, and is incapable of good faith compliance with the law, and therefore should be banned from all importation and trade under Lacey. The only reason why an importer would not identify the botanical species, place of origin/harvest, and quantity imported would be if the importer had a reckless and intentional disregard for the law. These facts demanded on the form are fundamental and well within the power of any responsible importer to obtain and report. In the law, we would regard the form as a “barebones” report.

By asking for comment on whether the information is “necessary” or has “practical utility”, APHIS itself is violating the law. The law is mandatory. It is not within APHIS’s discretion to decide not to collect this minimal information that Congress has demanded to be collected, and without which, the filing would become a hollow exercise and the whole law a nullity.

Industry surely made its usual arguments to Congress that it did not want to be regulated or file forms and that the world should simply stand by and watch from the wings as one phenomenally bio-diverse habitat after another is destroyed—just as has occurred and been reported in sickening detail in the news media from Cambodia, Tanzania, Madagascar, and Indonesia in only the last five years. The industry lost its arguments for non-regulation; the planet won. Lacey passed.

The responsible timber industry in the United States that practices sustainable forestry has suffered directly as a result of this pillaging of precious tropical hardwoods and ecosystems for short-term profit and the illegal trade in hardwoods from protected reserves in Mexico, Central America, South America, Africa, and Asia. Congress took specific note of this injustice and harm to fair trade and the American economy.



What APHIS can do is to facilitate electronic filing in the same way that the Internal Revenue Service and a plethora of other agencies have done to ease the burden on both sides—with respect to information reports many times more complicated and lengthy than PPQ 505.

The industry's estimates of hours spent filing these forms have no credibility whatsoever. For forty years the Environmental Protection Agency has received inflated industry claims of this type with respect to dozens of different types of permit applications and filings under many different environmental laws that apply not just to the same industry, but to the same companies within that industry. Ask any member of the chemical manufacturing industry, large or small. The Emergency Planning and Community Right-to-Know Act is a good example. The harm that is averted is well worth the time spent preparing the lengthy and probing forms. The same is true with dozens of EPA forms, USDA forms, OSHA forms and other forms that prevent commercial interests from destroying the environment and public health. The industries accept this responsibility and have been filing these forms for many years---and have themselves adopted international standards for operation. What Lacey demands of the importers is a proverbial drop in the bucket in terms of regulatory burden.

Furthermore, the Freedom of Information Act makes all of this reported information publicly available (except genuine trade secrets and proprietary information), and the agencies have developed, as APHIS well knows, effective means of making this information disclosure occur swiftly and smoothly.

Lacey importers have minimal burden in comparison.

We appreciate your consideration of this comment.

Respectfully,

Bradford F. Whitman  
Environmental Responsibility for Woodturners and Woodworkers