

September 7, 2018

Mr. Greg Ibach
Under Secretary for Marketing and Regulatory Programs
Animal and Plant Health Inspection Service
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, D.C. 20250

Re: Docket No. APHIS-2013-0055

Dear Mr. Ibach:

The National Customs Brokers and Forwarders Association (NCBFAA) appreciates this opportunity to submit comments on the agency's proposed rule published in the July 9, 2018 Federal Register (83 FR 31697) to create a *de minimis* exception to the Lacey Act declaration requirement for products containing a minimal amount of plant materials.

NCBFAA is the national organization that represents licensed customs brokers. Our members provide the important and unique perspective of intermediaries who serve as the interface between importers, Customs and Border Protection (CBP) and other government agencies. Customs brokers are at the frontlines for merchandise entering and departing the country. For nearly a decade, NCBFAA has worked with APHIS and other industry associations to develop a workable approach to implementing the expanded Lacey Act provisions.

***De Minimis* Exception for Minimal Amounts of Plant Material:** NCBFAA has long supported an exception to the Lacey Act declaration requirement for products containing only a minimal amount of plant material, such as a sweater with a wooden button, dried soup (cellulose), machinery with a rubber gasket, or a tube of lipstick (wax from carob tree). When such products are highly processed and incorporate small amounts of plant material, combined with many other non-plant inputs, the importer cannot realistically provide meaningful information as to the specific identity of an incorporated harvested plant. Nor does it significantly further the purposes of the Lacey Act to require this information for minimal amounts of plant material. Creating this *de minimis* exception allows APHIS to better target its resources on products containing greater amounts of plant material and ensures that importers will not be burdened with unreasonable requirements. Therefore, we are pleased that APHIS is moving forward with this proposed rule.

While importers of specific products will have different views on what method is most appropriate for determining if the exception applies depending on the characteristics of their product, we as customs brokers urge APHIS to adopt an approach that is simple and straightforward, allowing importers to choose a method established by APHIS (whether based on weight, volume or value) most appropriate for their product and which can be readily and cost-effectively determined. After all, the exception will be of little value if it is too complex and costly to implement.



Definition of Import: APHIS proposes to define “import” as: “To land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.” This very broad definition creates practical difficulties since it would apply, for example, to products in transit through the U.S. (transferred from one mode of transport to another in bond for immediate export) which do not enter U.S. commerce and are not subject to the documentation required at entry. Circumstances such as this make it very difficult to determine the percentage of plant material or other information required for the Lacey Act declaration. Since the Lacey Act is implemented as part of customs import process, we strongly encourage APHIS to align its definition of import with the customs definition for purposes of the Lacey Act declaration.

3-Day Deadline: APHIS proposes a 3-day post-importation deadline for submitting the Lacey Act declaration. We understand the need to specify a timeframe for submission, since the current lack of a deadline has apparently caused some importers to submit a declaration long after the entry. At the same time, however, three days may not provide enough time in some circumstances, particularly for shipments along the land borders, where cargo moving by truck or rail clears the border at a faster pace. A more reasonable approach is to align the Lacey Act declaration deadline with the customs entry process, which allows most import documentation to be submitted with the entry summary within 10 days after entry. Not only does this provide the needed flexibility for all modes of transportation, but it synchronizes the APHIS entry requirements with CBP entry requirements, facilitating a more uniform and efficient submission of Lacey Act declarations.

NCBFAA is happy to provide any additional information that would be helpful. Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Lahar". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael E. Lahar, Chairman
NCBFAA Regulatory Affairs Committee