

INTERNATIONAL TRADE ALERT

UPDATE ON FARM BILL'S IMPORTER DECLARATION REQUIREMENT FOR PLANT PRODUCTS

APHIS ANNOUNCES IMPLEMENTATION PLAN, REQUEST FOR COMMENTS AND OCTOBER 14 PUBLIC MEETING

In today's *Federal Register*, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) issued a notice and request for comments on a proposed implementation plan for the controversial importer declaration requirements for "plant products," enacted by Congress in May 2008 through amendments to the wildlife protection statute called the Lacey Act. [See 73 Fed. Reg. 58,925 (Oct. 8, 2008)]. Congress passed this legislation as part of the so-called "Farm Bill" (The Food, Conservation and Energy Act of 2008). The notice also announced that APHIS will hold a public meeting on October 14, 2008, to discuss the plan. Any foreign manufacturers serving the U.S. market or importers of plant-based products (e.g., products containing wood or paper) should monitor the United States' implementation plan due to the broad scope of the legislation and its requirement that importers of covered products implement potentially burdensome supply chain security procedures in order to comply with the importer declaration requirements. In addition, manufacturers and importers should consider filing comments in response to the notice and attending the October 14 meeting.

PROPOSED IMPLEMENTATION AND ENFORCEMENT PLAN

The APHIS plan is a "phased-in" approach to implementation and enforcement of the importer declaration requirements. The proposed schedule is—

- **Phase I:** Beginning December 15, APHIS would make a paper declaration form available on its Web site for voluntary submission. Although there will be no negative implications for failing to complete the paper declaration during this first implementation and enforcement phase, any person who submits a paper declaration containing false information may be prosecuted.
- **Phase II:** Beginning April 1, 2009, or as soon thereafter as U.S. Customs and Border Protection (CBP) has the capability to accept the required data electronically through its Automated Broker Interface (ABI), the importer declaration would be mandatory for imports of plant products classified under Chapter 44 (wood and articles of wood) and Chapter 6 (live trees, plants, bulbs, cut flowers, ornamental foliage, etc.) of the Harmonized Tariff Schedule of the United States (HTSUS). The proposed plan does not specify for the importing community what the classification of the covered plant products are within these Chapters (e.g., either at the six-, eight- or 10-digit level in the HTSUS). In addition, the plan does not specify whether certain types of customs entries will be exempt from the importer declaration requirements (e.g., de minimis, informal entries, etc.).

- **Phase III:** Beginning on approximately July 1, 2009, the importer declaration would be mandatory for imports classified under HTSUS Chapters 47 (wood pulp), 48 (paper and articles thereof), 92 (musical instruments), 94 (furniture) and those chapters included in Phase II. Again, the proposed plan does not specify for the importing community what the classification of the covered plant products is within these Chapters (e.g., either at the six-, eight- or 10-digit level in the HTSUS), and it does not indicate whether certain types of customs entries will be exempt.
- **Additional Phases:** After September 30, 2009, APHIS proposes to evaluate the implementation status of the electronic system for declaration data collection. Based on this evaluation, the agency would phase in enforcement of the declaration requirements for additional imported plant products. At this time, it is still not known how broadly the agencies will interpret the term “plant product” but APHIS emphasized that it may ultimately cover products containing plant materials such as certain furniture, tools, umbrellas, sporting goods, printed matter, musical instruments, products manufactured from plant-based resins and textiles. Because so many products within the HTSUS contain some plant materials, the breadth of the term “plant product” and, by extension, the importer declaration requirement could be very wide. APHIS will announce a specific phase-in schedule for the additional plant products in a subsequent *Federal Register* notice.

COMMENT PERIOD AND PUBLIC MEETING

Given the potentially broad scope of the importer declaration requirement, concerned parties, including foreign manufacturers serving the U.S. market or importers of plant-based products, should consider submitting comments to voice practical, legal and policy concerns regarding the new law and its implementation. Comments, which may be submitted either electronically through the Federal eRulemaking Portal or by mail or commercial delivery, must be submitted no later than Monday, December 8.

As noted above, along with other agencies participating in an interagency task force entrusted with implementing the new law (e.g., CBP, U.S. Fish and Wildlife Service, etc.), APHIS will host a public meeting on its implementation plan on October 14, 2008, from 10 a.m. to 12 p.m. The purpose of the meeting is to provide the public with information on the importer declaration requirements and 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 participating in the interagency task force.

The meeting will be held in the Jefferson Auditorium, South Agriculture Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, D.C.

The APHIS Web site, <http://www.aphis.usda.gov>, which will be updated as new information regarding the Lacey Act becomes available, provides a Microsoft PowerPoint presentation regarding 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. Persons interested in receiving updates on APHIS’ Lacey Act efforts should register for the stakeholder registry at <https://web01.aphis.usda.gov/PPQStakeWeb2.nsf> and select “Lacey Act Declaration” as the topic of interest.

For additional details about the public meeting and the comment submission process, see the Federal Register notice at: <http://edocket.access.gpo.gov/2008/pdf/E8-23984.pdf>.

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