



The American Companies

"News Flash"

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LACEY ACT AMENDMENT, REVISIONS

Important revisions to the text of the Lacey Act Amendment, which appeared in May as section 8204 of the 2008 'Farm Bill', were published in the Federal Register on Oct 8.

In the original rule language, a declaration in hard-copy specifying certain details of the imported wood or plant-related products was required, effective December 2008. Paperless and remote location releases would have been precluded under those circumstances. This would have been a severe blow to the widely automated US supply chain. In the revision, CBP has delayed implementation of that declaration until at least April 2009, at which time they expect to have a suitable electronic system ready and available for transmission of the data.

It has been widely rumored that an older system, formerly used as an interface with the Fish & Wildlife Service (FWS) would be reprogrammed to serve the data collection needs of the Lacey declaration. Reportedly, CBP currently lacks the staff and funding to either sponsor the reprogramming or enforce the law, so that the April start date appears to be optimistic.

In addition to the start date delay, Customs has accepted the principle of a phased deployment of the data requirements (similar to the wood packaging rules), an approach that was opposed by the environmental activists behind the legislation. In the first phase, to begin April 1, 2009, electronic data would be presented only for wood products in Chapter 44 of the HTS.

The second phase, currently envisioned for July 1, 2009 would extend to other HTS chapters that include other wood products, such as wood pulp, paper and wood furniture. Although the FR revision uses 3 month intervals for its version of the phases, other governmental and trade groups are arguing for 6 month intervals minimally, to allow sufficient time for the implementing agencies and the business community to develop the process changes necessary to meet the requirements.

In October 2009, if all goes well, enforcement for additional chapters will become effective. For importers eager to begin submitting the data, APHIS will make a paper form available sometime in December 2008. The use of this form is entirely voluntary, and the related agencies will not prosecute importers who fail to deploy the form. However, importers who do submit the paper form with erroneous or false information can be subject to prosecution.

Other major administrative challenges were not addressed in the recent revision, namely the still open-ended range of products that would fall within the purview of the law, the absence of direct linkage to the HTS, and the equally open-ended nature of the responses required for plant and plant-related products where the genus, species and country of origin are not known. In the current requirements, the importer is required to report all possible species that might have been used and all their countries of origins. There is no extant source for that information.

The American Companies will continue to monitor the situation and keep you advised as best as possible. Please continue to carefully examine our news flashes and news letters for more information or call your customer service representative who will be happy to assist you.

Link to the Federal Register Vol. 73, No. 196, October 8, 2008

<http://frwebgate2.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAIIdocID=26870267882+1+1+0&WAIAction=retrieve>

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