

MEMORANDUM

August 3, 2011

To: File No. S7-40-10

From: Scott H. Kimpel
Office of Commissioner Troy A. Paredes

Re: Conflict Minerals

On August 3, 2011, Scott H. Kimpel and Gena Lai, Counsel to Commissioner Troy A. Paredes, met with Erik Autor, National Retail Federation. The participants discussed the Commission's proposed rules concerning conflict minerals.

Congress of the United States
Washington, DC 20515

October 10, 2008

Cindy Smith, Administrator
Animal and Plant Health Inspection Service
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington D.C. 20250

The Honorable W. Ralph Basham
Commissioner
U.S. Customs and Border Protection
U.S. Department of Homeland Security
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229

Ronald J. Tenpas, Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington D.C. 20530

H. Dale Hall, Director
U.S. Fish and Wildlife Service
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Ms. Smith, Mr. Basham, Mr. Tenpas and Mr. Hall:

We believe that amendments to the Lacey Act (16 U.S.C. 3371) in section 8204 of the Food, Conservation and Energy Act of 2008 (FCEA) can play a critical role in preventing the environmental degradation and social disruption caused by illegal logging and the illegal taking of other wild plants. Illegal logging contributes to loss of biodiversity, watershed damage and increased sedimentation, and climate change. In the communities where illegal logging takes place, the forest is often the only local economic resource. Illegal logging decimates, often irrevocably, that resource. In the same way, the illegal taking of other plant species has serious environmental and economic consequences.

Section 8204 of FCEA amends the Lacey Act with the aim of preventing the trade of illegally harvested plants and plant products without disrupting legitimate commerce. Since passage of the FCEA, we have heard several concerns and questions regarding the implementation of section 8204. This letter is intended to address some of those concerns and questions by reviewing the authorities that section 8204 delegates to the implementing agencies and by providing further guidance on Congressional intent with respect to the new provisions of the Lacey Act.

Section 8204 of the FCEA clearly provides the implementing agencies with adequate discretion to implement the new requirements in a commonsense practical manner. Specifically, the amended section 7 of the Lacey Act states that “[t]he Secretary [of Agriculture], after consultation with the Secretary of the Treasury, is authorized to issue such regulations...as may be necessary to carry out the provisions of section[] 3(f)...” Additionally, section 3(f)(6) of the Lacey Act, as amended, states:

Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary may promulgate regulations

Cindy Smith, Administrator
Ronald J. Tenpas, Assistant Attorney General
The Honorable W. Ralph Basham
H. Dale Hall, Director
October 10, 2008
Page 2

— (A) to limit the applicability of any requirement imposed by paragraph (2) to specific plant products; (B) to make any other necessary modification to any requirement imposed by paragraph (2), as determined by the Secretary based on the review; and (C) to limit the scope of the exclusion provided by paragraph (3), if the limitations in scope are warranted as a result of the review.

Congress also explicitly delegated the definition of “common cultivar” and “common food crop,” to the relevant agencies. Section 7(c) of the Lacey Act, as amended by section 8204 of the FCEA, states “[t]he Secretary of Agriculture and the Secretary of the Interior, after consultation with the appropriate agencies, shall jointly promulgate regulations to define the terms used in section 2(f)(2)(A) for the purposes of enforcement under this Act.” The *Federal Register* notice published on October 8, 2008 failed to provide definitions for these terms. We urge you to initiate the notice and comment process pertaining to these definitions as soon as possible.

The modifications to the Lacey Act provided by section 8204 require an importer of plant and plant products to file an import declaration that contains the scientific name of the plant imported, the country of origin and a description of value and quantity. A critical reason for including the declaration requirement in the law is to provide relevant government agencies, including law enforcement agencies, and, through appropriate mechanisms, environmental and other interest groups, with useable data for the purposes of identifying products of potentially illegally harvested plants. We believe an electronic information collection system is essential to achieving this goal. We further recognize that paperless entry processing is critical to the smooth operation of supply chains, ensuring the timely and cost-efficient delivery of merchandise.

U.S. Customs and Border Protection has identified a legacy U.S. Fish & Wildlife system that can be retooled to permit the electronic filing of Lacey amendment declarations, but has indicated that this system will not be ready for use until April 1, 2009. We concur with the *Federal Register* notice that enforcement of the declaration requirement should be delayed until electronic filing is available, but no sooner than April 1, 2009, and we strongly believe that the implementing agencies have the authority to do so. We urge you to allow, on a voluntary basis, the filing of paper declarations between December 15, 2008, and the date that electronic filing is available.¹ Voluntary filing will allow importers to acclimate to the new requirements while also using this period to educate importers, retailers and others who will be affected by the requirements of section 8204 of the FCEA.

¹ If you determine that the electronic filing system will not be available on April 1, 2009, we expect you to notify us of this at the earliest possible time.

Cindy Smith, Administrator
Ronald J. Tenpas, Assistant Attorney General
The Honorable W. Ralph Basham
H. Dale Hall, Director
October 10, 2008
Page 3

Subsequent to passage of the FCEA, the Administration indicated the need for a phased-in approach to the plant declaration requirement in section 8204 of the FCEA. We support a phased-in approach. The Administration used a phased-in approach to implement successfully the International Plant Protection Convention requirements for solid wood packing material. For purposes of the declaration requirement, we believe a similar phased-in approach would be appropriate. Once the system for electronically filing import declarations is ready for use, but no sooner than April 1, 2009, the declaration requirement should be phased in. This would greatly reduce the burden on implementing agencies and maximize the accuracy and value of the declarations submitted by importers. Phased-in enforcement would also provide the importer community with time to set up the business processes necessary to obtain the required declaration information.

While we recognize the *Federal Register* notice published on October 8, 2008 outlines a phased-in implementation of the declaration requirement, we believe the agencies should consider further limiting the products covered by the phase-in. The phase-in schedule should be developed taking into consideration risk and an importer's ability to accurately identify a plant or plant product and the country of origin of the plant or plant product, as required by the declaration. To provide clear and predictable guidance, the Administration should phase-in the declaration requirement using Harmonized Tariff Schedule (HTS) classifications and each phase should be six months in length. Examples of the types of products that should be included in the first phase include logs and timber, sawn wood, lumber, and solid wood flooring. Examples of products that should be included in the second phase include bent wood furniture, cribs, wooden picture frames, plywood, engineered flooring and wood pulp. Examples of the types of products that should be included in subsequent phases include certain paper products, wooden blinds, billiard cues and musical instruments.

The *Federal Register* notice describes the first two phases of this process. The notice then indicates that a phase-in schedule for additional products will be announced in the future. However, based on the above criteria, some products should be exempted from the import declaration requirement during the first two years that the law is in force. Examples of products in this category should include beverages (HTS chapters 21 and 22); cosmetics and personal care products (HTS chapters 33 and 34); footwear, textiles and apparel (HTS chapters 50 through 64); and rubber or cork products. As part of the review that the legislation contemplates (*See* Sec. 3(f)(4) of the Lacey Act, as amended by section 8204 of the FCEA), we would expect the Administration to use its rulemaking authority to expand or limit the applicability of the declaration requirement on plants and plant products, as necessary.

