

**Testimony of Rebecca Bech  
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**Before the House Committee on Natural Resources  
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs  
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Dear Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify at today's hearing on implementation of the 2008 Farm Bill amendments to the Lacey Act. I am Rebecca Bech, Deputy Administrator of the Plant Protection and Quarantine Program within USDA's Animal and Plant Health Inspection Service (APHIS).

APHIS has a broad mission that includes protecting U.S. animal and plant health, administering the Animal Welfare Act, and carrying out wildlife damage management activities. These efforts support the overall mission of USDA: to protect and promote food, agriculture, and natural resources. The Food, Conservation, and Energy Act of 2008, more commonly known as the 2008 Farm Bill, amended the Lacey Act (16 U.S.C. 3371 et seq.) by expanding its protections to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices) and requiring APHIS to implement the import declaration requirement for those products.

The Administration is fully supportive of the 2008 amendments. Over the past five years, our Agency has focused on implementing our piece of the Lacey Act amendments—the declaration requirement—while continuously working with our stakeholders to carry out Congress' direction in a common sense way. Since we last testified before this Subcommittee one year ago, we have made progress on several regulatory and administrative fronts to further refine the requirements of the Act and to ease the potential burden on industry, while enhancing our ability to collect and analyze declaration data, all of which I will discuss in more detail. While our focus is on the declaration requirement, we are part of the broader Lacey Act interagency group tasked with implementing the provisions of the Act, which includes representatives from the U.S. Forest Service, U.S. Department of Homeland Security's Customs and Border Protection (CBP), U.S. Trade Representative, U.S. Department of Justice (DOJ), U.S. Department of State, U.S. Fish and Wildlife Service (FWS), the Council on Environmental Quality, and the U.S. Department of Commerce.

**APHIS' Implementation of the Declaration Requirement—A Phased-In Approach**

In implementing the amendments, it was important that we take into account the large and diverse quantity and value of imported products that require a declaration under the Lacey Act; goods containing plant material are included in at least 59 of the 99 chapters of the Harmonized Tariff Schedule of the United States (HTS), encompassing an estimated 5,000 types of goods. Additionally, estimates indicate that full enforcement of the Act would result in over 1 million import declarations per month. Given this scope, the interagency group decided to phase in

enforcement of the declaration requirement, gradually adding categories of products that require a declaration, to give affected industries and agencies time to comply and to help ensure that legal trade would not be unintentionally or unnecessarily disrupted.

To date, APHIS has implemented four phases for plant declarations, encompassing 447 HTS codes. The interagency group identified categories of goods to be included in each of these phases that were relatively less complex goods for which the required declaration information should be more readily available.

APHIS introduced the latest phase of the implementation schedule in April 2010. Since that time, the Agency has focused on soliciting input from the public on ways to improve the administration of the 2008 amendments, development of the common food crop and common cultivar rule, the analysis and working towards the completion of the required report to Congress, as well as discussions on how to deal with the administrative challenges of implementing the Act. While APHIS has not yet announced additional phases as part of the implementation process, the Agency has had interdepartmental discussions about what types of additional products and corresponding HTS codes could be included in the next phase of enforcement that meet the goals of the Act while presenting the least potential burden on legitimate trade and the Agency. Consistent with a Notice APHIS published on February 3, 2009 in the Federal Register, the Agency still commits to provide a minimum of six months' notice before further phases are implemented.

### **Using Regulatory and Administrative Flexibilities to Refine the Requirements**

As APHIS has implemented the Lacey Act amendments, we have been faced with a number of challenges, particularly in regard to the scope of the provisions. While the Act directs us to provide legislative recommendations to Congress to assist in the identification of plants imported in violation of the amendments, we have found that we can use existing regulatory and administrative flexibilities to deal with a number of the challenges we have encountered.

