(8) Administer the records management program in support of Departmental Management, and prepare and coordinate responses to management audits by the Inspector General and the Government Accountability Office, with authority to take actions as required by law or regulation for the offices and agencies reporting to the Assistant Secretary for Administration.

* * * * *

§ 2.98 [Removed]

■ 24. Remove § 2.98.

Subpart Q—Delegations of Authority by the General Counsel

■ 25. Revise § 2.200 to read as follows:

§ 2.200 Principal Deputy General Counsel.

Pursuant to § 2.31, the following delegation of authority is made by the General Counsel to the Principal Deputy General Counsel, to be exercised only during the absence or unavailability of the General Counsel: Perform all duties and exercise all powers that are now or which may hereafter be delegated to the General Counsel.

■ 26. Amend subpart Q by adding new §§ 2.201 and 2.202 to read as follows:

§ 2.201 Director, Office of Ethics.

Pursuant to the Office of Government Ethics regulations at 5 CFR part 2638, the Director, Office of Ethics, shall be the USDA Designated Agency Ethics Official with the authority to coordinate and manage the Department's ethics program as provided in part 2638.

§ 2.202 Deputy Director, Office of Ethics.

Pursuant to the Office of Government Ethics regulations at 5 CFR part 2638, the Deputy Director, Office of Ethics, shall be the USDA Alternate Agency Ethics Official and shall exercise the authority reserved to the USDA Designated Agency Ethics Official as provided in part 2638 in the absence or unavailability of the USDA Designated Agency Ethics Official.

Done at Washington, DC, this 25th day of June, 2013.

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. 2013–15849 Filed 7–8–13; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 357

[Docket No. APHIS–2009–0018]

RIN 0579–AD11

Lacey Act Implementation Plan; Definitions for Exempt and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim final rule.

SUMMARY: In response to recent amendments to the Lacey Act, we are establishing definitions for the terms ''common cultivar'' and ''common food crop'' and several related terms. The amendments to the Act expanded its protections to a broader range of plant species, extended its reach to encompass products, including timber, that derive from illegally harvested plants, and require that importers submit a declaration at the time of importation for certain plants and plant products. Common cultivars and common food crops are among the categorical exclusions to the provisions of the Act. The Act does not define the terms ''common cultivar'' and ''common food crop'' but instead gives authority to the U.S. Department of Agriculture and the U.S. Department of the Interior to define these terms by regulation. Our definitions specify which plants and plant products will be excluded from the provisions of the Act, including the declaration requirement.

DATES: *Effective dates:* The addition of 7 CFR part 357, with the exception of the definitions of the terms ''commercial scale'' and ''tree'' in § 357.2, is effective August 8, 2013. The addition of the definitions of the terms ''commercial scale'' and ''tree'' to § 357.2 is effective September 9, 2013 unless we take action to delay the effective date or to amend or withdraw either or both definitions.

Comment date: We will consider all comments on the definitions of the terms ''commercial scale'' and ''tree'' that we receive on or before August 8, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2009-0018.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2009–0018, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0018* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Staff Officer, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; (301) 851–2240.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Purpose of the Regulatory Action

The Food, Conservation, and Energy Act of 2008 amended the Lacey Act by expanding its protections to a broader range of plants and plant products. Common cultivars and common food crops are among the categorical exclusions to the provisions of the Act. The Act does not define the terms ''common cultivar'' and ''common food crop'' but instead gives authority to the U.S. Department of Agriculture (USDA) and the U.S. Department of the Interior (DOI) to define these terms by regulation.

Summary of the Major Provisions of the Regulatory Action

In this rule, we adopt definitions for the terms ''common cultivar'' and ''common food crop'' and also, at the request of commenters, adopt definitions for the related terms ''artificial selection,'' ''commercial scale,'' and ''tree.''

Costs and Benefits

Since the terms ''common cultivar'' and ''common food crop,'' while not yet defined by regulation, were previously included in the statute, there should be no instances in which an importer will be required because of this rule to make declarations for commodities that are not now being declared. To the extent that the rule defines which products are excluded from the provisions of the Act, it will benefit U.S. importers. By defining ''common cultivar'' and ''common food crop,'' the rule will facilitate importer understanding of and compliance with the Act's requirements.