Cindy Smith, Administrator
Ronald J. Tenpas, Assistant Attorney General
The Honorable W. Ralph Basham
H. Dale Hall, Director
October 10, 2008
Page 4

We urge the appropriate implementing agencies, as needed, to state their intent to tie enforcement of the declaration requirement to the declaration phase-in schedule. Importers need the assurance that they will not be subject to civil enforcement or prosecution for complying with the phased-in electronic declaration process prior to the date that U.S. Customs and Border Protection implements the declaration requirement for a particular product. Written notification from the relevant enforcement agencies is essential to provide such assurance.

Section 3(f)(1) of the Lacey Act, as amended by section 8204 of the FCEA, is intended to require a declaration only for the item that provides the basis for the HTS classification and is presented for import. Section 3(f)(3) of the Lacey Act, as amended, is intended to exclude from the declaration requirement any packaging materials that support (either physically or by providing information), protect or carry the imported item and that are properly classified with the imported item. Only where the packaging material itself is the item being imported is it potentially subject to the declaration requirement. HTS General Rule of Interpretation 5(b) makes a similar interpretation of packaging, although the Lacey Act provision also excludes from the declaration requirement packaging that is "reusable." The agencies therefore should interpret the term "packaging materials" to include, *inter alia*, tags, labels, manuals, warranty cards, wrap, boxes, cardboard or paper inserts, bottle corks, and pallets.

The declaration requirement in section 3(f)(1) of the Lacey Act, as amended by section 8204 of the FCEA, is intended for formal, consumption entries. It is not intended to cover other entries such as informal entries, personal importations, mail (unless subject to formal entry), transportation and exportation (T&E) entries, in transit (IT) movements, carnet importations, and foreign trade zone (FTZ) and warehouse entries, except in the case of FTZs and warehouse entries when required by U.S. Customs and Border Protection for specific products when the agency is notified by appropriate enforcement agencies that compelling evidence exists that links those products to Lacey Act violations within FTZs or bonded warehouses.

We strongly urge the Administration to, within one year, budget for, establish, and maintain on a U.S. government website a comprehensive and continuously updated database of genus and species and common/trade name information for plants; a continuously updated compilation of foreign laws related to taking, possessing, transporting or selling plants; and a reference of available tools for tracking wood and assessing and addressing risk of illegal sourcing within a wood supply chain. The purpose of this website is to provide information that those involved in wood product trade may find helpful in implementing section 8204. Please note, however, that this website would be for guidance only, and would not be intended to replace the exercise of due care necessarily undertaken by those involved in the wood product trade to comply

Cindy Smith, Administrator
Ronald J. Tenpas, Assistant Attorney General
The Honorable W. Ralph Basham
H. Dale Hall, Director
October 10, 2008
Page 5

with the Lacey Act, as amended. Obviously, the website must caution the user that it may not be comprehensive, and care must be taken that the information on the website does not become obsolete.

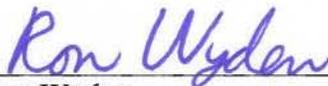
Additionally, adequate implementation of the new import declaration requirements and prohibitions will require new funds for the implementing agencies, which will be necessary, for instance, to design a streamlined electronic declaration database system and to hire declaration analysts, inspectors and investigators. We request that the agencies budget accordingly for FY 2010 and subsequent years as required.

When properly implemented, section 8204 of the FCEA can significantly curb trade in illegally harvested plants and plant products without disrupting legitimate commerce. We hope that this letter is helpful and we look forward to working with you to ensure that the legislation is implemented in a way that reflects Congress' intent.

Sincerely,



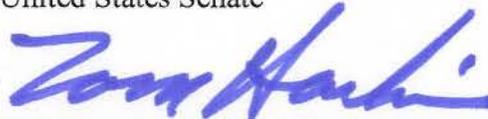
Earl Blumenauer
United States House of Representatives



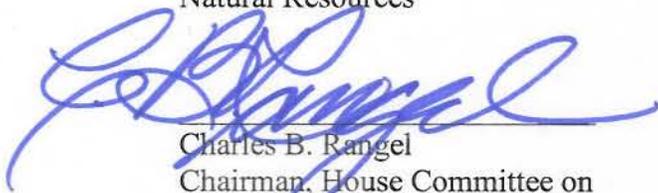
Ron Wyden
United States Senate



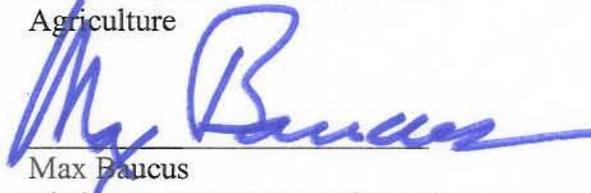
Nick Rahall
Chairman, House Committee on
Natural Resources



Tom Harkin
Chairman, Senate Committee on
Agriculture



Charles B. Rangel
Chairman, House Committee on
Ways and Means



Max Baucus
Chairman, Senate Committee on
Finance

review. A formal request for nominations for membership is published in the **Federal Register**.

Done in Washington, DC, this 17th day of September 2008.

Boyd K. Rutherford,

Assistant Secretary for Administration.

[FR Doc. E8-23854 Filed 10-7-08; 8:45 am]

BILLING CODE 3410-34-P

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 and request for comments.

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 become effective on December 15, 2008. The purpose of this notice is to inform the public about the new Lacey Act provisions, particularly the declaration requirements and the Federal Government's plan to implement and enforce the declaration requirements.

DATES: We will consider all comments that we receive on or before December 8, 2008.

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, 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, and 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 of May 22, 2008, the Lacey Act makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of the laws of the United States, a State, an Indian tribe, 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 covered by the Act.

In addition, Section 3 of the Lacey Act, as amended (16 U.S.C. 3372), makes it unlawful, beginning December 15, 2008, to import certain plants and plant products without an import declaration. The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) is working with a larger interagency group composed of representatives from U.S. Forest Service, Customs and Border Protection (CBP), U.S. Trade Representative (USTR), U.S. Department of Justice, U.S. Department of State, U.S. Fish and Wildlife Service (FWS), Council on Environmental Quality, and Department of Commerce, to implement the new provisions.

Under the amended Lacey Act, beginning December 15, 2008, importers are required to submit a declaration for certain plants and plant products. 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

which the plant was harvested. For paper and paperboard products with recycled plant content, the importer will not be required to specify the species or country of harvest with respect to the recycled plant product component, but will be required to provide the average percent recycled content. If the product also contains non-recycled plant materials, the basic declaration requirements still apply to that component of the product imported. For plant products (as opposed to plants), if the plant species from which they are made varies and are unknown, importers will have to declare the name of each species that may have been used to produce the product. Similarly, if a plant product is made of plant species commonly harvested in more than one country, and the country is unknown, the importer will be required to declare the name of each country from which the plant may have been harvested.

Violations of the Lacey Act provisions may be prosecuted in three basic ways: (1) Civil—monetary penalties; (2) criminal—fines and penalties and potential incarceration; or (3) forfeiture—dispossession of the plant, fish, or wildlife in question.

Scope of Plants and Plant Products Covered

Under the Lacey Act, as amended, "Plant" means: "Any wild member of the plant kingdom, including roots, seeds, parts or product thereof, and including trees from either natural or planted forest stands." There are three categorical exemptions:

1. Common cultivars, except trees, and common food crops (including roots, seeds, parts, or products thereof);
2. Scientific specimens of plant genetic material (including roots, seeds, germplasm, parts, or products thereof) that are to be used only for laboratory or field research;
3. Plants that are to remain planted or to be planted or replanted.

