
NATIONAL CUSTOMS BROKERS AND
FORWARDERS ASSOCIATION OF AMERICA, INC.

Office of General Counsel
One Astor Plaza
1515 Broadway 43rd Floor
New York, N.Y. 10036

Phone: (212) 944-6611
Facsimile: (212) 944-9779
e-mail: hisaacs@tdllp.com

July 8, 2003

Via Fedex

Food and Drug Administration
Dockets Management Branch (HFA – 305)
5630 Fishers Lane
Room 1061
Rockville, Maryland 20852

**Re: Comments on Proposed Notices of Rulemaking:
Docket Number 02N-0277**

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Dear Sirs:

The following is submitted by the National Customs Brokers & Forwarders Association of America, Inc. (“NCBFAA”), in connection with the Notice of Proposed Rulemaking, (“NPRM”) published in the Federal Register of May 9, 2003, (68 F.R. 25187) relating to proposed amendments to 21 C.F.R. Parts 1 and 11, and implementing the relevant provisions of the P.L. 107-188, the “Public Health Security and Bioterrorism Preparedness and Response Act of 2002” (hereinafter referred to as the “Bioterrorism Act” or the “Act”).

The NCBFAA is a national organization with regular membership consisting of licensed customs brokers, international freight forwarders, non-vessel operating common carriers, and international air cargo agents. Our member customs brokers prepare and file entries on behalf of persons importing merchandise into the United States.

At the outset, we wish to express wholehearted support for the intended aim of the proposed regulations — the protection of the integrity of the U.S. food supply, and consequently, of the American public. However, because section 1.326 applies the proposed regulations to,

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inter alia, persons that “import” food, it could be interpreted to include customs brokers, who act only as agents for the actual importer. This would result in placing a redundant and burdensome recordkeeping requirements¹ on customs brokers. For the following reasons, we believe that the regulations should make it clear that customs brokers are exempted from these requirements.

As set forth in the notice, the proposed rules will amend FDA regulations to require the establishment and maintenance of records, by a person who “owns food or who *holds, processes, packs, imports, receives, or distributes* food for purposes other than transportation.” Customs brokers perform none of the enumerated functions. At most, they aid in obtaining customs release of the goods by filing an entry on behalf of the actual importer. Certainly, they possess only the information having to do with the customs entry of the food. Those records are immediately available under existing customs regulations.

Pursuant to 19 U.S.C. §1508(a) and 19 C.F.R. 163.2, customs brokers are required by the Bureau of Customs and Border Protection (“CBP”) to establish, maintain, and produce documents for examination and inspection.² These requirements are applicable to a customs broker irrespective of whether the broker or the actual importer appears as the importer of record on the entry. In addition to maintaining records relating to importations, 19 C.F.R. §111.25 requires that customs brokers make those records readily available to the government and §111.26 prohibits a broker from interfering in their inspection. Thus, any recordkeeping

¹ The recordkeeping requirements vary according to whether the person is a “Transporter” or a “Non-transporter,” etc.

² 19 U.S.C. §1508(a) and 19 C.F.R. 163.2 require the following parties to maintain and produce records relating to the entry of merchandise to Customs for examination and inspection, upon reasonable demand, whether or not Customs required the presentation of such documents at the time of entry:

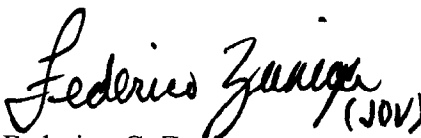
- (1) Any owner, importer, consignee, importer of record, *entry filer* or other party who
 - (A) imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond; or
 - (B) knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;
- (2) *Any agent* of any party described above; or
- (3) Any person whose activities require the filing of a declaration or entry, or both.
(Emphasis supplied.)

requirement imposed upon customs brokers by these regulations would be unnecessarily redundant.

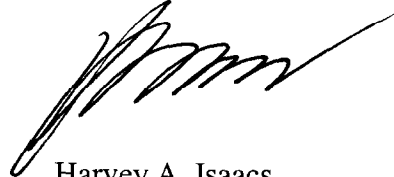
In addition, in a related context, we note that under 21 C.F.R. §1.90, dealing with imports and exports, employs the term “owner or consignee” as the party to receive notice. Similarly, in the context of the instant regulations, “imports” should not be used. Rather, that term should be deleted and the following inserted, “. . . is the actual consignee of the imports” That will clearly exempt customs brokers from the regulations.

We thank you for the opportunity to submit these comments.

Sincerely,

Handwritten signature of Federico C. Zumiga in black ink, with the initials "(JOV)" written in the lower right corner of the signature.

Federico C. Zumiga,
President

Handwritten signature of Harvey A. Isaacs in black ink, consisting of stylized initials.

Harvey A. Isaacs
General Counsel