

# Lacey Act Due Care Certification of Compliance©

## Introduction

The National Consensus Lacey Due Care Standard© was unanimously approved on May 21, 2012.

Lacey makes it a crime to sell or possess any wood or paper product in the global supply chain in violation of any law including common law in all countries globally.

Lacey has resulted in strict criminal liability fines and incarceration even when the party is not at fault, product seizure and forfeiture as contraband with no access to court, and resulting brand destruction and substantial legal fees.

The Standard identifies requirements for companies to achieve the Lacey Act Due Care and Innocent Owner Liability Defenses increasing compliance with the law and protecting and enhancing the forest environment as required by Lacey, with the presumption the product is lawfully possessed, not contraband, and the company and / or person is not liable. See Standard §6.8.

The Standard is a legal opinion (§1.6), provides relevant statutory, case law, and Legislative History (§6 & Annex), and Justice and Agriculture Departments stated that a consensus standard can demonstrate Lacey Due Care (§3.3).

Federal law requires federal agencies to adhere to a consensus standard where the government currently has none such as Lacey Due Care and Innocent Owner (§1.4).

A bona fide Certification of Compliance allows the certifier to assert these Liability Defenses in the appropriate US District Court.

Exclusive jurisdiction for all Standard content, approval, amendment and interpretation rests with the Lacey Due Care National Consensus Committee and its Executive Board.

For a list of the organizations involved, a copy of the standard, or other questions, please contact the Capital Markets Partnership (CMP) or go to [www.LaceyDueCare.com](http://www.LaceyDueCare.com). CMP is a subsidiary of Market Transformation to Sustainability (MTS). MTS is an ANSI-Accredited Standards Developer.

## **National Consensus Lacey Due Care Standard covers:**

- Purpose, Scope, Background & Definitions
- Lacey Act Statutory Purpose & Retroactive Application
- What is the Meaning of Due Care Under the Law?
- Encouraging Lacey Compliance & Benefits
- Rationale for Due Care Requirements & Implications
- Principles Governing Due Care, Action Plan, & Due Care Charts
- Forest Certification
- Equivalency Petitions & Burden of Proof
- Legally Binding Certification to the Standard – Options & Product Marking
- Amendments & Jurisdiction
- Non-Mandatory Appendix
- Mandatory Annex: Discussion of Retroactive Application of the Lacey Act

## **Purpose of This Lacey Due Care Compliance Certification Document**

This Document is intended to be used for documenting and completing compliance with Lacey Act Due Care and should be used in conjunction with the Standard. This Document contains:

- Instructions
- Lacey Due Care Action Plan
- Completion of Due Care Requirements & Documentation
- Risk Audit
- Legal Audit
- Compliance Audit
- Equivalency Petitions
- Legally Binding Certification of Compliance
- Chart on Achievement of Due Care
- Due Care Flow Chart

## **Instructions:**

- 1. Document Wood Control System of your company** e.g.,: Procurement policy, designated staff responsible for purchase and standard completion.
- 2. Complete Lacey Due Care Compliance Form for each supply chain or individual forest product procurement process.**
- 3. Post a summary of the compliance to the Lacey Due Care Consensus Standard on the company website or publish in annual report consistent with the Legally Binding Certification below.**

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Note: Should this link change, users may search the ANSI site for "Lacey Due Care Standard"

For reprints and approval of excerpts, please contact CMP at: 202-338-3131 or [mts@sustainableproducts.com](mailto:mts@sustainableproducts.com)

## Lacey Due Care Action Plan

# Lacey Due Care Action Plan

The Action Plan Purpose is to Identify & Achieve Needed Steps to Execute a Legally Binding Certification of Compliance With the Lacey Due Care Standard, and thus a Defense to Liability.

1. **Select Appropriate Forest Certification Option for Due Care** that the company or independent third party will certify compliance to the Standard pursuant to §11.
2. **Identify Timeline for Achieving Compliance** with the applicable level of Due Care.
3. **Decide Whether to Achieve FSC, or PEFC, or Seneca Creek / AHEC US Hardwood Program.** If an FSC option is specified, decide which FSC Standards to comply with.
4. **Complete Required Risk, Compliance & Legal Audits.**
5. **Decide How to Complete the §11 Legally Binding Certification** to the Lacey Due Care Standard. FSC Step 3 / PEFC and Seneca Creek AHEC allow self certification to §11 as well as third party. FSC Steps 2 & 1 require independent third party certification to §11. Decide whether the §11 Certification will be to the FTC Environmental Marketing Guides or an express warranty that is part of the contract of sale of the wood or paper product.
6. **Place Summary of the §11 Certification on a Web Site** so that it is publicly available.
7. **Decide Whether There is Internal Capacity to Complete this Action Plan**, or whether outside services should be engaged.