The amendments, including the declaration requirements, still apply for items described under 2 and 3 if the plant is listed:

- In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249) (CITES);

- As an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) (ESA); or

- Pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

All covered plants and plant products will require an import declaration,

except for those used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported. Thus, the scope of products that will require a declaration under the Lacey Act is broad and includes certain live plants, plant parts, lumber, wood pulp, paper and paperboard, and products containing certain plant material or products, which may include certain furniture, tools, umbrellas, sporting goods, printed matter, musical instruments, products manufactured from plant-based resins, and textiles.

USDA and the Department of the Interior have been given authority under the Lacey Act to define the terms "common cultivar" and "common food crop." APHIS and FWS are currently working on a joint rulemaking that will define those terms, thus clarifying the application of the declaration requirements.

Implementation Plan for Declaration Requirements

CBP already collects some of the information that the Lacey Act amendments require importers to include in their declaration. CBP is currently developing an electronic system that will collect the remaining data required to be declared, and we intend to begin enforcement of the declaration requirements upon completion of the electronic system. CBP anticipates completing the electronic system by April 1, 2009. We will publish a notice in the **Federal Register** announcing the specific dates in which enforcement of the declaration requirements will begin once the electronic system is near completion.

Once the electronic system is completed, all agencies with Lacey Act enforcement authority will employ a phase-in approach to enforcement of the Lacey Act declaration requirements. Prior to the availability of electronic filing, from December 15, 2008, to April 1, 2009, or as soon thereafter as the electronic system is available, APHIS

will make a paper declaration form available for voluntary submission. No agencies with Lacey Act enforcement authority will bring prosecutions or forfeiture actions for failing to complete the paper declaration form before the electronic system for data collection is available (April 1, 2009, or after); however, any person who submits a form containing false information may be prosecuted.

On April 1, 2009, or as soon thereafter as the electronic system for collecting the declaration is available, we will begin enforcement of the declaration for wood and certain wood products and certain live plants and related products (see table below). During the initial few months of phase-in for any group of products, enforcement agencies will take into consideration in their actions and decisions any technical issues that may be encountered in the initial process of implementing the electronic filing system. The proposed phase-in enforcement schedule through September 30, 2009, is described in the table below.

PROPOSED PHASE-IN SCHEDULE OF ENFORCEMENT OF THE DECLARATION REQUIREMENTS FOR GOODS OF, OR CONTAINING, PLANTS OR PLANT PRODUCTS*

[Specific goods may be exempt**]

I	II	III
Present—March 2009	Beginning April 1, 2009 (or as soon thereafter as an electronic system is available)	Beginning July 1, 2009 (approximate)
PPQ Plant Import Declaration Form will be available on Web site, and accepted after Dec. 15, 2008.	Harmonized Tariff Schedule (HTS) Chapters: Ch. 44 (wood & articles of wood)	HTS Chapters: Ch. 47 (wood pulp). Ch. 48 (paper & articles of). Ch. 92 (musical instruments). Ch. 94 (furniture).
Domestic and International Outreach	Ch. 6 (live trees, plants, bulbs, cut flowers, ornamental foliage, etc.).	Plus chapters included in Phase II.

Note: Chapter descriptions are for ease of reference only.

* Declaration requirements are effective as of Dec. 15, 2008. All declarations submitted must be accurate; false statements are enforceable. 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.

** Example: In HTS Ch. 6, most live plants not listed under CITES, the ESA, or certain State laws would be exempt from these declaration requirements. See the Lacey Act regarding further exemptions.

After September 30, 2009, based on experience with the implementation of the electronic system for declaration data collection, we will phase in enforcement of the declaration requirements for additional chapters containing plants and plant products covered by the Lacey Act, including (but not limited to) Ch. 12 (oil seeds, misc. grain, seed, fruit, plant, etc.), Ch. 13 (gums, lacs, resins, vegetable saps, extracts, etc.), Ch. 14 (vegetable plaiting materials and products not elsewhere specified or included), Ch. 45 (cork and articles of), Ch. 46 (basket ware and wickerwork), Ch. 66 (umbrellas, walking sticks, riding crops), Ch. 82 (tools), Ch.

93 (guns), Ch. 95 (toys, games and sporting equipment), Ch. 96 (brooms, pencils, and buttons), and Ch. 97 (works of art). We will announce a specific phase-in schedule for those chapters in a subsequent **Federal Register** notice.

Information Collection

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), APHIS is currently seeking Office of Management and Budget 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. APHIS is also

requesting emergency approval of a paper form that may be used for declarations. The emergency approval will be valid for 6 months and will allow us to collect the information and make the paper form available for immediate use. Once we have this emergency approval, APHIS will publish a notice in the **Federal Register** announcing the availability of the paper form and soliciting comments from the public (as well as affected agencies) on these information collection requirements and stating our intention to request an extension of the 6-month approval.

Public Meeting

We are advising the public that we are hosting a public meeting on implementation of the amendments to the Lacey Act on October 14, 2008, from 10 a.m. to 12 p.m. The meeting will be held in the Jefferson Auditorium, South Agriculture Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC. Participants should enter the South Agriculture Building through the 7th wing entrance of the building located at Independence Avenue and 14th Street. Valid photo identification is required for clearance by building security personnel. Please arrive 30 minutes prior to the scheduled start of the meeting. The purpose of the meeting is to provide the public with information on the declaration requirements and declaration enforcement phase-in plan, enforcement of provisions that are already in effect, scope, and other related issues, as well as to provide the public with an opportunity to ask questions of the agencies involved in the implementation of the declaration requirements and enforcement of the Act.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Additional meetings are likely to be held this winter near key port locations in the United States. We will announce the locations and dates of those meetings in the **Federal Register**.

Additional Information

APHIS will 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 Microsoft PowerPoint presentation covering background and context, new requirements, commodities and products covered, information on prohibitions, and the current status of implementation of the declaration requirements of the Lacey Act; frequently asked questions; and the phase-in implementation plan. The Web site will be updated as new materials become available. Persons interested in receiving timely updates on APHIS' Lacey Act efforts should 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 3rd day of October 2008.

Cindy J. Smith,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8-23984 Filed 10-7-08; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Dakota Prairie Grasslands; North Dakota; Dakota Prairie Grasslands Land and Resource Plan Amendment and Site Specific Projects for the Elkhorn Ranchlands

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The purpose of this notice is to inform the public that the Forest Service intends to prepare an environmental impact statement for amending the Dakota Prairie Grasslands Land and Resource Management Plan (DPG Plan) pursuant to 16 U.S.C. 1604(f)(5) and 36 CFR 219.12. This includes approving certain site specific projects associated with the same lands.

The National Environmental Policy Act (NEPA), the Forest and Rangeland Renewable Resources Planning Act (RPA) and the National Forest Management Act (NFMA) are among the laws that set forth the requirements for Forest Service planning. This DPG Plan amendment will determine management direction including land-use determinations, management area prescriptions, and standards and guidelines.