On the regulatory front, APHIS is moving forward with two regulations to further refine the requirements of the Lacey Act amendments. First, the Agency plans to complete the rule defining "common food crop" and "common cultivar," which will greatly benefit industry, by clarifying the existing statutory exclusions and excluding large numbers of products from the declaration requirement. Common food crops would include plant material, such as fruits, vegetables, and grains. Common cultivars would include plant material, such as cotton. Any plant material imported into the United States that falls under either definition would not be considered a "plant" under the Lacey Act, and would not be subject to the requirements of the Act. On August 4, 2010, APHIS published a proposed rule in the Federal Register to establish definitions for these terms, and later extended the comment period at the request of stakeholders. Under the proposed rule, these exclusions would cover approximately 500,000 imports per month. APHIS has drafted a final rule and intends to publish it in the near future to provide greater clarity to regulated entities.

Second, APHIS has initiated the rulemaking process to develop de minimis exclusions, which would provide industry cost and time savings by eliminating the need for declarations of products

comprising of minimal plant material. In June 2011, the Agency published an Advance Notice of Proposed Rulemaking soliciting input on such an exception, particularly in regard to developing a de minimis standard for the amount of plant material that must be present in a product for the declaration requirement to apply. We are using the feedback received through this process as we move forward with rulemaking.

Administratively, APHIS has been able to streamline data requirements for the declaration form and address concerns about the resulting costs to industry to provide that information. The Agency has implemented Special Use Designations (SUD) to help importers expedite their reporting of various wood products. For example, APHIS has made a SUD available for one type of common trade grouping, Spruce Pine Fir (SPF), an acceptable industry short-hand that signifies a larger group of species that may otherwise be difficult to differentiate from one another. Additionally, we have developed SUDs for importers of other plant products, such as products containing composite, recycled, or reused plant materials. Given the positive feedback we have received on this initiative, APHIS has now implemented a formal process for stakeholders to propose special use designations for other species groupings, and is currently reviewing recommended suggestions for possible inclusion.

Another area of interest has been goods manufactured prior to the effective date of the 2008 amendments. APHIS has published guidance on these goods, consistent with comments received through the June 30, 2011, Advance Notice of Proposed Rulemaking that included a section on declaring pre-Amendment wood. Under this guidance, if importers of items manufactured entirely prior to May 22, 2008, are unable through the exercise of due care to determine the genus or species of the plant materials contained in that item, the importer can use the SUD “PreAmendment.” In addition, we are working with other interagency group members to explore other possible policies to address such plant products manufactured prior to 2008.

### **Improving Data Collection and Use**

Since 2009, APHIS has received approximately 1.8 million import declarations. Of this total, approximately 40,000 declarations are filed per month, and approximately 15 percent of these declarations are submitted on paper forms that require significant resources to analyze and store securely. Prior to fiscal year 2012, APHIS had not received funding specific to the implementation of the Lacey Act; however, we are now able to dedicate resources to address the administrative challenge of paper declarations. The Agency is developing a web-based solution to help eliminate the need for paper-based declarations and provide an easier electronic alternative for collecting and maintaining declarations. The system, Lacey Act Web Governance System, or LAWGS, will provide another alternative to importers for filing declarations (as importers currently go through a licensed customs broker or fill out a paper declaration) and allow APHIS to be more responsive to importers’ needs. In addition, an information technology infrastructure will help the agency to analyze and monitor these declarations for compliance with the Act. We have completed Phase 1 development of LAWGS and conducted our first webinar for industry on its use in March 2013. We anticipate piloting the system this summer before full implementation this fall.

Additionally, APHIS continues to work with U.S. Customs and Border Protection (CBP) on improvements to data transmission by importers into CBP systems. APHIS and CBP are collaborating to strengthen the guidance and streamline the process importers need to file Lacey Act declaration information in CBP's electronic system for Participating Government Agencies (PGA's). The PGA Message Set is a single, harmonized set of importer information collected by CBP as part of Customs and Trade Automated Interface Requirements.

