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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, and enforcement of those requirements is being phased in. 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, Branch Chief, Risk Management and Plants for Planting Policy, RPM, 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 comments on the proposed phase-in plan for 60 days ending on December 8, 2008, and received 124 comments by that date. On February 3, 2009, we published a second notice in the Federal Register (74 FR 5911-5913, Docket No. APHIS-2008-0119) and provided a revised, more detailed phase-in schedule based on comments we received in response to the October notice. We solicited comment on the revised phase-in plan for 60 days ending on April 6, 2009, and received 41 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 specifically address each of the comments in this notice, we have revised the phase-in schedule based on the comments we received and our experience with implementation to date. We will also publish a separate notice in the Federal Register to respond to the substantive comments that we have received to date. We will continue to take into account

public comments 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, further internal consideration, and experience with implementation of the first phase of enforcement of the declaration requirement, we have revised the phase-in schedule, which covers the period from December 15, 2008, to August 31, 2010. In our February notice, we committed to providing affected individuals and industry with at least 6 months' notice for any products that would be added to the phase-in schedule.

Although we have modified phase III, which is scheduled to begin on October 1, 2009, we have only removed items from this phase. Phase IV, scheduled to begin April 1, 2010, has been substantially revised. Those changes were based on information supplied by commenters and further consideration within the interagency group of the products that would supply the most valuable information to inform the Federal Government as we continue to implement the statute and develop recommendations for Congress as required by the Act.

Several commenters contended that identifying composite and recycled or reused materials (e.g., medium density fiberboard, particleboard, and scrap wood) to the genus and/or species level would be difficult and in some cases impossible. In response to those comments, we have decided to further delay enforcement of the declaration for such products. We currently propose to begin enforcing the declaration for those products no earlier than September 1, 2010. This delay in enforcement of the declaration requirement will allow the Federal Government more time to evaluate options for enforcing the declaration for these goods.

The revised phased-in enforcement schedule through August 31, 2010, is described in the table below with the date that enforcement of the declaration requirement begins listed at the top

of each column. It is important to note that while enforcement of the declaration requirement is being phased in, 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.

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

II April 1, 2009	III October 1, 2009	IV April 1, 2010
HTS Chapters: Ch. 44 Headings (wood & articles of wood) 4401—(Fuel wood) 4403—(Wood in the rough) 4404—(Hoopwood; poles, piles, stakes) 4406—(Railway or tramway sleepers) 4407—(Wood sawn or chipped lengthwise) 4408—(Sheets for veneering) 4409—(Wood continuously shaped) 4417—(Tools, tool handles, broom handles) 4418—(Builders' joinery and carpentry of wood)	HTS Chapters: Ch. 44 Headings (wood & articles of wood) 4402—Wood charcoal 4412—Plywood, veneered panels, except 44129906 and 44129957 4414—Wooden frames 4419—Tableware & kitchenware of wood 4420—Wood marquetry, caskets, statuettes PLUS PHASE II	HTS Chapters: Ch. 44 Headings (wood & articles of wood) 4421—Other articles of wood Ch. 66 Headings (umbrellas, walking sticks, riding crops) 6602—Walking sticks, whips, crops Ch. 82 Headings (tools, implements) 8201—Hand tools Ch. 92 Headings (musical instruments) 9201—Pianos 9202—Other stringed instruments Ch. 93 Headings (arms and ammunition) 9302—Revolvers and pistols 93051020—Parts and accessories for revolvers and pistols Ch. 94 Headings (furniture, etc.) 940169—Seats with wood frames Ch. 95 Headings (toys, games, & sporting equipment) 950420—Articles and accessories for billiards Ch. 97 Headings (works of art) 9703—Sculptures PLUS PHASES II & III

* Declaration requirements were 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.

Federal enforcement will address failures to file declarations for entries of products in the Harmonized Tariff Schedule (HTS) subchapters listed in the above phase-in schedule, unless

APHIS publishes another notice in the Federal Register announcing an amended implementation plan. We recognize that many of the headings listed in phase IV of the phase-in schedule contain goods that are not composed of wood or other plant material. We wish to clarify that a declaration is not required for products that have no wood or other plant content. For example, both metal hammers and hammers with wooden handles are included in HTS Chapter 82. In that example, only the hammers with wooden handles would require a declaration as of April 1, 2010.

There will be no further additions to phases III or IV. We intend to provide at least 6 months' notice to persons and industries affected by changes to the phase-in schedule to facilitate compliance with the new requirements. Changes will be announced in the Federal Register. We invite public comment on the revised schedule for enforcement of the declaration.