The need for the DPG Plan amendment results from the recent acquisition of 5,200 acres of private land, the majority of which lie in a solid block east of the Little Missouri River in Billings County, North Dakota. Site specific project proposals relate to: (1) Restoring ecological functions and wildlife habitat, (2) improving livestock grazing opportunities, (3) enhancing heritage and recreation opportunities, and 4) promoting conservation activities.

Respondents are encouraged to review grassland planning documents and the final response to the Scientific Review Team Report for more information on woody and riparian communities' restoration, prescribed burning, grazing management issues, and drought management strategies. Documents are available at: <http://www.fs.fed.us/r1/dakotaprairie/> and <http://www.fs.fed.us/ngp>.

The Forest Service will be soliciting comments from individuals, state and local governments, American Indians, federal agencies, and organizations on the scope of the analysis specific to this DPG Plan amendment and the site-specific projects proposed.

DATES: Comments concerning the scope of the analysis must be received within 45 days of the scoping letter. The draft environmental impact statement is expected in late May 2009 and the final environmental impact statement is expected November 2009.

ADDRESSES: Submit written comments to: Sherri Schwenke, DPG Plan Amendment Interdisciplinary Team Leader, Dakota Prairie Grasslands, 240 W. Century Avenue, Bismarck, North Dakota 58503 or by e-mail to: comments-northern-dakota-prairie@fs.fed.us. When commenting by e-mail, please be sure to list LRMP Amendment in the subject line and provide a U.S. Postal Service address so that we may add you to our mailing list.

FOR FURTHER INFORMATION CONTACT: Sherri Schwenke, DPG Plan Amendment Interdisciplinary Team Leader, Dakota Prairie Grasslands, 240 W. Century Avenue, Bismarck, North Dakota 58503.

Background Information

The USDA Forest Service manages over 190 million acres of public land in the United States of America. These public lands are managed in accordance with numerous laws enacted by Congress including the Bankhead-Jones Farm Tenant Act (BJFTA), the National Forest Management Act (NFMA), 16 U.S.C. 1604 *et seq.* and the Multiple-Use Sustained Yield Act (MUSYA) 16 U.S.C. 528 *et seq.* which directs the agency to provide for the multiple use and sustained yield of the National Forest System lands. In addition, Congress has instructed the agency to develop land and resource management plans for the public land it manages (NFMA, 16 U.S.C. 1604(a)), which includes the involvement of the American public in the planning process (NFMA, 16 U.S.C. 1604(d)). Of the public land managed by the Forest Service, approximately 4 million of those acres are National Grasslands. The National Grasslands lie primarily within the Great Plains states, with roughly 1.1 million of those acres occurring in North Dakota. The Little Missouri National Grassland in western North Dakota comprises over 1 million of those and is managed under BJFTA, NFMA and other authorities of the Forest Service. The National Grasslands in North Dakota are managed by the Forest Service as part of the Dakota

retrospective review of rules is an important part of the regulatory process as long as it does not impose additional burdens to the agency and to the public. I urge the Commission as we move forward with finalizing rules to consider the goals of the Executive Orders.

[FR Doc. 2011-16430 Filed 6-29-11; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 357

[Docket No. APHIS-2010-0129]

RIN 0579-AD44

Implementation of Revised Lacey Act Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

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. We are soliciting public comment on regulatory options that could address certain issues that have arisen with the implementation of the declaration requirement. These options include establishing certain exceptions to the declaration requirement and modifying the Declaration Form PPQ 505 to simplify the collection of information.

DATES: We will consider all comments that we receive on or before August 29, 2011.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/documentDetail;D=APHIS-2010-0129-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2010-0129, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/documentDetail;D=APHIS-2010-0129> or

in our reading room, which 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.

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Staff Officer, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737-1231; (301) 734-5783.

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). 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, possessed, transported, or sold in violation of the laws of the United States, a State, an Indian tribe, 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, beginning December 15, 2008, to import certain plants, including plant products, without an import declaration. The declaration must contain the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested.

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 providing dates and products covered for the first three phases of enforcement. We solicited comments on the proposed plan for phasing in enforcement 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 and industry, and enforcement issues. On September 2, 2009, we published a third notice in the **Federal Register** (74 FR 45415-45418, Docket No. APHIS-2008-0119) and provided a further revised, more detailed phase-in schedule based on comments we received in response to the April notice as well as our experience with implementation to that date. We solicited comment on the revised phase-in plan for 60 days ending on November 2, 2009, and received 67 comments by that date.

We are publishing this advance notice of proposed rulemaking in order to seek information and develop regulatory options on the following issues:

1. Whether an exception from the declaration requirement for products containing minimal amounts of plant material could be developed that would be less burdensome while still carrying out the intent of the Lacey Act amendments;
2. How importers may comply with the declaration requirement when importing composite plant products whose genus, species, and country of harvest of some or all of the plant material may be extremely difficult or prohibitively expensive to determine;
3. How to accommodate products made of re-used plant materials, or plant materials harvested or manufactured prior to the 2008 Lacey Act amendments, and for which identifying country of harvest, and possibly species, would be difficult if not impossible; and
4. Whether groups of species commonly used in commercial production, could be given a separate name that could be entered on the declaration form as a type of shorthand identification of genus and species, such as the currently recognized "SPF" acronym for "spruce, pine, and fir."

Declaration Requirement for Shipments Containing Minimal Plant Materials

The Lacey Act does not explicitly address whether the declaration requirement is intended to apply to imported products that contain only minimal amounts of plant material. It is not ideal to apply this requirement to minimal amounts of non-listed (i.e., not

of conservation concern) plant materials contained in an otherwise non-plant product, such as wooden buttons on a shirt. Instead this issue might be efficiently addressed by describing a level at which the declaration requirement does not apply. Some commenters on our previous notices referred to this as a *de minimis* exception from the declaration requirement. Such a *de minimis* exception would be designed to ensure that the declaration requirement fulfills the purposes of the Lacey Act without unduly burdening commerce. Therefore, the exception would not apply to products containing plant material from species of conservation concern that are listed in an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 27 UST 1087; TIAS 8249); as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

We are considering the feasibility of defining a *de minimis* exception for products containing minimal amounts of plant material. We invite comment on defining a threshold in terms of the volume, weight, or value of plant material in each item being imported, or using some combination of all three measures. We also invite comment on whether the threshold of the plant material should be set at 2 percent, 5 percent, or 10 percent of a product, and whether that percentage of the plant content should be based on volume, weight, or value of the item being imported. We also seek public comment on whether the *de minimis* exception should be based on a certain percentage of just one of these characteristics (volume, weight, or value) of the entry, or whether it should be based on a combination of two or three of these characteristics.

Declaration Requirement for Goods With Composite Plant Materials

The Lacey Act's declaration requirements do not address the issue of how to comply with the declaration requirements when importing goods for which identifying all of the plant material in the product by genus and species is extremely difficult or prohibitively expensive; however, the comments received to date demonstrate that many composite plant products are manufactured in a manner that makes identification of the genus and species of all of the plant content difficult and perhaps prohibitively expensive.

