



## **MASTER CUSTOMS SPECIALIST (MCS) COURSE**

### **Part 5: Admissibility Requirements | Module 16: U.S. Department of Agriculture (USDA)**

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#### **INTRODUCTION**

The U.S. Department of Agriculture (USDA) consists of 29 agencies and offices with nearly 100,000 employees working at more than 4,500 locations across the country and abroad.

The USDA has regulatory authority for a number of Acts, many of which are woven through multiple USDA agencies. We will look at individual products regulated by USDA and the agencies and Acts specific to those products.

#### **USDA agencies involved in imports:**

- Animal and Plant Health Inspection Service (APHIS)
- Food Safety Inspection Service (FSIS)

#### **Acts regulated by the USDA:**

- Plant Protection Act (PPA)
- Plant Protection and Quarantine (PPQ)
- Lacey Act

#### **Lesson 1: APHIS**

**APHIS** is responsible for:

- Facilitating international trade



- Protecting U.S. agriculture including animal health, animal welfare, and plant health from invasive pests and diseases
- Monitoring the health of animals presented at the border
- Regulating the import and export of animals, animal products, and animal by-products including biologics

## Lesson 2: FSIS

**FSIS** is responsible for:

- Insuring meat, poultry and egg products imported into the United States are produced under standards equivalent to U.S. inspection standards
- Facilitating the certification of exported goods.

The products must originate from certified countries and certified establishments and be labeled properly.

After filing the entry with CBP and meeting animal disease requirements of APHIS, the shipment must be presented for inspection by FSIS at a designated import inspection facility.

## Lesson 3: The Lacey Act

The Lacey Act was passed in 1900 and gave the U.S. its first federal wildlife protection law in safeguarding wildlife resources. The Lacey Act made it illegal to transport from one state or territory to another any wild animals or birds killed in violation of state or territorial law.

It also banned the importation of injurious wildlife that threatened crop production and horticulture in this country. In 2008, Congress passed the Food, Conservation, and Energy Act that amended the Lacey Act and expanded its protection to a broader range of plant and plant products.

In its present form, the law bans commerce in illegally sourced plants and their products including timber and wood products. It is unlawful to import, export, transport, sell, receive, acquire or purchase in interstate or foreign commerce any fish, wildlife or plant, with some exceptions, taken in violation of the laws of the U.S., state, or foreign laws. In accordance with Lacey Act requirements, an import plant and plant product declaration must be filed at the time of formal entry for any plant or plant products classified within the HTS chapters of the APHIS enforcement schedule.



The declaration form can be found on the [APHIS website](#). Importers must print and mail it to APHIS or submit the information electronically.

Violation of this federal act can result in civil penalties up to \$10,000 per violation or maximum criminal sanctions of \$20,000 in fines and/or up to five years imprisonment.

All plants or animals taken in violation of the Act are subject to forfeiture as well as all vessels, vehicles, aircraft, and other equipment used to aid in the importing, exporting, transporting, selling, receiving, acquiring, or purchasing of fish or wildlife or plants in a criminal violation of this chapter for which a felony conviction is obtained, where the owner should have known of the illegal transgression.

It is important to note that the Lacey Act does not impose U.S. law on sovereign nations. “Illegally sourced” is defined by the content of sovereign nations’ own laws.

The Lacey Act is administered by the Departments of the Interior, Commerce, and Agriculture through their respective agencies. These include the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Animal and Plant Health Inspection Service.

#### **Lesson 4: Invasive Pests**

One of the unexpected consequences of international trade is the global spread of invasive pests. They hitchhike in and on agricultural products as well as containers that transport cargo such as sea containers, rail cars, trailers and ships.

Once introduced into an ecosystem, invasive pests are very difficult and expensive to control or eradicate. They can severely damage agricultural production, affect property values, and reduce water availability and quality. The total cost of lost revenue and clean-up can run into billions of dollars.

##### **Asian Gypsy Moth**

\*Notice how this pest was introduced.\*

**Native To:** Russia (Lee and Pemberton 2010)

**Date of U.S. Introduction:** First discovered in the Pacific Northwest in 1991. (APHIS 2015)

**Means of Introduction:** From infested cargo in ships (APHIS 2015)

**Impact:** Eradicated in North Carolina and Washington. It is a voracious pest of trees that poses a major threat to forest habitats in North America (APHIS 2015)

**Current U.S. Distribution:** Not currently established



- APHIS. 2015. [Asian Gypsy Moth \(PDF | 62 KB\)](#) (Factsheet 81-35-027). USDA, APHIS Plant Protection and Quarantine.
- Lee, J.H. and R.W. Pemberton. 2010. [Parasitoid complex of the Asian gypsy moth \(\*Lymantria dispar\*\) \(\*Lepidoptera: Lymantriidae\*\) in Primorye Territory, Russian Far East](#). *Biocontrol Science and Technology* 20(2):197-211.

