

## **Implementation of the Revised Lacey Act Provisions**

The Lacey Act is a U.S. wildlife protection statute designed to combat illegal trafficking in wildlife, fish and certain plants. The Lacey Act, first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. 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, including any wild member of the plant kingdom (including trees from natural or planted forest stands), and any products made thereof. Provisions of this statute now apply to a wide range of plant products such as wood, pressed wood, furniture, wood pulp, paper and paperboard, books and printed materials, wood items, plant based resins, pharmaceuticals and textiles.

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, 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. If the plant species or country of origin cannot be determined conclusively for a plant product, the declaration must include a list of possible plant species found in the product and/or a list of each country from which the plant may have been harvested. For paper and paperboard products containing recycled content, the declaration also must include the average percentage of recycled content without regard for species or country of harvest. Packaging material used exclusively to support, protect, or carry another item will not require an import declaration, unless the packaging material itself is being imported.

The declaration requirements of the Lacey Act became effective on December 15, 2008; (paper forms are currently available for voluntary submission), 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," the Federal Register notice stated (74 Fed. Reg. 5,911 (Feb 3, 2009)). Failure to submit a declaration, (prior to April 1, 2009) will not be prosecuted, and customs clearance will not be denied for lack of a declaration until after the phase-in date. However, all declarations submitted must be accurate, and false statements may be referred for enforcement at any time.

The first implementation plan, published in the October 8, 2008 Federal Register, phased in the reporting requirements. In response to public comments to that plan, APHIS released a new implementation plan in the February 3, 2009 Federal Register. The new plan revises the phase-in schedule and extends the length of each phase from three months to six months. Also provided is a list of the products to be included in each phase, which is largely based on the product's degree of processing and the complexity of its composition.

For example, phase II – April 1, 2009 through Sept 30, 2009 – contains products that are minimally processed and/or of less complicated composition (e.g., wood in the rough, sheets for veneering).

Phase III – Oct 1, 2009 through March 31, 2010 – contains products that are more processed and of more complex composition (e.g., wood pulp and particle board). Last,

phase IV-April 1, 2010 through Sept. 30, 2010 – includes more highly processed products composed of materials from phases II and III (e.g., paper and furniture). APHIS published a table outlining specific Harmonized Tariff Schedule headings covered in each phase.

“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,” APHIS said. Should there be additions to phases III or IV, APHIS said it intended to provide at least six months’ notice to persons and industries affected by those changes to facilitate compliance. APHIS said it will be enforcing the declaration requirement only as to formal consumption entries (i.e., most commercial shipments). APHIS, at this time, does 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. APHIS will only enforce a declaration for the product being imported and not for sundries that ordinarily accompany the product such as tags, labels, manuals, and warranty cards.

As referenced above, packaging material used exclusively to support, protect, or carry another item will not require import certification, unless the packaging material itself is being imported. (Packaging material includes manuals, tags, labels and warranty cards.) Other items are excluded from the definition of plants, including (1) live plants or trees intended for replanting, unless listed on the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Endangered Species Act or a state endangered species list; (2) scientific specimens to be used only for research, unless they are listed as in item 1, above; and (3) common cultivars and food crops (to be defined via a joint rulemaking by USDA and the Department of the Interior).

APHIS is accepting public comments on the revised plan to phase in enforcement of the import declaration requirements until April 6, 2009. Comments may be submitted via the Federal eRulemaking Portal or by Postal Mail/Commercial Delivery: send two copies of 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. State that your comment refers to Docket No. APHIS-2008-0119.

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The full text of the Federal Register notice can be accessed online at:

<http://edocket.access.gpo.gov/2009/E9-2232.htm> , or in .pdf format at:  
<http://edocket.access.gpo.gov/2009/pdf/E9-2232.pdf> .

Additional information such as Product Declaration form and plant genus/species is available at:

[http://www.aphis.usda.gov/plant\\_health/lacey\\_act/index.shtml](http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml)

Please submit questions regarding the new Lacey Act declaration requirement to the following email address:

[lacey.act.declaration@aphis.usda.gov](mailto:lacey.act.declaration@aphis.usda.gov).

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 &amp; articles of wood)</p> <p>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)</p>	<p>HTS Chapters:</p> <p>Ch. 44 Headings (wood &amp; articles of wood)</p> <p>4402-(Wood charcoal)4405-(Wood wool [excelsior]) 4410-(Particle board)4411-(Fiberboard of wood) 4412-(Plywood, veneered panels)4413-(Densified wood) 4414-(Wooden frames) 4415-(Packing cases, boxes, crates, drums)4416-(Casks, barrels, vats, tubs) 4419-(Tableware &amp; kitchenware, of wood)4420-(Wood marquetry; caskets; statuettes)</p> <p>Ch. 47 Headings (wood pulp)</p>	<p>HTS Chapters:</p> <p>Ch. 44 Headings (wood &amp; articles of wood)</p> <p>4421-(Articles of wood, nesoi)</p> <p>Ch. 48 Headings (paper &amp; articles of)</p> <p>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)</p>

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
		4701-(Mechanical wood pulp) 4702-(Chemical wood pulp, dissolving) 4703-(Chemical wood pulp, sulfate) 4704-(Chemical wood pulp, sulfite) 4705-(Combination mechanical and chemical)  PLUS PHASE II	4811-(paper coated, etc., other than 4803, 4809, or 4810)  Ch. 94 Headings (furniture, etc .)  940169 (seats with wooden frames) 940330 (wooden office furniture) 940340 (wooden kitchen furniture) 940350 (wooden bedroom furniture) 940360 (other wooden furniture) 94039070 (wooden furniture parts)  PLUS PHASES II & III