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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2008-0119]

Implementation of Revised Lacey Act Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food, Conservation, and Energy Act of 2008 amended the Lacey Act to provide, among other things, that importers submit a declaration at the time of importation for certain plants and plant products. The declaration requirements of the Lacey Act became effective on December 15, 2008; however, enforcement of the declaration requirement will be phased in and will begin on April 1, 2009 (unless the implementation date must be delayed slightly for technical reasons as described below). The purpose of this notice is to inform the public of the Federal Government's revised plan to phase in enforcement of the declaration requirement and other implementation plans.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0119> to submit or view comments and to view supporting and related materials available electronically.

- **Postal Mail/Commercial Delivery:** Please send two copies of your comment to Docket No. APHIS-2008-0119, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0119.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Belano, Assistant Branch Chief, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-8758.

SUPPLEMENTARY INFORMATION:

Background

The Lacey Act (16 U.S.C. 3371 et seq.), first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. The Act combats trafficking in "illegal" wildlife, fish, or plants. The Food, Conservation, and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act by expanding its protection to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). As amended, the Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken in violation of

the laws of a U.S. State or any foreign law that protects plants. The Lacey Act also now makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant. In addition, Section 3 of the Lacey Act, as amended (16 U.S.C. 3372), makes it unlawful to import certain plants and plant products without an import declaration. The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from where the plant was harvested. For paper and paperboard products containing recycled content, the declaration also must include the average percent of recycled content without regard for species or country of harvest.

Comment Analysis

On October 8, 2008, we published a notice in the Federal Register (73 FR 58925-58927, Docket No. APHIS-2008-0119) announcing our plans to begin phased-in enforcement of the declaration requirement on April 1, 2009, and provided dates and products covered for the first three phases of enforcement. We solicited comment on the proposed phase-in plan for 60 days ending on December 8, 2008, and received 124 comments by that date. The comments covered a range of topics, including the scope of the declaration requirement, the specific products covered in each phase, definitions of terms, length of phases, effects on trade/industry, and enforcement issues. While we will not provide specific responses to comments in this notice, we have revised the phase-in schedule based on the comments we received. Comments related to other aspects of our implementation plan for the declaration requirement are still being analyzed and those comments will be taken into account as we continue to implement the provisions related to the declaration requirement of the Lacey Act.

Revised Phase-in Schedule

After review of the comments received and further internal consideration, we have revised the phase-in schedule, which covers the period from December 15, 2008, to September 30, 2010. We have extended the length of each phase from 3 months to 6 months and provided an affirmative list of products that fall within each phase of enforcement of the declaration requirement. We revised the schedule by phasing in products largely based on their degree of processing and complexity of their composition. For example, phase II contains products that are minimally processed and/or of less complicated composition (e.g., wood in the rough, sheets for veneering). Phase III contains products that are more processed and of more complex composition (e.g., wood pulp and particle board). Finally, phase IV includes more highly processed products composed of materials from phases II and III (e.g., paper and furniture). We continue to consider the applicability of the declaration requirement to products not included in the current phase-in schedule and we invite public comment on how the declaration requirement should be enforced as to these products.

The proposed phased enforcement schedule through September 30, 2010, is described in the table below. It is important to note that while enforcement of the declaration requirement will be phased in and will begin no earlier than April 1, 2009, the other Lacey Act amendments are already effective, and actions to enforce provisions of the Act other than the declaration requirement may be taken at any time. We invite public comment particularly on the products covered under phases III and IV of the revised plan, as well as on whether any additional Harmonized Tariff Schedule (HTS) chapters should be included in the current phase-in schedule.

Phase-In Schedule of Enforcement of the Declaration Requirement for Goods of, or Containing, Plants or Plant Products*

I Present – March 2009	II April 1, 2009 – September 30, 2009	III October 1, 2009 – March 31, 2010	IV April 1, 2010 – September 30, 2010
<p>PPQ Plant Import Declaration Form will be available on Web site, and accepted after December 15, 2008</p> <p>Domestic and International Outreach</p>	<p>HTS Chapters:</p> <p>Ch. 44 Headings (wood & articles of wood)</p> <p>4401—(Fuel wood)</p> <p>4403—(Wood in the rough)</p> <p>4404—(Hoopwood; poles, piles, stakes)</p> <p>4406—(Railway or tramway sleepers)</p> <p>4407—(Wood sawn or chipped lengthwise)</p> <p>4408—(Sheets for veneering)</p> <p>4409—(Wood continuously shaped)</p> <p>4417—(Tools, tool handles, broom handles)</p> <p>4418—(Builders’ joinery and carpentry of wood)</p>	<p>HTS Chapters:</p> <p>Ch. 44 Headings (wood & articles of wood)</p> <p>4402—(Wood charcoal)</p> <p>4405—(Wood wool [excelsior])</p> <p>4410—(Particle board)</p> <p>4411—(Fiberboard of wood)</p> <p>4412—(Plywood, veneered panels)</p> <p>4413—(Densified wood)</p> <p>4414—(Wooden frames)</p> <p>4415—(Packing cases, boxes, crates, drums)</p> <p>4416—(Casks, barrels, vats, tubs)</p> <p>4419—(Tableware & kitchenware, of wood)</p> <p>4420—Wood marquetry; caskets; statuettes)</p> <p>Ch. 47 Headings (wood pulp)</p> <p>4701—(Mechanical wood pulp)</p> <p>4702—(Chemical wood pulp, dissolving.)</p> <p>4703—(Chemical wood pulp, sulfate)</p> <p>4704—(Chemical wood pulp, sulfite)</p> <p>4705—(Combination mechanical and chemical)</p> <p>PLUS PHASE II</p>	<p>HTS Chapters:</p> <p>Ch. 44 Headings (wood & articles of wood)</p> <p>4421--(Articles of wood, nesoi)</p> <p>Ch. 48 Headings (paper & articles of)</p> <p>4801-(Newsprint)</p> <p>4802-(Uncoated writing paper)</p> <p>4803-(Toilet or facial tissue stock)</p> <p>4804-(Uncoated kraft paper)</p> <p>4805-(Other uncoated paper and board)</p> <p>4806-(Vegetable parchment, etc.)</p> <p>4807-(Composite paper and board)</p> <p>4808-(Corrugated paper and board)</p> <p>4809-(Carbon paper)</p> <p>4810-(Coated paper and board)</p> <p>4811-(Paper coated, etc. other than 4803, 4809, or 4810)</p> <p>Ch. 94 Headings (furniture, etc.)</p> <p>940169 (seats with wooden frames)</p> <p>940330 (wooden office furniture)</p> <p>940340 (wooden kitchen furniture)</p> <p>940350 (wooden bedroom furniture)</p> <p>940360 (other wooden furniture)</p> <p>94039070 (wooden furniture parts)</p> <p>PLUS PHASES II & III</p>