One approach we are considering is to define the term "composite plant materials" and then formally recognize a *de minimis* exception from the declaration requirement for products containing such materials for the purposes of Section 3 of the Lacey Act. Using this approach, we might define "composite plant materials" as plant products and plant-based components of products where the original plant material is mechanically or chemically broken down and subsequently re-composed or used as an extract in a manufacturing process. Such a definition would also need to include exceptions for species listed in an appendix to CITES; as an endangered or threatened species under the Endangered Species Act of 1973; or pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

We also invite comments on two possible approaches to incorporating such a definition into a *de minimis* exception from the declaration requirement for composite plant materials. In the first approach, if the plant product being imported is composed in whole or in part of a composite plant material, importers would have to identify the genus, species, and country of harvest of no less than a given percentage of the composite plant material content, measured on the basis of either weight or volume.

In the second approach, where the plant product being imported is composed in whole or in part of a composite plant material, the declaration would have to contain the average percent composite plant content, measured on the basis of either weight or volume, without regard for the species or country of harvest of the plant, in addition to information as to genus, species, and country of harvest for any non-composite plant content.

We invite comment on the possibility of defining composite plant products and implementing either of the approaches described above. We particularly invite comment on the possibility of using the *Genus* spp. format (for example, *Acer* spp.) for certain composite plant materials in limited circumstances both as to the scope of composite plant materials covered and the scope of the circumstances in which the format may be used for those limited materials. We also invite comment on possible percentages that could be used as a threshold for a *de minimis* exception from the declaration requirement for composite plant materials.

Declaration Requirement for Dated Products

We recognize that it may be difficult to determine and report the scientific name and/or country of harvest of plants in some products made of re-used plant materials, or harvested or manufactured prior to the passage of the Lacey Act Amendments of 2008. We do not believe that it was the intention of the amendments to prevent all such products from entering the United States. However, the Act as amended, including the plant import declaration requirement, applies to all imports of plants, plant parts, and products thereof as of the effective date of the amendments. We currently allow an importer to declare that the product being imported was manufactured prior to May 22, 2008, and that in the exercise of due care the genus, species, and/or country of harvest is unknown. The importer must still provide on the declaration form all known or reasonably knowable genus, species, and country of harvest information, and, as explained below, the person completing the declaration must certify that the declaration is correct to the best of his or her knowledge. An Animal and Plant Health Inspection Service-designated Special Use Code is provided to streamline the declaration of materials manufactured prior to the amendment. We anticipate that this approach would allow for trade in existing inventories and would diminish in use rapidly, ultimately applying largely to antique products, or those being re-sold. We invite comments on this practice.

Declaration Revision

Public comments and our experience implementing the declaration to date have drawn attention to the need to revise the declaration form to improve its effectiveness and remove unnecessary burdens associated with providing the required information. Comments on previous notices have drawn particular attention to the burden associated with providing scientific name, country of harvest, and plant quantity information for each plant component of products in a shipment, especially when the declaration is required for complex products, such as furniture. In response to these comments, we simplified the declaration so that the scientific name and country of harvest information need not be reported for each article or component of an article in an entry but can instead be provided for the entry as a whole. That is, the amount of each species, by country of harvest, is

required only in total for each Harmonized Tariff Schedule code. Importers are still permitted to report the scientific name information by article or component of article if that organizational structure is preferable. This has significantly reduced the lines of data entry required while causing little reduction in the enforcement utility of the information. However, the importer of record is still required to maintain records documenting the information used to calculate these total amounts for 5 years, should it be needed to facilitate an inspection or substantiate the totals provided.

The declaration could also be revised to substitute a new term in place of the term “country of harvest,” which experience has indicated is so similar to the Customs term “country of origin” as to be confusing. We are considering using the phrase “harvest location (by country)” to attempt to more clearly distinguish this information from the Customs concept of country of origin of the merchandise.

The declaration form could be further revised to accommodate the changes and proposals described above. These changes could include revision of the form to collect information required for composite materials (the percent composite material in the shipment, for which it is not possible to identify species and/or country of harvest). In addition, the revised form could have a box that would have to be checked when an importer needs to report goods manufactured prior to May 22, 2008, for which the importer cannot determine, in the exercise of due care, the genus, species and/or country of harvest of those plant products. The box would state that the plant products were manufactured prior to May 22, 2008, and that in the exercise of due care, the importer has been unable to determine the genus, species, and/or country of harvest information that is lacking on the declaration form.

We are soliciting comments on these possible changes to the declaration form.

Declaration of Genus and Species Using Species Groupings

We also recognize that the declaration requirement to identify the genus and species of all plants that may be contained in covered products may frequently require declarations to contain long lists of species. A number of commenters requested that recognized groups of common species often traded in combination in similar percentages in particular industries be allowed to be declared under a single shorthand definition. In a previous

notice we specifically invited comments on the use of species groups, such as “SPF” for spruce, pine and fir, when such groups accurately describe the species that may be contained in the product(s) covered by the declaration. We received a number of comments supporting this approach and no comments in opposition. Therefore, we have begun to provide reference codes for such groups, along with the lists of species included in each group, on the APHIS Web site at http://www.aphis.usda.gov/plant_health/lacey_act/.

In addition, we invite proposals for additional groupings to be considered. Any proposal for a species group should contain the complete list of species to be included and additional information with which we can evaluate the extent to which the proposed group is currently represented in goods in international trade. Only those species group codes posted on the APHIS Web site can be used to meet the requirement to provide genus and species information on the plant import declaration.

The Web site also contains the text of the Lacey Act, as amended, the declaration form and enforcement schedule, guidance on compliance with the provisions of the Act, and links to previous **Federal Register** publications. The Web site will be updated as new materials become available.

Persons interested in receiving updates on APHIS’s Lacey Act efforts should register for our stakeholder registry at <https://web01.aphis.usda.gov/PPQStakeWeb2.nsf> and select “Lacey Act Declaration” as a topic of interest.

This action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Authority: 16 U.S.C. 3371 *et seq.*; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 24th day of June 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011-16406 Filed 6-29-11; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2011-0649; Directorate Identifier 2011-NM-076-AD]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Model MD-11 and MD-11F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require replacing the rub strips of the tail fuel tank access door with new rub strips. This proposed AD was prompted by a report that the rub strips of the tail fuel tank access door were manufactured improperly. We are proposing this AD to prevent inadequate electrical bonding between the rub strips and the fuel access door, which can contribute to possible ignition of flammable fuel vapor in the tail fuel tank as a result of a lightning strike.

DATES: We must receive comments on this proposed AD by August 15, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800-0019, Long Beach, California 90846-0001; telephone 206-544-5000, extension 2; fax 206-766-5683; e-mail dse.boecom@boeing.com; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

SECOND CONSENSUS STATEMENT OF IMPORTERS, NON-GOVERNMENTAL ORGANIZATIONS, AND DOMESTIC PRODUCERS ON LACEY ACT CLARIFICATIONS

As the Administration prepares its review and report to Congress as required by sections 3(f)(4) and (5) of the Lacey Act, as amended, the undersigned organizations provide the following consensus views and recommendations.

In their October 10, 2008 letter to implementing agencies, the key chairmen of the House and Senate committees indicated an expectation that the Administration will use its rulemaking authority to expand or limit the applicability of the declaration requirement, as needed. Based upon this, we strongly urge the Administration to promulgate as soon as possible – and definitely before the end of 2010 – key regulations to clarify and streamline the requirements for industry to comply with the declaration requirement of the Lacey Act, as amended in May 2008.