APHIS has also acquired new software to improve the Agency's ability to monitor and analyze Lacey Act data from the import declarations. When the system is fully operational, the Agency will be able to create sets of reports to aid in accountability and to perform regular compliance checks of the data. It will allow the Agency to easily target problem shipments and repeat offenders, helping to ensure compliance with the 2008 amendments. It is important to clarify that APHIS' enforcement role only pertains to the declaration requirement. When we notice errors or discrepancies on the declaration forms, we work with importers to educate them about how to comply with the Act. However, APHIS makes declaration forms available to the enforcement agencies should they be needed for investigations. DOJ requested and APHIS provided full electronic declaration data available during 2009-2011. More recently, DOJ, FWS, and CBP enforcement officials requested and APHIS coordinated the delivery of information related to almost 3,000 electronic Lacey Act declarations in support of their investigations.

### **Outreach and Collaboration**

Since the enactment of the 2008 amendments, the U.S. Government has undertaken substantial public outreach efforts, both domestically and internationally, to inform and educate importers, producers, suppliers, and foreign governments on the requirements of the Lacey Act. APHIS leads Lacey Act outreach efforts in the United States. Serving as the public's primary point of contact on the Lacey Act, APHIS:

- Maintains a dedicated Web site ([http://www.aphis.usda.gov/plant\\_health/lacey\\_act/](http://www.aphis.usda.gov/plant_health/lacey_act/)), which contains extensive Lacey Act materials and updated guidance on how to comply.
- Answers dozens of telephone and email inquiries monthly from members of the public seeking guidance on the Lacey Act.
- Along with its federal partners, meets with and educates industry trade groups, professional forestry organizations, non-governmental organizations, legal professionals, companies, other U.S. Government agencies, and foreign government officials and industry officials.
- Developed a Lacey Act primer to educate importers on APHIS' role in implementation of the Act, and provided it to industry and on our Web site.

We also recognize the critical role that the public and industry have in informing the process as we continue implementation of the Lacey Act amendments. Throughout implementation, APHIS has actively solicited comments from the public on how best to administer the program to balance the needs of businesses and industry with the need to meet the goals of the Act and implement the statutory requirements. For example, several times, APHIS adjusted the phased enforcement schedule to address concerns raised by businesses and industry associations. Beyond that, APHIS, in its Federal Register notices, has solicited comments on other issues related to Lacey Act implementation. For example, the special use designations discussed above resulted in part

from a recommendation that APHIS develop a list of shorthand designations that would satisfy the genus and species requirement. Many stakeholders also raised the need for a de minimis exemption to the declaration requirement, which, as was previously mentioned, we are addressing. APHIS has also heard regularly from luthiers who manufacture artisan stringed instruments using stores of tropical hardwoods that were imported before the 2008 amendments, and we have provided guidance to clarify requirements and address their concerns.

APHIS again sought public comment through a notice in the Federal Register on February 28, 2011, consistent with the requirement in the 2008 amendments that the Secretary provide public notice and an opportunity for comment before conducting a review of implementation of the amendments. The comments received in response to that notice, as well as comments received in response to earlier Federal Register notices relating to the implementation of the 2008 amendments, have been taken into account in the preparation of the Act's required report to Congress. I apologize for the delays in completing this report and providing it to your Committee. As we have developed the report, we felt it was important that it reflect input received from stakeholders and the other Federal agencies interested in the 2008 amendments, and that process has taken some time.

### **Cost of Implementation**

As part of the rulemaking process for the common food crop and common cultivar rule, the Agency developed an economic analysis that included the estimated cost of compliance of the declaration requirement. Our economic analysis estimates that these exemptions could save industry and the government between \$900,000 and \$2.8 million per year just for the five percent of products that is excluded.

To fund our Agency's implementation of the Lacey Act, APHIS received \$775,000 in FY 2012 – the first time the Agency received appropriated money for the program. In FY 2013, the Agency received \$716,000 and we are requesting \$1.445 million for FY 2014. This funding has been and will be used for full-time staff, recordkeeping and secure storage for paper declarations, education and outreach, and continued development of the LAWGS database and other tools.

Mr. Chairman, thank you for the opportunity to testify today. I assure you that APHIS will continue to implement the 2008 amendments balancing the legitimate needs of industry with the requirements of the Act. For this to be a successful effort, APHIS will continue its commitment to listening to the public, business and industry, seeking their input and implementing the Act in a way that addresses their concerns in the best possible way, while still following the direction of Congress.