II. Background

The Lacey Act (16 U.S.C. 3371 *et seq.*), first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. The Act combats trafficking in ''illegal'' wildlife, fish, and plants. The Food, Conservation, and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act by expanding its protections to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). As amended, the Lacey Act now makes it unlawful to, among other things, import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of any Federal, State, tribal, or foreign law that protects plants or that regulates: the theft of plants; the taking of plants from a park, forest reserve, or other officially protected area; the taking of plants from an officially designated area; or the taking of plants without, or contrary to, required authorization.

The statute excludes from the definition of the term ''plant'' the following categories: (i) Common cultivars, except trees, and common food crops; (ii) scientific specimens for laboratory or field research (unless they are listed in an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 27 UST 1087; TIAS 8249); as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction); and (iii) plants that are to remain planted or to be planted or replanted (unless they are listed in an appendix CITES; as an endangered or threatened species under the Endangered Species Act of 1973; or pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction). The Lacey Act also now makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant covered by the Act.

In addition, Section 3 of the Lacey Act, as amended, makes it unlawful, beginning December 15, 2008, to import plants and plant products without an import declaration. The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested. Currently, enforcement of the declaration requirement is being phased in, as described in two notices we published in the **Federal Register** [1] (74 FR 5911–5913 and 74 FR 45415–45418, Docket No. APHIS–2008–0119).

On August 4, 2010, we published in the **Federal Register** (75 FR 46859–46861, Docket No. APHIS–2009–0018) a proposal [2] to establish a new part in the plant-related provisions of title 7, chapter III of the Code of Federal Regulations (CFR), containing definitions for the terms ''common cultivar'' and ''common food crop.'' Common cultivars and common food crops are among the categorical exclusions to the provisions of the Act. The Act does not define the terms ''common cultivar'' and ''common food crop'' but instead gives authority to USDA and DOI to define these terms by regulation.

We solicited comments concerning our proposal for 60 days ending October 4, 2010. We reopened and extended the deadline for comments until November 29, 2010, in a document published in the **Federal Register** on October 29, 2010 (75 FR 66699, Docket No. APHIS–2009–0018). We received 21 comments by that date. They were from domestic and foreign industry associations, importers, exporters, and representatives of State and foreign governments. They are discussed below by topic.

One commenter stated that the definitions as proposed were too vague and that the proposed rule should be withdrawn and re-proposed with concrete examples of products that would be considered common food crops or common cultivars.

We disagree. General definitions, such as the ones we proposed, provide sufficient guidance to the public regarding the scope of the definition while allowing us the flexibility necessary to adapt to the changing nature of international trade. As we explained in the proposed rule, we will provide guidance in the form of a list of taxa within various commodity types that would fall within the definitions of ''common food crop'' and ''common cultivar,'' but this list is intended to be illustrative, not exhaustive.

Several commenters expressed concern that products that might be considered both common food crops and common cultivars would be put on only one list.

The list of common food crops and common cultivars will not be mutually exclusive; we recognize that some plants may have more than one end use. For example, corn (*Zea mays*) may be raised for human food, for animal feed, or for conversion into ethanol, but in all cases is the same plant and meets the definition of both ''common food crop'' and ''common cultivar.''

Many commenters requested that particular crops or commodities be included on the list of common cultivars and common food crops.

As we explained in the proposed rule, the list of common cultivars and common food crops are intended to be illustrative, not exhaustive. However, we have considered all these requests in developing the list. The list is available on the Animal and Plant Health Inspection Service (APHIS) Web site at *http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml.* The public may also send inquiries about specific taxa or commodities and requests to add taxa or commodities to the list, or remove them from the list by writing to The Lacey Act, ATT: Common Cultivar/Common Food Crop, c/o U.S. Department of Agriculture, Box 10, 4700 River Road, Riverdale, MD 20737 or by email to *lacey.act.declaration@aphis.usda.gov* and including the following information:

- Scientific name of the plant (genus, species);
- Common or trade names;
- Annual trade volume (e.g., cubic meters) or weight (e.g., metric tons/kilograms) of the commodity; and
- Any other information that will help us make a determination, such as countries or regions where grown, estimated number of acres or hectares in commercial production, and so on.

Decisions about which products will be included on the list will be made jointly by APHIS and the DOI's Fish and Wildlife Service (FWS). We will inform our stakeholders when the list is updated via email and other electronic media. We will also note updates of the list on APHIS's Lacey Act Web site mentioned above.

Three commenters stated that APHIS and FWS should develop a process by which products may be added to or removed from the list.

We agree that stakeholder input on the content of the list will be valuable. As discussed above, stakeholders may contact APHIS with inquiries or suggestions for changes to the list.