If it is deemed that the statute does not afford the Secretary sufficient authority and a legislative clarification is still needed, the undersigned are committed to work with Congress to make a simple technical fix to the declaration provisions clarifying that the Secretary has the regulatory authority to take the necessary steps to ensure effective implementation of the declaration requirement of the Lacey Act.

In either case, we seek modifications only in regard to the specific aspects of the declaration implementation enumerated in the document below and in the previous consensus statement signed by our organizations in July 2009, and ask that these are addressed in an expedited fashion.

Creating a transparent and predictable process to consider future phases for the declaration

Issue: The government has yet to establish specific criteria for the phase-in of the declaration requirement. Instead, the agencies have announced schedules for enforcement discretion and then changed them in response to specific issues brought to their attention, but not necessarily illuminated through a public review. This has created uncertainty and some confusion concerning when and how the declaration requirement applies.

Proposed Solution: We recommend continuing to establish a clear list of products, by HTS number, that require a Lacey Act Declaration, and to establish a process to consider future phases of HTS categories that would proceed as follows:

- Identify by October 1, 2010 any categories on the September 1, 2009 list that will be phased in, at the four-digit HTS level or with greater specificity. Allow six months for phase-in to become effective.
- Place all remaining categories, whether on September 1 list or not, on hold for 12 months.

- Establish and initiate a process whereby additional categories or other subdivisions may be considered for coverage by or exclusion from the Lacey Act declaration requirement. Categories may be proposed either by the government or by individual private citizens.
- The review and petition process would include the following elements:
 - determination of government or submission by petitioner of product that should be covered by the Lacey Act declaration
 - publication of a preliminary determination as a proposed rule, with criteria to review a citizen submission that includes an analysis of the risk of illegally sourced plant material being included in the product category and the ability to accurately identify source material
- The review process would occur once a year and would allow sufficient time for importers to explore how the declaration would be completed and submit comments based on this experience. The comment period should extend at least 90 days.
- Final decisions on proposed phase-ins will be issued 6 months after the publication of the proposed rule determination and should include a response to comments.
- Twelve months from the publication of a proposed rule determination must be allowed for a new phase-in to become effective.

If the agencies have uncertainties about the legal permanence of decisions reached through this process, then it would be appropriate to seek legislative change. But such concerns should not stand in the way of bringing regularity and some certainty to the process.

Providing authority and a process to exclude from the declaration requirement certain highly processed products

There are numerous products that include, incorporate or are made from some plant product but have since undergone numerous processing steps, making identification of the plant(s) extremely difficult. In some instances, the amount of plant materials included in a product is quite small and would be considered a *de minimis* quantity. In their October 10, 2008, letter to the implementing agencies, the key chairmen of the House and Senate committees indicated an expectation that the Administration will use its rulemaking authority to expand or limit the applicability of the declaration requirement as needed. Nevertheless, it may be appropriate for the Congress to explicitly state the authority of the Administration to establish exclusions, as well as guidelines and a process for considering exclusions from the declaration requirement for certain highly processed products for which the plant ingredients or components are difficult to identify and/or are *de minimis*. Examples of products in this category should include beverages (HTS chapters 21 and 22); cosmetics and personal care products (HTS chapters 33 and 34); footwear, textiles and apparel (HTS chapters 50 through 64); and rubber or cork products.

Excluding Composite Materials from Declaration Requirement until Reasonable and Practical to Identify the Genus and Species

Under current production methods, it is difficult, if not impossible, to declare the genus and species of wood used in certain composite products such as particle board or medium density fiberboard (MDF), because these products are often made from by-products left over from the manufacture and processing of other wood products. This group has agreed that Lacey declarations for particleboard (HTS 4410) and fiberboard (HTS 4411) and other equivalent engineered composite materials, and any components thereof in other products, should not be mandatory until appropriate administration agencies determine it is feasible and practical to collect the required information. APHIS has provided guidance on its website that instructs importers to list the type of composite material (e.g., MDF) used in the product or component subject to the declaration, but APHIS has also noted that this is a significant issue that has not been resolved.

While the APHIS guidance provides a short-term solution on composite materials, we support a clarification that composite materials (and components comprised of composites that are in other manufactured products) are currently excluded from the Lacey declaration requirement, and the Administration shall, in the future, consider the inclusion of composite materials in the declaration requirement in light of various factors, including advances in the feasibility and practicality of collecting the required information. To provide some certainty that industry must begin to identify ways to track genus and species on composite materials, the exclusion could be time-limited unless there is a proactive determination that it remains unfeasible to identify genus and species in composite materials. We suggest that the Administration conduct a review within three to five years to determine an appropriate timeframe for phasing out this exclusion.

It is not foreseen that the composite materials definition would apply outside the engineered wood composite materials categories (and components comprised of engineered wood composites that are in other manufactured products).

Species Groupings

In line with our July 2009 consensus statement, we continue to support the definition and use of logically coherent groupings of plant species. These groupings should be included in a digital, searchable database linked to APHIS pages, and a review process should be put in place to update groupings if necessary.

APHIS/USDA should have discretionary authority to accept the declaration of “spp” or other relevant sub-genus species groupings where it is not technically feasible, by reasonable and practical methods, to obtain and provide species-specific information.¹ The Forest Products Lab

¹ Regarding ‘sub-species groupings’: It is often feasible and practical to go beyond “spp” for an entire genus, providing meaningful information for data tracking and enforcement targeting without obtaining definitive species-level information. One example is the major tropical timber genera *Shorea* and *Dipterocarpus* (family Dipterocarpaceae). While the trade names for various species in these genera vary by country and regional dialect (e.g. lauan, keruing, and meranti in Indonesia, tangile in the Phillipines, makai in India, saya in Thailand, melapi, alan and seraya in Malaysia), there are distinct sub-genus groupings (e.g. ‘red meranti’, ‘white meranti’) that correspond to well-delineated species subsets. Our recommendation would be to allow declarations to state “*Shorea* spp. (red meranti)” in cases where producers cannot verify the wood to species level. Wood products manufacturers

should lead a process to determine when such situations exist, and shall provide opportunity for input as it reviews species groupings.

We recognize the government's attempt to provide guidance on this issue in the Federal Register notice of September 2, 2009. However, the guidance offered does not significantly simplify reporting requirements in practice, because given the broad ranges of many important timber genera, it is not often that "the list of possible species in a particular product includes all species in a genus." We believe that the combination of information regarding country of origin and well-defined genus or sub-genus groupings is sufficient for the transparency that the Lacey Act seeks to foster. The word "species" as used in 3372(1)(A) could plausibly be interpreted as plural in cases where it is not possible to ascertain the unique species of plant material in question.

Date of Manufacture

Issue: Before the new law was enacted, it was not unlawful to import or trade in plant products that were harvested in violation of other countries' laws, except with regard to certain protected species. Moreover, manufacturers were not required to collect information from their suppliers on the genus, species, country of harvest, value and quantity of the plant material, nor the legality of harvest. For many reasons, it is not consistently possible for importers to retroactively determine this information for plant material used in goods that were produced before the Lacey Act amendments were enacted. Antiques are particularly problematic because, by definition, they were manufactured or created many years ago.

