

Food & Drug

E-ALERT

February 5, 2009

USDA Revises Implementation Framework for Import Declarations under Lacey Act Amendments

On February 3, 2009, USDA's Animal and Plant Health Inspection Service ("APHIS") issued a long-anticipated Federal Register notice revising the phased-in enforcement framework for importer declaration requirements under the *Food, Conservation and Energy Act of 2008*, which amended and expanded the scope of the *Lacey Act*. See 74 Fed. Reg. 5911.

The so-called Lacey Act Amendments prohibit the importation, exportation and other enumerated transactions involving protected plants, and furthermore prohibit the importation of covered 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 in which 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 to species or country of harvest.

On October 8, 2008, APHIS solicited comments through a Federal Register notice (73 Fed. Reg. 58925) regarding phased-in enforcement of the import declaration requirements. Based on comments received, APHIS has:

- Revised the phase-in schedule by extending the length of each phase from three months to six months;
- Revised the phase-in schedule so that enforcement will begin for unprocessed and less complex products in earlier phases, while more complex products will be covered in later phases; and
- Provided an affirmative list of products that fall within each enforcement phase.

Enforcement of import declaration requirements will be phased in for products falling within the following enumerated headings and subheadings of the Harmonized Tariff Schedule ("HTS"):

- Phase 1 (Present - March 2009): Plant Import Declaration Form is available from APHIS website, and declarations will be accepted after Dec. 15, 2008. Enforcement is not yet in effect.
- Phase 2 (April 1, 2009 - Sept. 30, 2009): 4401--(Fuel wood); 4403 (Wood in the rough); 4404 (Hoopwood; poles, piles, stakes); 4406--(Railway or tramway sleepers); 4407--(Wood sawn or chipped lengthwise); 4408--(Sheets for veneering); 4409--(Wood continuously shaped); 4417--(Tools, tool handles, broom handles); 4418--(Builders' joinery and carpentry of wood)
- Phase 3 (Oct. 1, 2009 - March 31, 2010): 4402--(Wood charcoal); 4405--(Wood wool [excelsior]); 4410--(Particle board); 4411--(Fiberboard of wood); 4412--(Plywood, veneered panels); 4413--(Densified wood); 4414--(Wooden frames); 4415--(Packing cases, boxes, crates, drums); 4416--(Casks, barrels, vats, tubs); 4419--(Tableware & kitchenware, of wood);

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4420--(Wood marquetry; caskets; statuettes); 4701--(Mechanical wood pulp); 4702--(Chemical wood pulp, dissolving); 4703--(Chemical wood pulp, sulfate); 4704--(Chemical wood pulp, sulfite); 4705--(Combination mechanical and chemical)

- Phase 4 (April 1, 2010 - Sept. 30, 2010): 4421--(Other articles of wood); 4801--(Newsprint); 4802--(Uncoated writing paper); 4803--(Toilet or facial tissue stock); 4804--(Uncoated kraft paper); 4805--(Other uncoated paper and board); 4806--(Vegetable parchment, etc.); 4807--(Composite paper and board); 4808--(Corrugated paper and board); 4809--(Carbon paper); 4810--(Coated paper and board); 4811--(paper coated, etc., other than 4803, 4809, or 4810); 940169 (seats with wooden frames); 940330 (wooden office furniture); 940340 (wooden kitchen furniture); 940350 (wooden bedroom furniture); 940360 (other wooden furniture); 94039070 (wooden furniture parts).

APHIS has made the following clarifications regarding the enforcement phase-in schedule:

- During the phase-in schedule, federal enforcement agencies will not refer for enforcement entries of products from HTS chapters other than the four identified HTS chapters (chapters 44, 47, 48 and 94), unless APHIS first publishes an amended implementation plan in the Federal Register. Any such amendments would apply only to phases III or IV, and APHIS will give at least six months' notice to affected persons. Accordingly, for the present, industry concerns about the ambiguity and potential breadth of the Oct. 8, 2008 Federal Register notice have been resolved. USDA will not enforce the import declaration requirements against, for example, plant-derived pharmaceuticals or cosmetics under the current phase-in schedule.
- During the phase-in schedule, APHIS will enforce the import declaration requirement only as to formal consumption entries (i.e., most commercial shipments), and will not enforce the requirement with respect to informal entries (i.e., shipments valued at \$2,000 or less), 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, APHIS is soliciting comments on enforcement for those types of entries.
- During the phase-in schedule, APHIS will only enforce a declaration for the product being imported and not for various items that ordinarily accompany the product (e.g., tags, labels, manuals, and warranty cards).

APHIS states that, "[w]e continue to consider the applicability of the declaration requirement to products not included in the current phase-in schedule and we invite public comment on how the declaration requirement should be enforced as to these products." APHIS is also soliciting comments on the products that are covered under phases III and IV of the revised plan. Comments must be submitted to APHIS by April 6, 2009.

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