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Violating the Lacey Act Declaration Requirement

Last Modified:

Legal Authorities

[U.S. Code 2008 Title 16 Chapter 53](#)

[Amendments to the Lacey Act from H.R.2419, Sec. 8204](#)

[APHIS regulation 7 CFR Part 357 Control of Illegally Taken Plants](#)

What are the penalties for violating the declaration requirement?

A person who imports plants or plant products in violation of the Lacey Act declaration requirement, or falsely labels plants or plant products, could be subject to civil or criminal penalties as follows:

Civil Penalties

Any person who violates the declaration requirement may be assessed a civil administrative penalty of not more than \$250. Any person who knowingly violates the declaration requirement, or knowingly falsely labels a plant or plant product, may be assessed a civil administrative penalty of not more than \$10,000. Furthermore, any plant or plant product imported in violation of the import declaration requirements may be subject to civil forfeiture.

Criminal Penalties

Any person who knowingly violates the declaration requirement or knowingly violates the false labeling prohibitions could be subject to criminal penalties. If the offense involves:

- The importation of plants, fish, or wildlife, or
- The sale or purchase, offer of sale or purchase, or commission of an act with intent to sell or purchase plants, fish, or wildlife with a market value greater than \$350, the criminal penalties for an individual are not more than 5 years in prison and a fine of \$250,000 or twice the gross gain or loss. For a corporation the criminal penalties are not more than 5 years of probation and a fine of \$500,000 or twice the gross gain or loss. Restitution and forfeitures may also be imposed.

If the offense does not involve these factors, the criminal penalties for an individual are not more than 1 year in prison and a fine of \$100,000 or twice the gross gain or loss. For a corporation the criminal penalties in that circumstance are not more than 2 years of probation and a fine of \$200,000 or twice the gross gain or loss. Restitution and forfeitures may also be imposed.

What are the penalties and sanctions for violating the Lacey Act's trafficking prohibition?

A person who traffics in plants or plant products in violation of the Lacey Act trafficking prohibitions could be subject to civil or criminal penalties as follows:

Civil Penalties

Any person who violates the trafficking prohibitions and in the exercise of due care should know that the plant or plant product was taken, possessed, transported or sold in violation of, or in a manner unlawful under, any underlying law, treaty, or regulation, may be assessed a civil administrative penalty of not more than \$10,000. However, when the violation involved plants or plant products with a market value less than \$350, and involves only the transportation, acquisition or receipt of plants or plant products, the penalty shall not exceed the maximum provided for violation of the underlying law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, if that maximum is less than \$10,000.

Criminal Penalties

Any person who knowingly violates the trafficking prohibitions by:

1. importing or exporting the plants or plant products, or;
2. engaging in conduct that involved the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, plants and plant products with a market value in excess of \$350, and knew that the plant or plant product was taken, possessed, transported or sold in violation of, or in a manner unlawful under, any underlying law, treaty, or regulation, could be subject to criminal penalties. For an individual, the criminal penalties are not more than 5 years in prison and a fine of \$250,000 or twice the gross gain or loss. For a corporation the criminal penalties are not less than one year nor more than 5 years of probation and fine of \$500,000 or twice the gross gain or loss. Restitution and forfeitures may also be imposed.

Any person who knowingly violates the trafficking prohibitions and in the exercise of due care should have known that the plant or plant product was taken, possessed, transported or sold in violation of, or in a manner unlawful under, any underlying law, treaty, or regulation, could be subject to criminal penalties. For an individual, the criminal penalties are not more than 1 year in prison and a fine of \$100,000 or twice the gross gain or loss. For a corporation the criminal penalties are not more than 5 years of probation and fine of \$200,000 or twice the gross gain or loss. Restitution and forfeitures may also be imposed.

Permit Sanctions

Suspension, modification, or cancellation are authorized for any Federal hunting or fishing license, permit, or stamp, or any license or permit authorizing a person to import or export fish or wildlife or plants (other than a permit or license issued pursuant to the Magnuson-Stevens Fishery Conservation and Management Act) or to operate a quarantine station or rescue center for imported wildlife or plants, issued to any person who is convicted of a criminal violation of any provision of this chapter or any regulation issued hereunder. The government shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any licenses, permits, stamps, or other agreements pursuant to this section.

Forfeiture

The Lacey Act's civil forfeiture provisions are enforced on a strict liability basis. If illegal plants, including timber, or a product made from illegal plants (and/or illegal wildlife or fish) are brought into the U.S., that plant or plant product may be seized, whether or not the person from whom it is seized knew of the illegal nature of the product. Nonetheless, the government must still show that a plant, fish, wildlife, or product thereof has been imported or received in violation of a State or foreign law or regulation. Criminal forfeiture also extends to instrumentalities of the crime, such as vehicles, guns, vessels and even factories or sawmills, if a felony conviction is obtained.

What is meant by the term 'due care'?

The Lacey Act, as amended, makes it a crime to traffic in plants or plant products when, in the exercise of due care, the person should know that the plant or plant product was taken, possessed, transported or sold illegally. "Due" care is a long-standing legal principle that means the degree of care at which a reasonably prudent person would take under the same or similar circumstances. The Lacey Act does not define nor mandate any requirements to constitute due care. U.S. importers have discretion to determine how to best verify the legitimacy of their supply chain going back to where the plant material was taken, and the legality of transactions thereafter, and to abide by plant protection and conservation laws in the U.S. and abroad.

Is there an 'innocent owner' exception?

No. There is no innocent owner defense when the plant or plant product subject to forfeiture is contraband or otherwise illegal to possess under the law.

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