In addition to the underlying ban, in order to help determine whether an import of plant or plant products is lawful, Congress imposed a new declaration requirement for imports of these items. The phase-in process established for the declaration requirement means that a situation could occur in which an importer does not have on hand all of the information required by the declaration for products with a date of manufacture that pre-dates preliminary notification of phase-in. In such cases, some accommodation should be made to not unduly inhibit legal trade, but which also underscores the obligation that companies have had as of enactment of the Lacey amendments to exercise due care and to keep on hand pertinent information for all products manufactured after the enactment of the Lacey amendments.

Proposed Solution: The Lacey Act amendments should not apply to plant and plant products that were imported prior to the enactment of the amendments. To address the issue of pre-enactment harvest, the amendments should also not apply to finished wood products or parts thereof that are imported into the United States if the date of manufacture of those products occurred before the effective date of the amendments. Similarly, APHIS should modify its Declaration Form to permit an importer to indicate that finished articles or parts thereof contained within the importation were manufactured prior to the effective date of the Lacey Act amendments. The date of manufacture should be defined for such products as the date of final

and buyers can reasonably be expected to know the species in their products to a high degree of accuracy. This declaration is currently less prescriptive than the requirements that the FWS has for importers of any wildlife products or derivatives. The USFWS 3-177 requires "the Latin name including genus and species (and sub-species, when required to determine if the fish or wildlife is protected at the subspecies level)", as well as the common name. This document must be submitted upon importation.

assembly or process of the product to be imported. When an importer so indicates, then the plant and plant declaration information under Section 3372(f) shall not be required as a condition of entry.

Furthermore, as the list of products requiring a declaration changes, an importer may check the same box to indicate that an article otherwise subject to a declaration requirement was manufactured prior to the date of publication of a preliminary determination notifying parties that a specific product may be scheduled to be included within a future phase, based on the four-digit HTS code of the finished article. However, it must be made clear that an importer is still obligated to exercise due care so as to ensure that imported articles do not contain illegally-harvested wood, even in situations where a declaration is not required. We recommend that importers consider country of harvest, genus and species as valuable information in assessing risk and evaluating the legality of products for which declarations are not required.

In this discussion around date of manufacture, we have also explored whether or not this should be applicable to primary products such as logs and sawn wood, for which the identification of genus, species and country of harvest is much less difficult than for finished goods. At the same time, trade and stockpiling of materials such as logs and sawn wood that were known to be illegally harvested in the recent past, but before the date of enactment of the Lacey amendments, can be equally damaging to forests by stimulating demand for new cutting. We believe these realities should be taken into consideration when determining the treatment of such primary products under the Lacey amendments, and could be addressed by limiting or clarifying the definition of a manufactured product, or by some other means in order to prohibit the trade of logs or sawn wood that have been illegally removed from the forest in the recent past.

Burden of Proof

An importer who claims an exemption from the Lacey Act amendments or the future phase-in of the declaration requirement on the basis of the date of manufacture shall have the burden of proof, including the requirement to maintain any information that can reasonably substantiate the claim that the product was manufactured prior to the date of the Lacey Act Amendments, or, for purposes of the declaration, prior to the date of notification that the product would be covered by a declaration requirement. However, the United States government should not be released from the burden of proving a violation.

Treating recycled wood products in the same manner as recycled paper products

In line with the July 2009 consensus statement, we support treating content composed of recycled or recovered wood products in the same manner as paper products (e.g. by declaring percent content that is then exempted from species/genus declaration).

Allowing more flexibility on declarations

While the Lacey Declaration requirement is useful by requiring supply chains to know the wood that is contained in imported products and by providing information on trade flows of wood, it is also an additional administrative burden on importers. We believe the Administration should have more flexibility to reduce the burden on importers, customs brokers, and the Administering Agencies in instances where doing so would not undermine the benefits of the Lacey

Declaration. Examples of when flexibility is warranted include when shippers import the same products from the same sources on a regular basis, and making allowance for alternative, electronic, internet-based filing options that could be submitted directly to APHIS, rather than through CBP.

Streamlining the Lacey Declaration and APHIS' current requirement for component level reporting

Another area of flexibility relates to the wording of APHIS's current import declaration form, the Plant and Plant Product Declaration form (PPQ-505). APHIS's declaration form requires species and country of harvest information to be provided for the "component," rather than the "importation" as stated in the Lacey Act Amendments. Recognizing that requiring such information may play a constructive role both in encouraging the trade to gather more detailed data as well as providing an additional enforcement tool, APHIS should be flexible in implementing the Lacey Act amendments through the PPQ-505 or any future form in order to take into consideration not only the information-gathering requirements of the Act, but also the burden in reporting and analyzing such information. As such, APHIS should permit importers to list all components (e.g., "table leg", "vener") associated with a given species/country of harvest data line on the form. For example, "Quercus velutina" and "Indonesia" would show up once on the PPQ-505 for the importation as a whole, but importers may consolidate the different articles or components that correlate to that species/country of harvest combination on a single data line rather than having to complete a separate data line for each component to the extent such detailed component-level information can be reported.

Application of the Declaration to Formal Consumption Entries

There is broad agreement that the Lacey Act declaration ought to apply exclusively to formal consumption entries (including withdrawals from warehouse for consumption). A consumption entry is the customs documentation required in the import process for goods that will enter U.S. commerce.

The October 10, 2008 Congressional letter to APHIS stated that the Lacey Act declaration "is intended for formal, consumption entries." In its February 3, 2009 Federal Register notice, APHIS announced that "*at present*, we will be enforcing the declaration requirement only as to formal consumption entries (i.e., most commercial shipments)." [Emphasis added.] We support this interpretation on a permanent basis.

Exclusion for Packaging Materials

Under the Lacey Act amendments, the import declaration requirement does not apply to "plants used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported." There is a consensus among the importing community, NGOs, and agencies that the term "packaging material" be construed to ensure that only the dutiable imported product, and not accompanying material (e.g., hang tags, labels, stickers, instruction booklets, warranty cards and other such items), is subject to the import declaration requirement. In addition, we support a clarification that the exclusion for packaging material includes wine corks.

Inputting data into declaration forms and pursuing alternative means to encourage more electronic filing of declarations

Issue: Inputting data into declaration forms should be streamlined and less burdensome while still meeting objectives of transparency and enforcement support.

Proposed Solution: Our recommendations for making PPQ-505 entry a more effective process include the following:

- Data input should eventually become fully electronic, via a no-cost APHIS interface (not only through the Automated Broker Interface).
- In the short term, APHIS should simplify and clarify the paper form to:
 - Create drop down options for page 2 entries;
 - Allow a PDF file to be saved on computer, so that compliance specialists can return to a partially completed form;
 - Include a link to Forest Products Lab common names database on the form; and
 - Harmonize the PP-505 with 7501 import forms to ensure comparability of data.

Definitions of common cultivar and common food crop

The statute requires APHIS to issue definitions on common cultivar and common food crop. Without such definitions, companies are unsure whether their products are covered by the Lacey Act. We urge APHIS to issue regulations regarding the definitions of common cultivar and common food crop at the earliest possible time.

