



September 7, 2018

Mr. Kevin Shea
Administrator
Animal and Plant Health Inspection Service (APHIS)
U.S. Department of Agriculture
4700 River Road Unit 60
Riverdale, MD 20737-1231

RE: Regulatory Impact Analysis & Initial Regulatory Flexibility Analysis – Proposed Rule
APHIS-2013-0055 – Lacey Act Implementation Plan: De Minimis Exception

Dear Mr. Shea,

The International Wood Products Association (IWPA) has reviewed the Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis (“RIA”) that was completed by APHIS in regards to the Proposed Rule: Lacey Act Implementation Plan: De Minimis Exception. We are pleased to provide some specific comments to this Analysis in order to assist APHIS in assessing the impact of its proposed regulation. Please do note that we have also filed separate combined comments as part of the Lacey Act Implementing Industry Coalition of which IWPA is a member.

Affected Entities

APHIS in its RIA looked at formal entries and the Harmonized Tariff Codes currently covered by the enforcement guidance. However, the proposed regulation appears to expand the covered imports significantly beyond the formal entries. It also does not expressly include the phase-in list in the proposed regulatory language making it uncertain of the actual scope of the regulation. The RIA must consider the full scope of the proposal and not just current practice. Therefore, the RIA must be revised accordingly.

In addition, APHIS only considered the impact on importers and wholesalers. This is a misunderstanding of the Lacey Act declaration requirement and the import process. It is quite common for manufacturers, retailers and distributors to also directly import wood products. IWPA has several large retailers, distributors, and manufacturers who inform us that they also frequently directly import. In addition, even if a company is not directly importing covered wood products they are conducting due care as required by the Lacey Act

and making inquiries into the processes of their suppliers (overseas or domestic). The RIA should be recalculated and consider all of these industry players in the cost / benefit analysis.

Expected Benefits and Costs of the Rule

APHIS concluded that “[t]he cost of filing a declaration includes the labor to collect and maintain the necessary data and to complete and review the paperwork, and the postage fee for paper submission or the automated broker interface (BI) fee for electronic submission.” APHIS also estimated that “managers spend between 10 and 20 minutes per declaration on data collection, completion and review, and bear postage costs of \$.50 per paper declaration or ABI fees of between \$10 and \$30 per electronic declaration.” APHIS provides no explanation about how it came up with the time estimate and appears to assume that these are simple administrative matters and a matter of collecting easily obtainable information. APHIS concludes with an estimate that the “average cost of declaration compliance ranges from \$15.25 to \$54.85 per declaration for importers.” Surprisingly, APHIS also concludes that requiring the declaration to be filed in 3 business days of importation would have little impact on importers, while noting that at least 10 percent of current filings do not happen within that time period.

The minimal amount of time commitment and low cost for declaration completion and submission is in sharp contrast to the questions in recent U.S. Customs and Border Protection (CBP) Office of Trade Lacey Act Questionnaire’s that have recently been sent to wood importers. These questions appear to expect a much more involved process that could only be completed by well-trained staff and consultants, along with a large travel budget, none of which has been calculated by APHIS in its cost benefit analysis. For example, CBP asked the following:

- Describe how [Company] utilizes due care to ensure plant material is harvested and traded legally throughout their supply chain.
- Identify specific procedures used by the company to determine when imported merchandise is subject to the 2008 Lacey Act amendments, including the declaration requirement. Please indicate who (by name and / or title) is responsible for each procedure and when (and how often) the determination is made.
- Does company personnel review new items prior to importation to determine if they are subject to the Lacey Act? If so, please describe how [Company] exercises due care to ensure the wood is harvested legally as required by the Lacey Act.
- Please indicate who within your supply chain is responsible for providing you with trustworthy information to enable you to complete the Lacey Act declaration.
- What information / documentation is requested to attempt to ensure your supply chain provided you with the correct wood identification (i.e. species name) and origin of the wood (i.e. harvest location)?
- Please describe any information / documentation provided to your company by your suppliers, manufacturers, etc., in your exercise of due care?
- Please describe any audits or verification you conduct on the information/documentation provided to you?

- Please describe the procedures followed by your company if your verification / audits identify suspect information and/or high risk merchandise (e.g. from areas known to be illegally harvesting timber).
- Does company personnel review entries filed to verify that the Lacey Act declaration requirements were met? If so, please describe the review process?
- What records are maintained to support the review of the entries?
- Is the Lacey Act applicability information maintained in a format that is provided to Customs Brokers?
 - If so please provide a description of how this information is maintained, who is responsible for maintaining it, and evidence that the database was provided to the company's Customs Brokers.
 - If not, please describe procedures taken by your company to communicate which imports are subject to the Lacey Act with your Customs Brokers.
- What assistance has your company sought in determining whether merchandise is subject to the Lacey Act (i.e., CBP, Customs Brokers, USDA)?
- Does the purchase order, letter of credit terms, or contracts/agreements with manufacturers / suppliers provide requirements concerning product harvesting? If so, please provide examples.
- If your product harvesting requirements are breached by the manufacturer/supplier, what procedures would you take?
- What specialized training and/or experience have key personnel involved in ordering, receiving, and declaring merchandise subject to the Lacey Act received? Please provide evidence to support any training identified.
- How does your company obtain current information on Lacey Act requirements?
- What specialized training and/or experience has the responsible official received regarding the completion of the PPQ Form 505? Please provide evidence to support any training identified?
- Describe the procedures used to ensure that the information on the PPQ 505 is accurate.
- What controls are in place to ensure that goods/articles are accurately described?
- What controls are in place to ensure that the plant scientific name including genus and species are accurate?
- What controls are in place to ensure that goods are harvested from the country of harvest?
- Does the company verify where and by whom the imported merchandise is manufactured? If so, please explain and provide evidence of the verification process.
- Does the company obtain factory profiles and require factory visits for manufacturers supplying potential Lacey Act merchandise?
- Do you maintain documentation to prove the manufacturer of your purchase?
- Who is responsible for maintaining documentation to support the declarations made on the PPQ 505?
- Where is the documentation maintained?
- How long is the supporting documentation maintained?

It is clear that there is a major disconnect between what APHIS is estimating are the costs and what CBP is expecting importers to have in place for Lacey Act compliance activities and declaration submission. For these reasons, we urge APHIS to revise its Regulatory Impact Analysis accordingly. We welcome any discussions with APHIS to help it understand the processes required for setting up a new Lacey Act program and continuing to operate an existing program.

Sincerely,

A handwritten signature in blue ink, reading "Cindy L. Squires". The signature is fluid and cursive, with the first name "Cindy" and last name "Squires" clearly legible.

Cindy L. Squires, Esq.
Executive Director