

Lacey Act Declaration Phase-In Schedule, Group Designations, Etc. REVISED

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The Animal and Plant Health Inspection Service has revised its enforcement phase-in schedule for the Lacey Act declaration requirement for imported plants and plant products.

APHIS' notice also covers other revised aspects of enforcement, information on blanket declarations, the use of "spp.," updates to the declaration form, etc. The notice also announces that APHIS is seeking comments applying the declaration requirement to additional products.

Comments are due by November 2, 2009.

APHIS Revises Phases III and IV Due to Comments, Implementation Experience

After review of the comments received¹, further internal consideration, and experience with implementation of enforcement of the declaration requirement to date, APHIS has revised the product phase-in schedule, as follows:

Phase II (no change)	April 1, 2009	HTS Chapters: Ch. 44 Headings (Wood & Articles of Wood) 4401 (fuel wood) 4403 (wood in the rough) 4404 (hoopwood; poles, piles, stakes) 4406 (railway or tramway sleepers) 4407 (wood sawn or chipped lengthwise) 4408 (sheets for veneering) 4409 (wood continuously shaped) 4417 (tools, tool handles, broom handles) 4418 (builders' joinery and carpentry of wood)
Phase III (a number of items)	October 1, 2009	HTS Chapters: Ch. 44 Headings (Wood & Articles of Wood)

<p>removed; see footnote 2)</p>		<p>4402 (wood charcoal) 4412 (plywood, veneered panels, except 4412.99.06 and 4412.99.57) 4414 (wooden frames) 4419 (tableware & kitchenware, of wood) 4420 (wood marquetry; caskets; statuettes)</p> <p>Plus Phase II</p>
<p>Phase IV</p> <p>(items added noted by asterisk *; see footnote 2 for removed items)</p>	<p>April 1, 2010</p>	<p>HTS Chapters:</p> <p>Ch. 44 Headings (Wood & Articles of Wood) 4421 (other articles of wood)</p> <p>Ch. 66 Headings (Umbrellas, Walking Sticks, Riding Crops) 6602 (walking sticks, whips, crops)*</p> <p>Ch. 82 Headings (Tools, Implements) 8201 (hand tools)*</p> <p>Ch. 92 Headings (Musical Instruments) 9201 (pianos)* 9202 (other stringed instruments)*</p> <p>Ch. 93 Headings (Arms and Ammunition) 9302 (revolvers and pistols)* 9305.10.20 (parts and accessories for revolvers and pistols)*</p> <p>Ch. 94 Headings (Furniture, etc.) 9401.69 (seats with wood frames)</p> <p>Ch. 95 Headings (Toys, Games, & Sporting Equipment) 9504.20 (articles and accessories for billiards)*</p> <p>Ch. 97 Headings (Works of Art) 9703 (sculptures) *</p>

		Plus Phases II and III
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*newly added to the schedule

Enforcement to focus on goods listed above. Federal enforcement will address failures to file declarations for entries of products in the HTS subchapters listed above, according to the phase-in schedule, unless APHIS publishes another notice in the *Federal Register* announcing a further amendment to the schedule.

Enforcement of Phase IV limited to goods composed of wood/plant material. APHIS adds that it recognizes that many of the headings listed in phase IV of the phase-in schedule contain goods that are not composed of wood or other plant material. APHIS clarifies that a declaration is not required for products that have no wood or other plant content. For example, both metal hammers and hammers with wooden handles are included in HTS Chapter 82. However, only the hammers with wooden handles would require a declaration as of April 1, 2010.

No further additions to Phases III, IV. APHIS states that there will be no further additions to phases III or IV. It intends to provide at least six months notice to persons and industries affected by changes to the phase-in schedule to facilitate compliance with the new requirements. Any changes would be announced in the *Federal Register*.

(APHIS notes that while enforcement of the declaration requirement is being phased in, the other Lacey Act amendments are already in effect, and actions to enforce provisions of the Act other than the declaration requirement may be taken at any time.)

Declaration for Composite/Recycled/Reused Materials Delayed to No Earlier than Sept 2010

In response to comments contending that identifying composite and recycled or reused materials (e.g., medium density fiberboard, particleboard, and scrap wood) to the genus and/or species level would be difficult and in some cases impossible, APHIS has decided to further delay enforcement of the declaration for such products.

APHIS is currently proposing to begin enforcing the declaration for those products no earlier than September 1, 2010. This delay in enforcement of the declaration requirement will allow the government more time to evaluate options for enforcing the declaration for these goods.

APHIS Seeks Comments on Applying Declaration to Additional Products

APHIS is seeking comments on the applicability of the declaration requirement to (1) certain HTS subchapters currently under consideration for subsequent phases and (2) additional products not currently under consideration for subsequent phases and not included in the revised phase-in schedule. See footnote 2 for lists.

APHIS Evaluating Options for Blanket Certifications

APHIS states that it received several comments requesting that it consider the use of blanket declarations instead of shipment-by-shipment declarations. Blanket declarations could be used to declare routine and/or repeat shipments. APHIS is currently evaluating options for blanket certification programs.