SIGNED BY:

American Apparel & Footwear Association
(AAFA)
American Association of Exporters and
Importers
American Fiber Manufacturers Association
American Forest & Paper Association
American Home Furnishings Alliance
Canadian Manufacturers & Exporters
Coalition of New England Companies for
Trade (CONNECT)
Columbia River Customs Brokers and
Forwarders Association
Conservation International
Craft & Hobby Association

Custom Brokers & Forwarders Association of
Northern California
Customs Brokers & International Freight
Forwarders Assn. of Washington State
Defenders of Wildlife
Emergency Committee for American Trade
(ECAT)
Environmental Investigation Agency
Express Association of America
Fashion Accessories Shippers Association
Global Witness
Greenpeace USA
Grocery Manufacturers Association
Halloween Industry Association
Hardwood Federation

The Hosiery Association
INDA, Association of the Nonwoven Fabrics
Industry
International Association of Airport Duty Free
Stores
International Wood Products Association
Joint Industry Group
The Juvenile Products Manufacturer's
Association
Los Angeles Customs & Freight Brokers
Association
NAMM, the International Music Products
Association
NASSTRAC, Inc
National Association of Manufacturers
National Council of Textile Organizations
National Customs Brokers and Forwarders
Association of America
National Marine Manufacturers Association
National Retail Federation
The Nature Conservancy
Northern Border Customs Brokers Association
(NBCBA)
Outdoor Industry Association

Pacific Coast Council of Customs Brokers and
Freight Forwarders, Inc.
Personal Care Products Council
Rainforest Action Network
Rainforest Alliance
Retail Industry Leaders Association
San Diego District Customs Brokers
Association
Secondary Materials and Recycled Textiles
Association (SMART)
Sierra Club
Sustainable Furnishings Council
The Forest Trust (TFT)
Toy Industry Association
Travel Goods Association (TGA)
United States Association of Importers of
Textiles and Apparel
U.S. Business Alliance for Customs
Modernization
U.S. Chamber of Commerce
Wildlife Conservation Society
Wine & Spirits Wholesalers of America
World Wildlife Fund

Guidance on the Lacey Act Declaration

04/30/2009

Introduction

The Lacey Act (16 U.S.C. 3371 et seq., the Act) as amended makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken or traded in violation of the laws of the United States, a U.S. State or a foreign country. On February 3, 2009, the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) published a notice in the Federal Register announcing a revised enforcement phase in plan for the Act's requirement for a plant product import declaration (see 74 Fed. Reg. 5911 for details). The revised plan identifies a list of products and the associated Harmonized Tariff Schedule (HTS) Chapter or Heading as to which the requirement for a Plant Product Declaration Form (PPQ 505) is anticipated to be enforced over the next eighteen months.

PPQ 505: Plant Product Declaration

A declaration is required to obtain release of a covered product. Customs and Border Protection (CBP) has automated the process for collecting the PPQ 505 data elements. Data will be transmitted to CBP's Automated Commercial System (ACS) through the Automated Broker Interface (ABI) in the cargo release module. Electronic filing of the PPQ 505 declaration will not preclude remote location filing. Additional information on how to electronically file the PPQ 505 data can be found in the Participating Government Agencies chapter in the Customs and Trade Automated Interface Requirements (CATAIR) on CBP.gov. ([Participating Government Agencies \(doc - 706 KB.\)](#)) An importer has the option to complete and present a paper PPQ 505 for each line. If a paper form of the PPQ 505 is used, the importer must mail the form to USDA at the address on the form.

As a reminder, providing false or misleading information to the U.S. government can result in civil or criminal actions against any involved party and may result in the seizure and forfeiture of the merchandise.

Covered Goods for Enforcement of the Declaration

As described in the February 3, 2009 notice, enforcement of the declaration requirement will begin with the tariff schedule headings shown in the following table. Additional chapters are scheduled for enforcement starting October 1, 2009 and April 1, 2010 (see 74 Fed. Reg. 5911 for details).

HTS Chapters Scheduled for the First Phase of Enforcement of the Plant Import Declaration

HTS Code	Brief Description
4401	Fuel wood

4403	Wood in the rough
4404	Hoopwood, poles, posts, stakes
4406	Railway and 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

Implementation of Enforcement

Acceptance of electronic submission of the required data elements began April 1, 2009. As previously published, enforcement of the data collection requirement will begin on May 1, 2009. The 30-day delay of enforcement has allowed the government time to formulate a plan for integrating the Lacey declaration requirement into CBP's expedited border release programs, Automated Line Release (ALR) or Border Release Advance Screening and Selectivity (BRASS). This plan is presented below.

Pilot Program

The government will begin a pilot program on May 1, 2009, for those entities currently participating ALR or BRASS whose products require a Lacey Act declaration during the current phase of enforcement. Under this pilot, the participant must make a choice as to whether to remain active in the expedited program or to be removed from the expedited program.

If a participant opts to be removed from the expedited program, no further action is necessary. Effective June 1, 2009, that participant's C4 code will be inactivated. If a participant opts to remain in the expedited release program, a two step process must be completed.

Step 1

The participant must file with APHIS an advance estimated PPQ 505. Initially, and for purposes of this pilot, the estimated PPQ 505 must be filed on a monthly basis. It must include all data elements required on the PPQ 505. Genus, species, value, and quantity fields should be an estimation of the participant's planned imports during the next calendar month. The estimated PPQ 505 must be filed on or before the 15th day of the month prior to the reporting period. The deadline for the first estimated PPQ 505 is May 15, 2009, covering expedited release shipments planned for the month of June 2009.

Step 2

The participant must file with APHIS reconciliation within 15 days after the end of the month. This reconciliation will be submitted in a format to be established and

made available on the APHIS website. The reconciliation will provide information on the actual shipments made during the previous month. The deadline for the first reconciliation is July 15, 2009.

As an example, if a participant in ALR or BRASS that is required to make a Lacey Act declaration wishes to remain in an expedited program for the month of June 2009, the participant must file an estimated PPQ 505 with APHIS no later than May 15, 2009, for the covered products that the participant expects to import during the month of June. The participant must then also file a reconciled PPQ 505 with APHIS no later than July 15, 2009.

This process must be completed monthly during the pilot. The U.S. government will rely on the collected data in its reports to Congress and in determining possible refinements and extensions to enlarge the process and make it less burdensome for all involved.

For All Importers

CBP expects and urges most importers to use the electronic system to file the declaration. If an entry package is presented to CBP to obtain release, the CBP 3461 form will be annotated in Box 29 to indicate "PPQ 505-Paper" if the declaration is presented in paper or "PPQ 505-ABI" if the declaration information was submitted electronically. If a paper form is submitted to CBP as part of the entry package, the paper form will be returned to the importer (or importer's representative) for mailing to USDA. CBP will not mail forms to USDA.

As a reminder, providing false or misleading information to the U.S. government can result in civil or criminal actions against any involved party and may result in the seizure and forfeiture of the merchandise.

APHIS has been designated the lead regulatory agency for these new requirements and CBP is assisting APHIS with the electronic collection of data to fulfill the import declaration requirement. CBP will continue to work as part of the interagency working group, consulting with trading partners, importers, exporters, and other interested groups as the provisions of the Act are fully implemented. The most current information on implementation of the amended Lacey Act can be found on the USDA website. ([Plant Health](#))

If you have any CBP related questions, please contact Ms. Anne Rothrock, Office of International Trade, at **(202) 863-6573**.

BILLING CODE: 3410-34-P

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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