The Asian gypsy moth is one of the most dangerous forest pests capable of significant defoliation and causing widespread outbreaks.

There have been multiple introductions of this pest including strains with flight-capable females. Introductions have occurred from egg masses on ships and cargo entering ports in western North America from Japan and Far East Russian ports. There have also been introductions from pupae on military equipment or trooper belongings entering the eastern United States from Germany.

Most introductions have prompted an eradication program, the largest of which occurred in 1992 and 1994.

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In addition to ecological threats, invasive pests also have a very real impact on trade. When a contaminated container is found in port, the cargo owner, importer, or shipper can expect:

- Delayed cargo release,
- Demurrage charges due to cargo holds, and
- Unexpected costs because of the requirement to have the container quarantined, tarped and treated, cleaned, or re-exported back to origin at the cargo owner's expense

### **Self-Inspection**

The greatest risk of contamination occurs at the packing location. A shipper, or its packer, should develop measure to minimize pest contamination during packing.

All participants in the supply chain should develop control measures in accordance with their unique individual roles and responsibilities.

Measures may include:

- Visually inspect the sea container (both outside and inside) for contaminants such as plants, seeds, insects, egg masses, snails, animals, animal droppings, and soil.
- Where required, sweep, vacuum, or wash containers before loading to remove potential contaminants. Be aware that environmental factors, such as heavy rains, may increase the likelihood of certain types of contamination.
- Ensure cargo packed into the container is clean and free of visible contaminants.
- Clear the cargo staging and packing area to ensure that it is free from plants and visible plant pests. Containers placed on grassy areas may be more vulnerable to contamination by insects and snails.



- Do not keep containers under bright lights, as it will attract insects to the cargo staging area and increase the likelihood of contamination. If containers must be kept under bright lights, check them regularly for signs of insects and egg masses and clean containers as needed to remove these contaminants.
- Where appropriate, use baits, traps, or barriers to keep pests out of the cargo staging and packing area. For example, you can use a salt barrier to prevent snail infestations.
- When moving containers between animal production facilities:
  - Avoid driving containers through manure or wastewater.
  - Whenever possible, park containers on paved areas and away from livestock pens and pastures.
  - Where applicable, sweep, vacuum, or wash containers to remove contaminants, such as soil or animal droppings, that could move animal disease from one location to another.

## **Lesson 5: Plants and Plant Products**

### **Logs, Lumber, and Wood Articles**

The importation of logs, lumber and wood articles are regulated in accordance with 7 CFR 319.40-1 through 11 to protect U.S. agriculture resources from the introduction of potentially injurious wood-boring pests and diseases.

Phytosanitary procedures are required prior to importation for wood and wood products. One key requirement is the mandate to obtain a phytosanitary certificate from the exporting country. Additional import requirements may apply if the wood is listed under regulations pertinent to the CITES.

Logs and lumber may also be regulated under the Lacey Act which we discuss later in this module.

### **Wood Packing Material (WPM)**

WPM includes products such as pallets, crates and boxes and pieces of wood used to brace cargo. All WPM entering or transiting the United States, except for WPM of Canadian origin entering from Canada, must be heat-treated or fumigated and be marked with an approved logo certifying that it has been appropriately treated. The wood packaging materials must be heat treated to a minimum wood core temperature of 56°C for a minimum of 30 minutes or fumigated with methyl bromide.

USDA provides information on how to source compliant WPM as well as how to become a compliant manufacturer of WPM at the following link:

[https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/wood-packaging-material/ct\\_sources-isp15-wpm](https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/wood-packaging-material/ct_sources-isp15-wpm)



There are alternatives to WPM that have been approved by the USDA and are not subject to USDA regulation. Importers might consider the feasibility of using these products where appropriate:

- Plywood or press board
- Plastic pallets
- Oriented strand board
- Hardboard
- Parallel strand lumber
- Synthetic foam
- Metal frames
- Inflated dunnage
- Masonite veneer

Shipments containing non-compliant WPM **will not be allowed** to enter the United States.

Expenses associated with CBP services to separate the cargo will be billed to the importer or other party of interest. Costs associated with the immediate export of non-compliant wood packaging material and associated merchandise will be at the importer's expense.