We also seek comment on the following HTS chapters/subchapters currently under consideration for subsequent phases that would be scheduled to begin on or after September 1, 2010:

- Ch. 44 Headings (wood & articles of wood)
 - 4405—Wood wool [excelsior]
 - 4410—Particle board
 - 4411—Fiberboard of wood
 - 4412—Plywood, including 44129906 and 44129957
 - 4413—Densified wood
 - 4415—Packing cases, boxes, crates, drums
 - 4416—Casks, barrels, vats, tubs

- Ch. 47 Headings (wood pulp)
 - 4701—Mechanical wood pulp
 - 4702—Chemical wood pulp, dissolving
 - 4703—Chemical wood pulp, sulfate
 - 4704—Chemical wood pulp, sulfite
 - 4705—Combination mechanical and chemical

- Ch. 92 Headings (musical instruments)
 - 9205—Wind musical instruments

- Ch. 48 Headings (paper & articles of)
 - 4801—Newsprint
 - 4802—Uncoated writing paper
 - 4803—Toilet or facial tissue stock
 - 4804—Uncoated kraft paper
 - 4805—Other uncoated paper and board
 - 4806—Vegetable parchment, etc.
 - 4807—Composite paper and board
 - 4808—Corrugated paper and board
 - 4809—Carbon paper
 - 4810—Coated paper and board
 - 4811—Paper coated, etc.

- Ch. 66 Headings (umbrellas, walking sticks, riding crops)
 - 6601—Umbrellas
 - 6603—Umbrella parts

- Ch. 94 Headings (furniture, etc.)
 - 9401—Seats
 - 940330—Wooden office furniture
 - 940340—Wooden kitchen furniture
 - 940350—Wooden bedroom furniture
 - 940360—Other wooden furniture
 - 940381—Furniture of cane, osier, bamboo, rattan, or similar materials

- Ch. 95 Headings (toys, games & sporting equipment)
 - 9504—Articles for arcade, table, or parlor games

We continue to consider the applicability of the declaration requirement to other products not included in the revised phase-in schedule or listed above. In particular, we seek comment on how the declaration requirement should be enforced as to additional goods classified under the following HTS headings:

- Ch. 48 Paper & articles of
- Ch. 82 Tools, implements
- Ch. 89 Ships, boats, & floating structures
- Ch. 93 Arms and ammunition

- Ch. 94 Furniture, etc.
- Ch. 95 Toys, games, & sporting equipment
- Ch. 96 Brooms, pencils, buttons

As noted in the February 2009 Federal Register notice, the Federal Government is also conducting studies on other HTS headings to inform its implementation of the Lacey Act.

Blanket Declarations

Several commenters requested that APHIS consider the use of blanket declarations instead of shipment-by-shipment declarations. Blanket declarations could be used to declare routine and/or repeat shipments. The commenters noted that such declarations would reduce the paperwork burden on affected entities, reduce costs, and could, in addition, improve the quality and usefulness of the information collected. Some commenters provided detailed descriptions of possible blanket declaration programs.

The Federal Government is making every effort to implement the amended Lacey Act, including the declaration requirement, in a manner that is consistent with the Act and, at the same time, recognizes the burden of compliance on industry. We also have an objective of improving the overall quality of the information contained in the import declarations. In that context, we are currently evaluating options for blanket certification programs. We recently announced a pilot blanket declaration program for participants in Customs and Border Protection's expedited border release programs, Automated Line Release (ALR) or Border Release Advance Screening and Selectivity (BRASS). This pilot program will test the feasibility of collecting the information required through the use of a periodic "blanket" declaration, with subsequent reconciliation reports. Information on how to participate in this program is available on APHIS' Lacey Act Web page http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml.

Use of Spp. to Identify Species of Imported Plants

Several commenters proposed that APHIS allow for importers to provide only the genus name in circumstances where the individual species would be difficult to identify. The commenters contended that in some circumstances, the individual species used to manufacture the product would be impossible to identify and that they would therefore have to list dozens or even hundreds of possible species. The commenters contended that this information would be of little value to the Federal Government as it relates to enforcement of the declaration requirement and that it would result in significantly greater filing costs for them. Along similar lines, some of those commenters asked that APHIS allow for the use of common nomenclature for species identification. One example provided is SPF, a common grade of lumber manufactured from varying proportions of spruce, pine, or fir species in Canada. SPF imports from Canada are a combination of several distinct species, but identifying the particular species in any individual shipment would be difficult. The commenter recommended that APHIS develop a list of shorthand designations that would satisfy the requirement to provide genus and species information for these common nomenclature groups.

The amended Lacey Act explicitly states that the import declaration must contain both the genus and the species of the imported plant material. Further, the Act states that if a species is unknown, then the declaration should contain a list of all of the possible species that may be present in the product. Therefore, in circumstances where the list of possible species in a particular product includes all species in a genus, it is acceptable to use “spp.” following the genus name on the import declaration form. However, when reference to all possible species in a genus is not accurate (based on geographical or other factors), importers are expected to provide

either the single genus and species, or a specific list on the import declaration form of all possible species that may have been used to produce the plant product.

With regard to the use of shorthand group designations like SPF, the Federal Government is currently considering this approach. Specifically, we are considering criteria that might be used to define genus and species groups and the extent to which we might accept the use of group designations on the import declaration either under our current authority or through the regulatory authority provided in the amended Lacey Act.

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. We will continue to revise the declaration form to make editorial changes and otherwise clarify the requirements for the form. To ensure that you are using the most updated form, please visit the APHIS Web site to verify the current version. 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 encourage importers to file the data required by the amended Lacey Act electronically through the Automated Commercial System (ACS). If a paper declaration is used, please submit the original. The declaration form cannot be submitted online or by email.

Additional Information

APHIS will continue to provide the latest information regarding the Lacey Act on our Web site, http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml. 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 27th day of August 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

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