Two commenters stated that the list should be arranged by Harmonized Tariff Schedule (HTS) chapters and include entire tariff codes.

[1] To view these notices and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0119.*

[2] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0018.*

We do not believe that basing the list of common food crops and common cultivars on HTS codes would be practical. Tariff codes do not always describe processed products in sufficient detail to distinguish between products. For example, the chapter covering umbrellas and umbrella parts does not distinguish between umbrellas with aluminum or steel shafts and those with wooden shafts. Furthermore, HTS codes may change, and as a result, arranging the list by the codes could result in confusion regarding which products are subject to the requirements of the Act and which are excluded.

One commenter stated that APHIS should make it clear that the definitions are intended to apply to excluded classes of food crops and cultivars, but not apply to specific shipments.

The definitions refer only to plants. Therefore, we do not believe any changes are necessary to clarify that these terms apply to the entire species or hybrid of plant. The determination of whether a plant falls within these definitions is not made at the shipment or facility level. For example, bananas are a common food crop because bananas in general meet the definition of a common food crop. It is not necessary to determine whether specimens of bananas in a particular shipment or from a particular facility meet the definition.

Three commenters stated that plantation-raised trees and trees harvested from sustainable forests should be included in the definitions of common food crops and common cultivars.

The Act states specifically that the term ''common cultivar'' does not include trees, and trees are not common food crops. For these reasons we cannot include plantation-raised trees or those harvested from sustainable forests in the definitions of common food crops and common cultivars.

Two commenters asked whether certain products that are common but do not qualify as either common cultivars or common food crops will be subject to the declaration requirement. These include products such as wild spices and seaweed, as well as maple syrup, rubber, and latex products derived from trees that do not require that the tree be cut down. We plan to address specific concerns about non-timber derivatives of living trees in a future action. We also expect that the guidance provided by the list should reduce confusion as to what is excluded and what is not. As we noted above, the public can send inquiries about specific taxa or commodities and requests to add taxa or commodities to the list to APHIS.

One of the proposed requirements for a plant to be classified as a common cultivar is that it has been developed ''through selective breeding or other means'' for specific traits. Several commenters stated that the phrase ''through selective breeding or other means'' is unclear and asked for clarification.

The phrase ''selective breeding or other means'' was intended to include plants selected or hybridized in the traditional way as well as plants selected by cloning or developed through genetic modification. We agree with the commenters that the phrase was not clear and have replaced the phrase with ''through artificial selection'' in the definition. This rule also defines *artificial selection* as ''the process of selecting plants for particular traits, through such means as breeding, cloning, or genetic modification.''

A proposed requirement for plants to be classified as either common food crops or common cultivars is that they are a ''species or hybrid that is cultivated on a commercial scale.'' One commenter suggested that both definitions be revised to remove the phrase ''species or hybrid that is cultivated . . .'' because it is unclear. The commenter suggested rephrasing the definitions to read ''is a species or hybrid, or a selection thereof, that is cultivated . . .;'' because many crop plants are selections of species rather than the wild-type plant, or are selections of a hybrid rather than the original cross. The commenter stated that this change would eliminate ambiguity.

We agree with the commenter and have made this revision to both definitions.

Consistent with the provisions of the Act, both definitions refer to plants in general. One commenter suggested that both definitions be revised to refer to ''a plant, or any part of a plant'' to clarify that roots, seeds, and other parts or products of a plant are included in the definitions.

The Act includes roots, seeds, parts, or products in the definition of plant, and we also proposed to include a definition of ''plant'' consistent with the definition in the Act to the regulations. Therefore, we do not believe it is necessary to specify that plant parts are included in the definitions of common food crops and common cultivars.

A proposed requirement for a plant to be classified as a common food crop is that it be ''raised, grown, or cultivated for human or animal consumption.'' Two commenters suggested that the definition for common food crop be revised to read ''raised, grown, or cultivated primarily for human or animal consumption'' to avoid imposing an overly broad end-use requirement.

While we agree with the commenters that imposing specific end-use requirements would be undesirable, as we explained above, we do not consider ''common food crops'' and ''common cultivars'' to be mutually exclusive categories. A common cultivar not intended for human or animal consumption would still be excluded from the provisions of the Act.

One commenter expressed concern that the definition of ''common cultivar'' could be problematic for the seed trade industry. The commenter stated that some seed companies routinely work with organizations such as botanical gardens to bring new flower seeds to market. These seeds may be selected for existing characteristics but were not part of a selective breeding process.