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## **Lacey Due Care Consensus Standard: Certification of Compliance Form**

Please complete the following form in order to certify compliance to the Standard.

The standard requires completion of the following areas of compliance: [Risk, Legal & Compliance Audits](#)

Each area requires written answers accompanied by official forest regulatory documents, export/import documents as well as proof of purchase for timber and forest products. Feel free to attach additional explanation.

**Risk Audit.** See Risk Audit, section 7.1 of Lacey Due Care Standard.

1. Name suppliers, country of origin & species type of wood or paper product being certified.

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2. Determine risk of country, and region, and whether risk is high, medium or low and document the reason. Guidance provided in section 7.2 of the Standard
3. Determine risk of supplier and whether risk is high, medium or low and document the reason.
4. Identify the supplier forest product and or forest management certifications, e.g., FSC, PEFC. If no forest certification is currently applicable, please use Equivalency Application Form at [www.laceyduecare.com](http://www.laceyduecare.com).
5. Based on risk determination and procurement policy, was a site audit needed? Please explain.
6. Compile and attach evidence supporting risk determinations, e.g., government permits, proof of taxes paid, & review of international risk indexes.

**Legal Audit.** See Legal Audit, section 7.2 of Lacey Due Care Standard.

1. Confirm that the source company operates legally. Document license approval and expiration date below. Attach the license to operate.

2. Document communication to obtain the following country of origin forest regulatory permits and attach copies of license to harvest, transport, process, and export permits.
  
3. Identify and document species specific restrictions of product, e.g., CITIES or special permitting
  
4. Identify and document forest regulatory structure, including permitting, taxation & land tenure.

**Compliance Audit.** See Compliance Audit, section 7.3 of Lacey Due Care Standard.

1. Do you have a timber procurement policy? Please, document the name and address of the designated person responsible for procurement and policy compliance. Attach company forest and timber product procurement policy
  
3. Determine vendor policies on timber procurement and continuous improvement. Please identify and document communication between your company and the vendor and attach policies.
  
4. Obtain completed and signed vendor questionnaire asking the following:
  - Procurement Policy
  - License to operate
  - Legal right to harvest & process
  - Species identification
  - Transport, process, & export forest products permits

Attach these documents to this Certification of Compliance.

**Equivalency Petitions to the Standard & Burden of Proof.** [Equivalency Petitions are allowed and can be determined as an Official Interpretation to this Standard.](#) The burden of

persuasion is upon the petitioner. All Petitions are decided by a balanced subcommittee of the national consensus Lacey Due Care Committee. Subcommittee members are appointed by the Committee Officers. Any conflicts of interest by Subcommittee Members and Committee Officers must be disclosed and the disclosing party may have to be recused.

## **Legally Binding Certification to the Standard & Disclosure – Options & Product Marking.**

This mandatory provision is required to maintain the integrity of the Standard, and reduce the potential for Standard greenwash which is unlawful in violation of truth in advertising law. All purchasers and sellers of wood and wood products at any point in the supply chain, must have a certification of compliance pursuant to this section, in order to show evidence of achievement of due care.

Certifications of compliance to the Standard must be dated and updated every three years, and a summary of achievement to the Standard as certified pursuant to this section, must be publicly available and posted on a stated website as evidence of certification, including:

- Qualifications of the certifier
- Due Care Options achieved, and
- Key findings and rationale for each component of due care: Stepwise approach or PEFC or AHEC Seneca Creek (where applicable), risk reduction activities, legal audit, and compliance actions.
- An executed / signed certification to either option a or b below

Certifiers must be a qualified environmental professional as defined by EPA, show evidence of training and experience in sustainable forest management certification, chain of custody, legality verification, and legitimately do business in the US. EPA's environmental professional definition is at EPA 560-F-05-241 (Oct. 2005) [http://epa.gov/brownfields/aal/ep\\_deffactsheet.pdf](http://epa.gov/brownfields/aal/ep_deffactsheet.pdf)

As part of the decision in awarding a certificate of compliance with this Standard, the certifier of compliance shall use best professional judgment based on the Risk, Legal, and Compliance Audit and forest certification requirements, including the progress and status of the wood or paper seller in any stepwise approach, and any other relevant and material factors.

For FSC Step 3 / PEFC / Seneca Creek AHEC, self-certification (either first or second party) to this Standard by the seller is allowed. First party means verified or audited internally by the operation. Second party may involve a 2<sup>nd</sup> party, e.g. forest products association or technical advisor. For FSC Steps 2 & 1, independent third party certification to this Standard is required.

**Product Lines.** Certification to this Standard pursuant to Section 11 can be by product line or by Company. If by Company it must cover all product lines and all product lines must be identified in the Section 11 Certification. A product line is a specifically identified and branded wood or paper product that is sold.

