

November 2008

## Regulatory Alert

### New Lacey Act Import Law Will Apply to Marine Products

New amendments to the Lacey Act will require all manufacturers and importers who import wood and plant products to take more care to ensure that the products they receive are legal. This includes any unfinished and finished products such as wood flooring, cabinetry or even finished boats. In addition, some products will not be able to be imported into the United States without an “import declaration.”

#### What is the Lacey Act?

The Lacey Act combats trafficking in “illegal” wildlife, fish, and plants. The 2008 Farm Bill (the Food, Conservation, and Energy Act of 2008), amended the Lacey Act by expanding its protection to a broader range of plants and plant products. Also included in the amendments and effective on December 15, 2008 are new import declaration requirements. The lead agency, the Animal Plant Health Inspection Service (APHIS) will be slowly phasing in the requirements for the import declaration requirement. New regulations are being prepared now. A notice and request for comments on those new regulations was published by APHIS on October 8, 2008 ([73 Fed. Reg. 58,925](#)).

The products covered by the Lacey Act include any **illegally-harvested wood** and the **products made from that wood** including furniture, flooring, plywood, and cabinetry. However, the new amendments go beyond the typical wood products to also include **wild “plants”** or **“plant products”** and any plant listed as an endangered species. This applies to natural and planted forest stands, but not to cultivars and food crops.

#### Why should I care?

These amendments allow the U.S. Government to impose civil or criminal fines on individuals or companies who import into the U.S. illegally-harvested wood and other wild plant products. You can also go to jail if convicted or the illegal products can be subject to forfeiture. The sale of illegal wood products by major retailers has recently been the subject of news reports.

#### What does illegally-harvested mean?

The definition of illegal is extremely broad and includes U.S. laws and foreign laws. It would include any product made from a tree or other wild plant that is taken, possessed, transported or sold in violation of any state or foreign law. That includes illegally taking a plant from a park, forest reserve or other officially protected area. It also includes the failure to pay appropriate royalties, taxes, or stumpage fees required by law or regulation in any State or foreign nation.

## **I do not harvest the wood I use in my products – how can I comply?**

If you import or export any product that contains wood or covered plants you need to take steps to ensure that you are making a **good faith effort** to comply with the laws of the U.S. and the foreign nation where the trees or plants were harvested. The penalty a person or company will face under the Lacey Act is determined by whether you *actually know* or *should have known* in the exercise of *due care* that the goods are, or are made with, illegal taken trees and wild plants. The key then is to **use good faith efforts and due diligence in supply chain management**.

### **Good faith efforts include:**

- **Managing your vendors.** Manufacturers should have a process in place to track and investigate your product input supply chain. Have uniform procedures in place to ensure that you have asked all of your vendors about the source of your inputs. Be sure to keep good records.
- **Getting the scientific names of trees and plants from vendors.** New declaration regulations will soon be imposed and importers will need to report this information as a condition of import. Establish systems now to collect this information.
- **Seeking paper assurances from your vendors, but not assuming that is enough.** A letter or contract with a vendor that states that the inputs have been harvested legally is helpful. However, the Lacey Act provisions are very robust and may even allow the Government to force you to forfeit illegally harvested product even if you have such assurances.
- **Considering how you structure your contracts.** To minimize your risk pay for and take possession of imported product only after it has been cleared through Customs.
- **Keeping alert to new changes in the law and regulations.** APHIS will be rolling out new regulations in the next few months and may make changes as this program evolves. Be sure to keep apprised of any new developments. Check [www.aphis.usda.gov/plant\\_health/lacey\\_act](http://www.aphis.usda.gov/plant_health/lacey_act) frequently.
- **Being ready to answer your customers' questions** about the source of the inputs into your product. Consider this a marketing opportunity.

## **Tell me more about this import declaration?**

The Lacey Act amendments require importers to present a declaration at the time of importation. The rules and final form for the declaration are being finalized now.

The law requires the declaration to contain:

- **Scientific name of covered plant** (including genus & species) – if unknown then each species that may have been used to produce the product
- **Value** of importation
- **Quantity** of the imported plant or wood product
- **Name of the country** in which the plant was **harvested** – if unknown the name of each country from which the plant may have been harvested.
- For paper and paperboard products with recycled content, state the **average % recycled content** without regard for species or country of harvest

Note that the import declaration does not apply to packaging material of a product. NMMA is seeking a ruling that this will also extend to hang tags, manuals and other paper products accompanying a product. It is important to understand that the **Lacey Act amendments did not provide a *de minimis* exemption**. So the requirements apply to any amount of wood or covered plant product imported.

There will be a **phased-in enforcement of the declaration requirement**. The initial phase beginning on December 15, 2008 will be voluntary. APHIS has stated that enforcement will begin when an electronic filing system is established. This is the proposed schedule issued by APHIS but is still subject to change.

<b>Phase I</b>	<b>Phase II</b>	<b>Phase III</b>
Present to March 2009	April 1, 2009 (or when electronic system is available)	July 1, 2009
Voluntary	Mandatory	Mandatory
Plant Import Declaration Form available on APHIS website and accepted after Dec. 15, 2008	HTS Chapters: Ch. 44 (wood & articles of wood) Ch. 6 (live trees, plants, bulbs, cut flowers, ornamental foliage, etc.)	HTS Chapters: Ch. 47 (wood pulp) Ch. 48 (paper & articles of) Ch. 92 (musical instruments) Ch. 94 (furniture)

### How do I get more information?

Go to [www.aphis.usda.gov/plant\\_health/lacey\\_act](http://www.aphis.usda.gov/plant_health/lacey_act) to get the latest information from APHIS or contact Cindy Squires, Esq. ([csquires@nmma.org](mailto:csquires@nmma.org); 202-737-9766) or Bryan Zumwalt, Esq. ([bzumwalt@nmma.org](mailto:bzumwalt@nmma.org); 202-737-9764).