



# FedEx Regulatory Alerts & Updates

## Regulatory Alert: Lacey Act De Minimis Exception

March 18, 2020

### BACKGROUND INFORMATION

Section 3 of the Lacey Act makes it unlawful to import certain plants, including plant products, without an import declaration. The import declaration serves as a tool to collect information regarding the content of a shipment, which aids in combatting illegal trade in timber and timber products by ensuring importers provide required information. The Food, Conservation, and Energy Act of 2008 amended the Lacey Act by expanding its protections to a broader range of plants and plant products than was previously provided by the Act.

The Animal and Plant Health Inspection Service (APHIS) proposed a number of changes to allow exemptions from the Lacey Act declaration requirement in July 2018, for entries of products containing minimal plant material to help eliminate the burden on importers.

### WHAT HAS CHANGED?

The Animal and Plant Health Inspection Service (APHIS) posted a Final Rule on March 2, 2020, which finalized a new de minimis exception from Lacey Act declaration requirements for U.S. importers.

Under the Final Rule guidelines, U.S. importers will NOT have to submit the Lacey Act Declaration if the plant material in the product(s) meet BOTH of the specific weight criteria:

1. 5% or less plant material by weight of the individual product unit, AND
2. The total weight of the plant material at the entry line level of products in the same 10-digit Harmonized Tariff Schedule of the United States does not exceed 2.9 kilograms

It is important to understand both weight criteria above are referring to the weight component of the actual plant material within any product classified under a specific 10-digit HTSUS code. For example, HTSUS 8211926000 (hunting knives with wood handles) requires the Lacey Act Declaration. The metal blade for the knife would not be considered when determining the weight, only the wood handle.

Tips for U.S. importers:

- It is recommended to provide the specific 10-digit HTS code and a thorough description on the commercial invoice for their commodity to justify the HTSUS code
- It is also recommended to provide the specific weight criteria above on the commercial invoice so there is documented evidence to allow the exception
- 2.9 kilograms is 6.38 pounds

The new de minimis weight exception can be found in Part 357.4(b) in 16 U.S.C 3371.

The new Lacey Act de minimis exemption does NOT apply to any product if it contains plant material listed:

- In the appendix of CITES protected items
- Endangered or threatened species under the Endangered Species Act of 1973
- Species protected pursuant to any state conservation law

The Final Rule becomes effective on April 1, 2020.

#### **Q&A**

##### **Q1: Does this Lacey Act De Minimis Exception Final Rule address any other issues?**

A1: The Final Rule also codifies Lacey Act declaration requirements and associated definitions in APHIS's regulations. Definitions of import, person and taken are added, and the definition of plant is amended, "to conform to the definitions in the statute." APHIS is also adding a new section to its regulations to specify the conditions under which a plant import declaration must be filed and what information it must include.

##### **Q2: Is there an available list of HTSUS headings of articles that require the Lacey Act Declaration?**

A2: Yes, please see the "Schedule of Enforcement" PDF in the References section. Note that each HTS code also includes a description of the article.

##### **Q3: Does the U.S. importer need to cite this Final Rule on the commercial invoice to receive the new Lacey Act de minimis exemption?**

A3: No. The U.S. importer is not required to submit the Lacey Act Declaration for shipments that meet the required weight threshold parameters cited in the Final Rule. It is recommended U.S. importers provide the specific ten-digit HTS code of the item and a complete description to justify the HTSUS code on the commercial invoice.

#### **REFERENCES:**

Lacey Act Implementation Plan: De Minimis Exception Final Rule:

<https://www.federalregister.gov/documents/2020/03/02/2020-04165/lacey-act-implementation-plan-de-minimis-exception>

APHIS Lacey Act:

[https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/SA\\_Lacey\\_Act](https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/SA_Lacey_Act)

Schedule of Enforcement of the Lacey Act Declaration:

[https://www.aphis.usda.gov/plant\\_health/lacey\\_act/downloads/ImplementationSchedule.pdf](https://www.aphis.usda.gov/plant_health/lacey_act/downloads/ImplementationSchedule.pdf)