Liquidated damages or penalties may also be assessed depending on the nature of the violation of the regulations for wood packaging materials.

### **CITES (Endangered Plant Species)**

The USDA is responsible for enforcing CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) and Endangered Species Act (ESA) regulations specific to the import and export of plants.

A list of CITES regulated plants can be found [here](#). A list of ESA regulated plants can be found [here](#).

Under 7 CFR 35, organizations or individuals who import, export or re-export CITES or ESA regulated plants and plant products must possess a valid USDA Protected Plant Permit. The fee is \$70.

All CITES listed plants and plant products must enter the U.S. through a designated USDA port.

In addition to USDA permits, the U.S. Fish and Wildlife Service (FWS) issues permits for the export and re-export of CITES or ESA-protected plants leaving the United States. FWS also requires import permits for wild collected CITES Appendix I species.



### **Plant Protection Act (PPA)**

In addition to the CITES and ESA permitting requirements, importers of live plants and seeds must also obtain permits under the USDA's nursery stock regulations.

7 CFR 319 prohibits or restricts the import of certain plants and plant products to prevent the introduction of plant pests into the U.S., specifically living plants, plant parts, and seeds for propagation. The "plants for planting" regulations, also known as Q37, also has a regulated category for plants that are "not authorized pending pest risk analysis" (NAPPPRA).

The USDA has issued specific [protocols for the importation of plants for planting](#).

### **Fruits, Vegetables and Nuts**

The Agricultural Marketing Agreement Act, section 8e requires imports of certain commodities meet the domestic standards of same or comparable grade, size, quality and maturity requirements. These standards ensure that the American produce industry and imports are competing on a level playing field and that consumers have access to high-quality products.

Customs Directive 3250-007B provides specific steps that must be taken under this Act. Some key points are:

- It is the responsibility of the importer of record, not CBP, to arrange for an inspection by the Agriculture Marketing Service (AgMS) that are covered by the directive.
  - Note: Raisins and dates must be inspected, even if they are to be exported.
- Inspection may be performed anywhere in the U.S., as long as it is done prior to final release of the product into the commerce of the United States.
- AgMS inspectors are not immediately available at all ports, especially at small ports. Prior to, or upon arrival of the shipment, importers must make arrangements for inspection with the AgMS field office that will perform the inspection.
- If the product is dates, application for inspection must be prepared at least 10 days in advance.

Once AgMS inspection has been performed and the products certified, AgMS will issue inspection certificates. A copy of USDA Inspection Certificates (FV-184, FV- 300, FV-494, or FV-146) issued by AgMS should be provided to CBP by the importer and maintained by the importer in accordance with CBP record-keeping requirements.

The product cannot be released to the consignee until the certificate(s) is received from AgMS.

Products that do not meet the necessary standards may be subject to seizure.



Anyone attempting to enter or introduce products in violation of Section 8e of the Agricultural Marketing Agreement Act, through smuggling or any other types of concealment, false statement, act or omission, are subject to penalty under applicable law in addition to product seizures.

## **Lesson 6: Meat, Poultry, and Egg Products**

USDA's Food Safety and Inspection Service (FSIS) ensures that meat, poultry and egg products imported into the United States are produced under standards equivalent to U.S. inspection standards, and facilitates the certification of exported goods. It regulates all commercial shipments of meat and meat food products (derived from cattle, sheep, swine, goats, horses, and poultry, live, dressed, or canned); eggs, including eggs for hatching; and egg products. The products must originate from certified countries and establishments.

FSIS is responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and correctly labeled and packaged, as required by the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act. This authority extends to the control of un-denatured inedible meat and poultry products that have the appearance of being fit for human consumption, but are intended for the manufacture of articles not for human food. Countries wishing to export these products to the U.S. must apply to the FSIS for eligibility.

FSIS allows the movement of imported un-denatured inedible meat, poultry and egg products, subject to approval of a FSIS permit and advanced prior notice of the arrival of each shipment. After a shipment has met CBP and APHIS requirements, the shipment must be re-inspected at an approved FSIS import inspection facility. Shipments arriving at land border ports from Canada by truck must be presented to the inspection facility within three working days from receipt of the faxed 9540-1 form. The original foreign health certificate and the original FSIS form 9540-1 must be available for all imports for presentation to the FSIS inspector. Product refused entry must be exported, destroyed or converted to animal food.

Meat products from wild game are subject not only to the USDA's APHIS regulations but also the Food and Drug Administration (FDA) and the U.S. Fish and Wildlife Service (FWS).