* Declaration requirements are effective as of December 15, 2008. All declarations submitted must be accurate; false statements may be referred for enforcement. Failure to submit a declaration will not be prosecuted, and customs clearance will not be denied for lack of a declaration until after the phase-in date above.

With respect to the declaration requirement, the Federal enforcement agencies do not intend to refer for enforcement entries of products in HTS chapters not listed in the above phase-in schedule, during the respective timeframes, unless APHIS publishes another notice in the Federal Register announcing an amended implementation plan. Any such changes/additions would apply only to phases III or IV. There will be no further changes to phase II. Should there be additions to phases III or IV, we intend to provide at least 6 months' notice to persons and industries affected by those changes to facilitate compliance with the new requirements. Changes will be announced in the Federal Register.

The Federal Government will conduct studies in order to inform implementation of the amended Lacey Act, including with respect to products under HTS headings not listed in the current phase-in schedule. In addition, consistent with the requirements of the statute, we will review our experience with implementation and make decisions, including promulgating regulations, to guide any further phase in of the declaration requirement.

Applicability of the Declaration Requirement

At present, we will be enforcing the declaration requirement only as to formal consumption entries (i.e., most commercial shipments). Also at this time, we do not intend to enforce the declaration requirement for informal entries (i.e., most personal shipments), personal importations, or mail (unless subject to formal entry), transportation and exportation entries, in-transit movements, carnet importations (i.e., merchandise or equipment that will be re-exported within a year), and foreign trade zone and warehouse entries; however, we welcome public comment on enforcement of the declaration requirement with regard to those types of entries. Further, we will only enforce a declaration for the product being imported and not for sundries that ordinarily accompany the product (e.g., tags, labels, manuals, and warranty cards).

Declaration Form

A printable declaration form is currently available for voluntary submission on the Internet at http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml or from the person listed under FOR FURTHER INFORMATION CONTACT. You may submit completed declaration forms by mail to:

The Lacey Act
c/o U.S. Dept of Agriculture
Box 10
4700 River Road
Riverdale, MD 20737

As indicated previously, we intend to collect the data required by the amended Lacey Act electronically and anticipate the majority of importers will not need to submit a paper declaration form. No agencies with Lacey Act enforcement authority will bring prosecutions or forfeiture actions for failing to complete the paper declaration form before April 1, 2009; however, if any person submits a form and it contains false information, they may be prosecuted. We also invite public comment on the paper declaration form. Comments related to the content of the declaration form should be submitted by one of the methods provided under the heading ADDRESSES at the beginning of this notice and not to the Lacey Act mailbox. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), APHIS requested and received the Office of Management and Budget's emergency approval to collect information that the Lacey Act requires importers to include in the declaration and that is not already being collected for other purposes. The emergency approval is valid for 6 months and allowed us to collect the information and make the paper form available for immediate use. On January 5, 2009, we published an information collection notice in the Federal Register (74 FR 259-260, Docket No. APHIS-2008-0136) soliciting comments from the public (as well as affected

agencies) on these information collection requirements and requesting an extension of the 6-month emergency approval.

Availability of Electronic System

The Department of Homeland Security's Bureau of Customs and Border Protection (CBP) already collects some of the information that the Lacey Act amendments require importers to include in their declarations. CBP is currently modifying its Automated Commercial System (ACS) to collect the remaining data required to be declared. As noted in our October 2008 Federal Register notice, we intend to begin enforcement of the declaration requirements upon completion of those modifications. At this time, CBP still anticipates completing the changes to the system by April 1, 2009, and phase II remains scheduled to begin on April 1, 2009. If there are any changes to that date, we will notify the public through a Federal Register notice.

Additional Information

APHIS will continue to provide the latest information regarding the Lacey Act on our Web site, <http://www.aphis.usda.gov>. The Web site currently contains the Lacey Act, as amended; a slideshow covering background and context, new requirements, commodities and products covered, information on prohibitions, and the current status of implementation of the declaration requirement of the Lacey Act; frequently asked questions; the phase-in implementation plan; and the paper declaration form. The Web site will be updated as new materials become available. We encourage persons interested in receiving timely updates on

APHIS' Lacey Act efforts to register for our stakeholder registry at <https://web01.aphis.usda.gov/PPQStakeWeb2.nsf> and select "Lacey Act Declaration" as a topic of interest.

Done in Washington, DC, this 15th day of January 2009.

Cindy J. Smith,

Administrator, Animal and Plant Health Inspection Service.

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