**Product Marking.** Companies certifying compliance to this Standard may mark their products showing achievement of compliance.

- a. Express Warranty Option by the wood seller in the sales contract that the company or product line(s) information documenting compliance with this Standard, is accurate, not misleading, and prepared by qualified professionals.

Consistent with the preceding Section 11 requirements, compliance with this Standard is evidenced by expressly warranting achievement to the Standard requirements in writing which includes the professional's typed name, signature, and affiliation.<sup>1</sup>

I, \_\_\_\_\_, as the certifying professional hereby expressly warrant as part of the engagement agreement, or if the company is self-certifying as provided by this Standard as part of the wood or paper products sales contract, that the company or product line(s) information documenting compliance with this Standard, and data gathered in determining Lacey Due Care compliance pursuant to this Standard, including responses to any third-party information requests, are accurate, reliable, and not misleading to the best of my knowledge as set forth by the Federal Trade Commission Environmental Marketing Guides requiring accurate and true environmental communications.

Both the express and implied meaning of this certification concerning the data used, responses to information requests, and provisions of the Standard are reasonable and based on competent and reliable evidence prepared by a qualified professional using procedures to produce accurate and reliable results.

<Signature>

Name

Professional Designation & Date

**OR**

- b. Certification by the Wood or Paper Product Seller to FTC Environmental Marketing Guides Option that the company or product line(s) information documenting compliance with this Standard, is accurate, not misleading, and prepared by qualified professionals.

**Equivalent Option.** An equivalent option can be used satisfying this legally binding certification requirement in lieu of providing the express warranty above for general adherence to this Standard. To do this, the certifying professional must certify in writing that their communications regarding this Standard and applicable sections, including certification of compliance to this Standard, comply with the Federal Trade Commission *Environmental Marketing Guides* at 16 C.F.R. Part 260 (1998) for accurate, reliable, and documented communications: <http://www.ftc.gov/bcp/gnrule/guides980427.htm>.

This certification must also state that "both the express and implied meaning of the certification about the data, responses to information, and provisions of the Standard, is reasonable and based on competent and reliable scientific evidence prepared by qualified professionals in the relevant area, using procedures to produce accurate and reliable results." See 16 C.F.R. § 260.5. Further, such certification and its documentation will be publicly available.

<Signature>

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<sup>1</sup> Federal Trade Commission Environmental Marketing Guides at 16 C.F.R. Part 260 (1998)

Name

Professional Designation

Date

# Achievement of Due Care

Achievement of Lacey Due Care & Defense to Liability. Forest Certification and Risk, Compliance & Legal Audits are All Required. §10 Allows Equivalency Petitions.

§11 Legally Binding Certification That Forest Environment is Protected

Joint Statement of the Lacey Conference Managers: A Primary Statutory Purpose is to Protect the Forest Environment From Illegal Logging.  
110 H. Rpt., 627, Food, Conservation & Energy Act of 2008 Conference Report to Accompany H.R. 2419 (2008)

FSC OR PEFC OR Seneca Creek / AHEC Program Protecting & Enhancing US Hardwood Forests.

**FSC Step 3 / PEFC:** Required is independent field audited achievement of risk reduction activities. Needed means to counter government corruption undermining the rule of law & meet statutory purpose. With forest management preconditions, two years are allowed to set up systems for Stepwise Approach or PEFC, and 5 years to achieve FSC Step 2.. **Seneca Creek / AHEC:** Achieve AHEC Certificate of Compliance or equivalent, and achieve conditions ensuring low risk of illegal logging with 3 year review of material forestry and logging activities and indicators. **FSC Step 2:** Stds. - Principles & Criteria, Forest Management Evaluation, Controlled Wood for Forest Mgt. Enterprises, Regional Std. for Forest Management Unit, Chain of Custody for all companies, Company Evaluation of FSC Controlled Wood, Product Classification. Identification of Wood Source, Origin & Category. **FSC Step 1:** Identification of Wood Origin & Source by forest management unit & Product Must be “FSC Certified Product” as defined in the most recent FSC Chain of Custody Standard.

Risk Audit

Evaluate supply chain risk based on relevant and appropriate law, and ecological significance of place of origin. Risk factors include species type, CITES list, supplier integrity and practices, and level of corruption and other serious social issues like conflict in place of origin.

Law & Practices Audit

Confirm license to operate, plant species & plant protection laws, permits, tax payments, supplier export license, forest governance regulatory structure, export restrictions, first placement compliance, and law in any EU Voluntary Partnership Agreement.

Compliance Audit

Conduct inspections, audits for suppliers, continuous improvement programs, and determine needed qualifications. Develop procurement policy ensuring contractual agreement with vendors throughout the supply chain to adhere to Lacey Due Care Standard and allow compliance auditing.



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