(APHIS notes that it recently implemented a pilot blanket declaration program for participants in U.S. Customs and Border Protection's expedited border release program, Automated Line Release/Border Release Advance Screening and Selectivity (ALR/BRASS). This pilot program is testing the feasibility of collecting the information required through the use of a periodic "blanket" declaration, with subsequent reconciliation reports.)

Importers Can List "spp." Instead of Single Species in Limited Instances

APHIS states that in circumstances where the list of possible species in a particular product includes all species in a genus, it is acceptable to use "spp." (which is the plural of species) following the genus name on the import declaration form.

However, when reference to all possible species in a genus is not accurate (based on geographical or other factors), importers are expected to provide either the single genus and species, or a specific list on the import declaration form of all possible species that may have been used to produce the plant product.

Government is Considering Use of "Shorthand" Group Designations

APHIS states that the government is considering an approach that would allow shorthand group designations, such as SPF. (SPF is a common grade of lumber manufactured from varying proportions of spruce, pine, or fir species in Canada.)

Specifically, it is considering criteria that might be used to define genus and species groups and the extent to which it might accept the use of group designations on the import declaration either under its current authority or through the regulatory authority provided in the amended Lacey Act.

APHIS Continues to Revise the Declaration Form as Needed

APHIS states that it will continue to revise the online (printable) declaration form (PPQ 505) to make editorial changes and otherwise clarify the requirements for the form. Filers should visit the APHIS website to verify that they are using the most updated version of the form.

APHIS encourages importers to file the data required by the amended Lacey Act electronically through the Automated Commercial System (ACS). If a paper declaration is used, the original must be submitted to APHIS; it cannot be submitted online or by

email. The address for submitting paper declarations is: The Lacey Act, c/o USDA, Box 10, 4700 River Road, Riverdale, MD 20737.

¹APHIS notes that its notice does not specifically address each of the comments it received in its request for comments on its phase-in schedule. However, APHIS will publish a separate *Federal Register* notice to respond to the substantive comments that it has received to date. APHIS will continue to take into account public comments as it continues to implement the provisions related to the declaration requirement of the Lacey Act.

²APHIS is seeking comments on the following HTS chapters/subchapters currently under consideration for subsequent phases that would be scheduled to begin on or after September 1, 2010:

- Ch. 44 Headings (Wood & Articles of Wood)
 - 4405 (wood wool (excelsior))
 - 4410 (particle board)
 - 4411 (fiberboard of wood)
 - 4413 (densified wood)
 - 4415 (packing cases, boxes, crates, drums)
 - 4416 (casks, barrels, vats, tubs)

Note that these headings were previously part of phase III.

- Ch. 47 Headings (Wood Pulp)
 - 4701 (mechanical wood pulp)
 - 4702 (chemical wood pulp, dissolving)
 - 4703 (chemical wood pulp, sulfate)
 - 4704 (chemical wood pulp, sulfite)
 - 4705 (combination mechanical and chemical)

Note that these headings were previously part of phase III.

- Ch. 48 Headings (Paper and Articles of)
 - 4801 (newsprint)
 - 4802 (uncoated writing paper)
 - 4803 (toilet or facial tissue stock)
 - 4804 (uncoated kraft paper)
 - 4805 (other uncoated paper and board)
 - 4806 (vegetable parchment, etc.)
 - 4807 (composite paper and board)
 - 4808 (corrugated paper and board)

- 4809 (carbon paper)
- 4810 (coated paper and board)
- 4811 (paper coated, etc.)

Note that these headings were previously part of phase IV.

- Ch. 66 Headings (Umbrellas, Walking Sticks, Riding Crops)
 - 6601 (umbrellas)
 - 6603 (umbrella parts)
- Ch. 92 Headings (Musical Instruments)
 - 9205 (wind musical instruments)
- Ch. 94 Headings (Furniture, etc.)
 - 9401 (seats)
 - 9430.30 (wooden office furniture)
 - 9403.40 (wooden kitchen furniture)
 - 9403.50 (wooden bedroom furniture)
 - 9403.60 (other wooden furniture)
 - 9403.81 (furniture of cane, osier, bamboo, rattan, or similar materials)

Note that these headings/subheadings were previously part of phase IV, except for 9401 and 9403.81. (9403.90.70 (wooden furniture parts) was removed from phase IV, but APHIS does not appear to be seeking comments on this subheading at this time.)

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

In addition, APHIS states that it continues to consider the applicability of the declaration requirement to other products not included in the revised phase-in schedule or listed above. In particular, it is seeking comments on how the declaration requirement should be enforced as to additional goods classified under the following HTS Chapters:

- Ch. 48 (Paper & Articles of)
- Ch. 82 (Tools, Implements)
- Ch. 89 (Ships, Boats, & Floating Structures)
- Ch. 93 (Arms and Ammunition)
- Ch. 94 (Furniture, etc.)
- Ch. 95 (Toys, Games, & Sporting Equipment)
- Ch. 96 (Brooms, Pencils, Buttons)

APHIS notes that the government is also conducting studies on other HTS headings to inform its implementation of the Lacey Act.