As we noted above, the definition of ''plant'' in the Act includes seeds. The Act further specifies that plants that are to remain planted or to be planted or replanted are excluded from the provisions of the Act, unless they are listed in a CITES appendix; as an endangered or threatened species under the Endangered Species Act of 1973; or pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction. Therefore, seeds for planting are excluded from the provisions of the Act unless they are listed in the CITES Appendices, are listed as endangered or threatened under the Endangered Species Act, or are protected under State law.

One commenter asked for clarification in regard to how precommercial seed will be considered under the regulations. The commenter cited seeds for research, breeding, and foundation programs as specific examples.

Scientific specimens of plant genetic material, including roots, seeds, germplasm, parts, or products thereof, like the plants for planting described above, are excluded from the provisions of the Act.

Two commenters expressed concern that the definitions as proposed would not cover maricultural products, such as carrageenan, that are derived from harvested seaweeds and may not fall under the traditional meaning of ''cultivated.'' One of these commenters suggested revising the definitions to read ''raised, grown, *harvested,* or cultivated.''

The provisions of the Act do not distinguish between terrestrial and

aquatic plants. Many maricultural products are cultivated on a commercial scale on seaweed farms; however, some are collected from the wild. While these wild-collected seaweeds may not necessarily be of conservation concern, the laws and conditions under which they are gathered may vary. For this reason, adopting the commenter's suggestion would not be consistent with the provisions of the Act.

One commenter stated that APHIS and FWS should specify a threshold, based on quantity or value of plant material of the product, below which the declaration requirement (as distinct from the substantive provision of the Act) would not apply.

We have received similar requests in response to our earlier notices. We note that on June 30, 2011, we published in the **Federal Register** (76 FR 38330–38332, Docket No. APHIS–2010–0129) an advance notice of proposed rulemaking [3] in which we discussed the possibility of establishing such a threshold related to the declaration requirement. In contrast, the current rulemaking deals with exclusions from the entire Act, not just exemptions from the declaration requirement.

One commenter asked that sufficient notice be given to importers when implementing final regulations. The commenter suggested that 2 years would be an appropriate minimum phase-in period for Lacey Act-related regulations.

APHIS will attempt to provide sufficient notice of the effective dates of this and any future regulations. How much lead time is sufficient when implementing regulations may vary; for example, regulations that relieve restrictions are often made effective upon publication or a short time after publication, while implementing regulations that impose restrictions may require more time.

One commenter stated that APHIS should clarify that primary responsibility for compliance with the declaration requirement lies with the individual to whom the products are shipped, not the Customs and Border Protection importer of record.

Our current guidance already specifies that the responsibility lies with the importer of record, who may be a business, a broker, or a private courier. We note that most shipments brought in by private couriers fall below the threshold for formal entry and therefore are not currently subject to enforcement of the declaration requirement

Several commenters asked that APHIS provide guidance on compliance with the Act.

APHIS does provide guidance on our Web site at *http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml,* but we will take these requests into consideration and develop additional guidance if needed.

Several commenters requested that we consider additional exclusions that would not be consistent with the plant-related provisions of the Act. These included requests to provide exclusions for: plants that have previously been imported into the United States, or were exported and then re-imported; highly manufactured products that may contain plant products that were introduced before the manufacture or import of the final product; or whole classes of commodities, such as hydrocolloidal products. As we explained above, we published an advance notice of proposed rulemaking in which we discussed not only the possibility of establishing a de minimis threshold for the declaration requirement, but also how importers may comply with the declaration requirement when importing composite plant materials, and how to accommodate products made of re-used plant materials, or plant materials harvested or manufactured prior to the 2008 Lacey Act amendments. We plan to address these questions in a future action.

Additional Definitions

The comments we received on the proposed rule included concerns about two additional terms used in the regulations. Specifically, some commenters stated that the phrase ''commercial scale'' should be removed from the definitions of ''common cultivar'' and ''common food crop'' because it implies a sizeable market rather than a viable one, and would unfairly impact small industries. Other commenters asked that we define ''commercial scale'' to clarify that the definitions apply to specialty products grown commercially on a smaller scale. One commenter also asked that we define the word ''tree'' as it is used in the regulations. The commenter noted that there is no globally accepted botanical definition for ''tree'' and stated that adding a definition to the regulations would help clarify which products require a declaration.

