

# PUBLIC SUBMISSION

As of: December 02, 2010  
Tracking No. 80ba9919  
Comments Due: November 29, 2010

**Docket:** [APHIS-2010-0093](#)

Notice of Request for Extension of Approval of an Information Collection; Lacey Act Declaration Requirement; Plants and Plant Products

**Comment On:** [APHIS-2010-0093-0001](#)

Notice of Request for Extension of Approval of an Information Collection; Lacey Act Declaration Requirement; Plants and Plant Products

**Document:** [APHIS-2010-0093-0009](#)

Comment from Russell Nemark

---

## Submitter Information

**Name:** Russell Nemark

**Address:**

Thousand Oaks, CA,

---

## General Comment

see attachment

---

## Attachments

[APHIS-2010-0093-0009.1](#) Comment from Russell Nemark

# PUBLIC SUBMISSION

<b>As of:</b> December 02, 2010 <b>Tracking No.</b> 80ba9919 <b>Comments Due:</b> November 29, 2010
---

**Docket:** [APHIS-2010-0093](#)

Notice of Request for Extension of Approval of an Information Collection; Lacey Act Declaration Requirement; Plants and Plant Products

**Comment On:** [APHIS-2010-0093-0001](#)

Notice of Request for Extension of Approval of an Information Collection; Lacey Act Declaration Requirement; Plants and Plant Products

**Document:** [APHIS-2010-0093-0009](#)

Comment from Russell Nemark

---

## Submitter Information

**Name:** Russell Nemark

**Address:**

Thousand Oaks, CA,

---

## General Comment

see attachment

---

## Attachments

[APHIS-2010-0093-0009.1](#) Comment from Russell Nemark

NOV 29 2010

November 18, 2010

To APHIS

Re: Comments to Docket no . APHIS 2010-0093

Respectfully I submit the following:

There is a particular difficulty in completing accurate declarations for customized musical instruments that should be addressed by APHIS relative to the Lacey Act. This comment identifies the challenges, and respectfully suggests possible resolutions.

**The existing policy:**

Current APHIS guidelines appropriately allow the declaration for musical instruments that were manufactured prior to 2008 to be completed simply as "pre-amendment". This identification covers the requirement for "genus and species" for the entire instrument as a single unit and accurately acknowledges that the Act did not apply to musical instruments before that date.

At this time, the determination of a "pre-amendment" instrument is based solely on the date of manufacture of the instrument.

However, it is extremely common in the custom musical instrument business to hold stock of exotic woods (as well as more common woods) for years, even decades, before producing a final product. This is done for two reasons. First, a superior sound quality and stability can only be found in very well seasoned (aged and dried) woods. Second, most custom shops produce on order and while they may buy a quantity at one time, they will rarely use all the material in one instrument. The quantity of exotics used to decorate an instrument is usually extremely small, often measuring only a few square inches, so it can take years, even decades, for a small shop to use even a cubic meter of raw material.

Musical instruments are still largely done by an artisan or hand crafted production process. Many small shops are family operations, and a son may use lumber stock provided by his father. It is therefore extremely common in this field to have instruments manufactured today out of lumber that was harvested ten, twenty, even fifty years or more in the past.

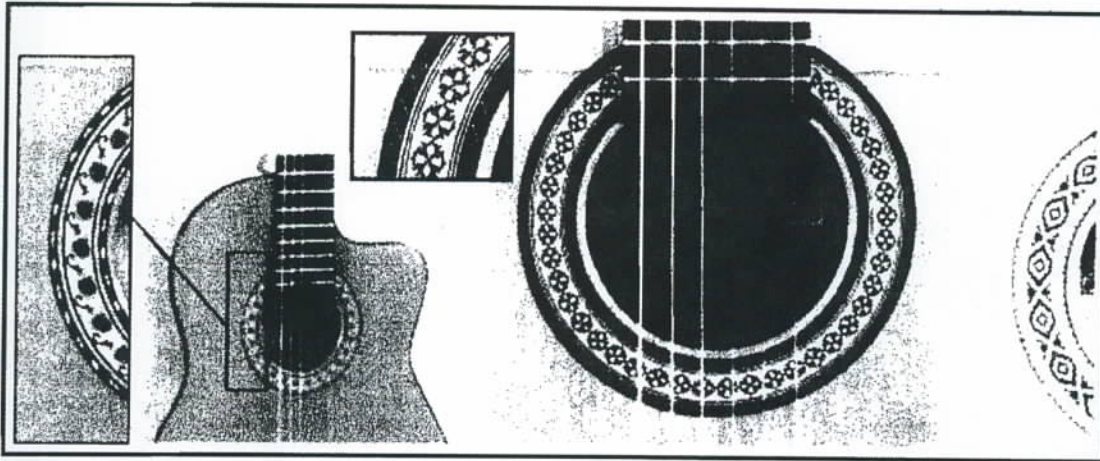
Many shops know their stock of species only by common names and do not have records of their original country or origin or exact scientific category for genus and species. Few are direct importers and often simply bought "a dozen ebony fingerboards" or a "lot of rosewood strips for inlay work." They are unable to easily track those older purchases back to their original harvest location. Some may even intermix material by color or character so they could have figured maple in one pile



(including different figures and multiple sub species of maple) and then “red woods” in another including species like rosewood, paduk, and jarrah, which could come from three continents but all be grouped by their red coloring.

Additionally, some companies use colored woods—stained green or blue or other special colors. It is usually impossible to identify the original wood in this case.

Finally, for many instruments, inlays are an important part of the decorative feature. These inlays can be highly intricate and be composed of very tiny pieces. Some examples from guitars are below.



Please note the burden on the importer to try to calculate the individual volumes of each inlay component and to attempt to identify each component's individual species and genus and match it back to the original country of origin.

Therefore I would say that as a practical reality, woods acquired prior to 2008 by a musical instrument builder should be also be designated as 'pre-amendment' regardless of the actual manufacturing date of the final musical instrument.

#### **Supporting evidence:**

Please note that even CITES has a provision for allowing the use of material harvested “pre-listing.” For example, a craftsman can use *Dalbergia Nigra* that was harvested before it was listed on the CITES Appendix. CITES recognizes that they cannot make something 'illegal' retroactively. I would propose adjusting the declaration requirements for musical instruments in a similar way; allowing applicable wood components used in a musical instrument to enter under the provision of “harvested prior to 2008.”

**Suggested resolutions:**


All musical instruments, regardless of the date of production, should be categorized as 'pre-amendment' if the woods utilized to create the musical instrument were acquired prior to the modification of the Act in 2008.

Alternatively, the declaration could be waived in the case of minimal imports—perhaps a quantity of under five individual pieces, where the product being imported is clearly not a mass produced factory item. Or there could be a category for artisan production, where if evidence could be provided that the production was a customized hand crafted instrument produced from older raw material stock.

Another option might be putting a specific time limit (a grandfather clause) on how long this declaration condition would be in effect, perhaps a period of ten or twenty years to allow a clearance of the majority of old wood stock used in musical instrument production.

A final option might be to provide an allowance for the decorative inlay entries on a musical instrument. Since it is often impossible to identify tiny decorative pieces at all, it might be appropriate to group them. For example, if the inlays total less than 10% of the surface area of the guitar or violin or piano, perhaps they could be included in a group entry, a general "decorative inlays" category. While this would still place a heavy burden on an importer to identify larger sections of backs and sides, it would eliminate the most impossible of declaration requirements.

Sincerely:

  
Russell Nemak  
212 Dirt Road  
Thousand Oaks, California 91361