As we explained in the proposed rule, the definitions are designed to ensure that the exclusions do not place at risk plants of conservation concern. The fact that a plant is not listed as endangered or threatened does not mean that it is necessarily a common one. In order to ensure that the exclusion from the provisions of the Act applies only to plants that are common food crops or cultivars, the definitions are limited to plants of species grown on a commercial scale. We agree, however, that a definition of ''commercial scale'' would improve clarity.

Therefore, we are proposing to define ''commercial scale'' as ''production, in individual products or markets, that is typical of commercial activity, regardless of the production methods or amount of production of a particular facility.'' As we explained above, the determination of whether a plant falls within these definitions is not made at the shipment or facility level, but applies to the entire species or hybrid of plant.

We also agree that a definition of ''tree'' would clarify which products require a declaration. We propose to define ''tree'' as ''a woody perennial plant that has a well-defined stem or stems and a continuous cambium, and that exhibits true secondary growth.'' This definition is intended to be consistent with common dictionary and botanical definitions. We note that this definition includes plants which may, in a natural state, [demonstrate] low height and/or multiple stems, as well as tall, single-stemmed plants.

We invite public comment on these two definitions.

Miscellaneous Change

Paragraph (1) of the definition for ''common food crop'' requires that the plant ''has been ''*raised, grown, or cultivated* for human or animal consumption.'' Paragraph (2) of the definitions of both ''common food crop'' and ''common cultivar'' requires that they be ''*cultivated* on a commercial scale.'' After consideration, we believe that, since the scope of paragraph (1) in the definition of ''common food crop'' covers plants ''raised, grown, or cultivated,'' the requirement in paragraph (2) that the plant must be ''cultivated'' is overly limiting. Therefore, we have revised paragraph (2) of the ''common food crop'' definition to require that the plants be ''*produced* on a commercial scale'' instead. We have also made the same revision to paragraph (2) of the ''common cultivar'' definition in order to be consistent between both definitions.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

[3] To view the advance notice of proposed rulemaking and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0129.*

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

''Common cultivar'' and ''common food crop'' are defined in this rule to ensure that the exclusions do not place at risk plants of conservation concern. The definitions are also consistent with the terms' existing and commonly understood definitions. Since the terms have not previously been defined, there should be no instances in which importers will be required because of this rule to take actions they are not currently taking. In other words, the definitions presented in this rule and the related exclusions will not result in additional costs for importers based on their current activities. On the other hand, APHIS has estimated that about 5 percent of declarations being made under the current stage of phased-in enforcement of the Act are either for common cultivars or common food crops that would be excluded under the definitions in this rule. The costs incurred in making these declarations are a measure of the expected benefits of the rule. We estimate the total annual cost savings associated with not making these declarations alone will be between $1 million and $3 million. Implementation of the declaration requirement for all plants, including common food crops and common cultivars, would cover far more product categories than those that currently require a declaration.

To the extent that the rule defines which products are excluded from the provisions of the Act, it will benefit U.S. importers, large and small. By defining the terms ''common cultivar'' and ''common food crop,'' the rule will facilitate importer understanding of and compliance with the Act's requirements.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications. If a request is made for consultation once the rule has been implemented, APHIS will work with the Tribe(s) to conduct a consultation session.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 357

Endangered and threatened species, Plants (Agriculture).

Accordingly, we are amending Title 7, subtitle B, chapter III, of the Code of Federal Regulations by adding part 357 to read as follows:

PART 357—CONTROL OF ILLEGALLY TAKEN PLANTS

Sec.
357.1 Purpose and scope.
357.2 Definitions.

Authority: 16 U.S.C. 3371 *et seq.;* 7 CFR 2.22, 2.80, and 371.2(d).

§ 357.1 Purpose and scope.

The Lacey Act, as amended (16 U.S.C. 3371 *et seq.*), makes it unlawful to, among other things, import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of any Federal, State, tribal, or foreign law that protects plants. The Lacey Act also makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant covered by the Act. In addition, the Act requires that importers submit a declaration at the time of importation for plants and plant products. Common cultivars (except trees) and common food crops are among the categorical exclusions to the provisions of the Act. The Act does not define the terms ''common cultivar'' and ''common food crop'' but instead gives authority to the U.S. Department of Agriculture and the U.S. Department of the Interior to define these terms by regulation. The regulations in this part provide the required definitions.

§ 357.2 Definitions.

Artificial selection. The process of selecting plants for particular traits, through such means as breeding, cloning, or genetic modification.

Commercial scale. Production, in individual products or markets, that is typical of commercial activity, regardless of the production methods or amount of production of a particular facility or the purpose of an individual shipment.

Common cultivar. A plant (except a tree) that:

(1) Has been developed through artificial selection for specific morphological or physiological characteristics; and

(2) Is a species or hybrid, or a selection thereof, that is produced on a commercial scale; and

(3) Is not listed:

(i) In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

(ii) As an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or

(iii) Pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

Common food crop. A plant that:

(1) Is raised, grown, or cultivated for human or animal consumption; and

(2) Is a species or hybrid, or a selection thereof, that is produced on a commercial scale; and

(3) Is not listed:

(i) In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

(ii) As an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or

(iii) Pursuant to any State law that provides for the conservation of species

that are indigenous to the State and are threatened with extinction.

Plant. Any wild member of the plant kingdom, including roots, seeds, parts or products thereof, and including trees from either natural or planted forest stands.

Tree. A woody perennial plant that has a well-defined stem or stems and a continuous cambium, and that exhibits true secondary growth.

Done in Washington, DC, this 27th day of June 2013.

Max Holtzman,

Acting Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2013–16463 Filed 7–8–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 433

[Docket No. EERE–2011–BT–STD–0055]

RIN 1904–AC60

Energy Efficiency Design Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is publishing this final rule to implement provisions in the Energy Conservation and Production Act (ECPA) that require DOE to update the baseline Federal energy efficiency performance standards for the construction of new Federal commercial and multi-family high-rise residential buildings. This rule updates the baseline Federal commercial standard to the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1–2010.

DATES: This rule is effective September 9, 2013. The incorporation by reference of certain publications in the rule is approved by the Director of the Federal Register as of September 9, 2013.

ADDRESSES: This rulemaking can be identified by docket number EERE–2011–BT–STD–0055 and/or RIN number 1904–AC60.

Docket: The docket is available for review at *http://www.regulations.gov* including **Federal Register** Notices, public meeting attendee lists, transcripts, comments and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

For further information on how to review public comments or review hard copies of the docket in the resource room, contact Ms. Brenda Edwards at (202) 586–2945 or email *Brenda.Edwards@ee.doe.gov.*

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SUPPLEMENTARY INFORMATION: This rulemaking incorporates by reference the following standard into 10 CFR Part 433:

- ANSI/ASHRAE/IESNA Standard 90.1–2010, Energy Standard for Buildings Except Low-Rise Residential Buildings, I–P Edition, Copyright 2010.

Copies of this standard are available from the American Society of Heating Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE., Atlanta, GA 30329, (404) 636–8400, *http://www.ashrae.org.*

Also, a copy of this standard is available for inspection at U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. For information on the availability of this standard at DOE, contact Ms. Brenda Edwards at (202) 586–2945 or email *Brenda.Edwards@ee.doe.gov.*

I. Introduction
II. Executive Summary
III. Discussion of Today's Action
IV. Compliance Date
V. Reference Resources
VI. Regulatory Analysis
VII. Congressional Notification

I. Introduction

Section 305 of the Energy Conservation and Production Act (ECPA), as amended, requires DOE to establish building energy efficiency standards for all new Federal buildings. (42 U.S.C. 6834(a)(1)) The standards established under section 305(a)(1) of ECPA must contain energy efficiency measures that are technologically feasible, economically justified, and meet the energy efficiency levels in the applicable voluntary consensus energy codes specified in section 305. (42 U.S.C. 6834(a)(1)–(3))

Under section 305 of ECPA, the referenced voluntary consensus code for commercial buildings (including multi-family high rise residential buildings) is the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1 and the referenced code for low-rise residential buildings is the International Energy Conservation Code (IECC). (42 U.S.C. 6834(a)(2)(A)) DOE codified these referenced codes as baseline Federal building standards into energy efficiency standards in 10 CFR parts 433, 434, and 435. Also under section 305 of ECPA, DOE must establish, by rule, revised Federal building energy efficiency performance standards for new Federal buildings that require such buildings be designed to achieve energy consumption levels that are at least 30 percent below the levels established in the referenced codes (baseline Federal building standards), if life-cycle cost-effective. (42 U.S.C. 6834(a)(3)(A)(i)(I))

Under section 305 of ECPA, not later than one year after the date of approval of each subsequent revision of the ASHRAE Standard or the IECC, DOE must determine whether to amend the baseline Federal building standards with the revised voluntary standard based on the cost-effectiveness of the revised voluntary standard. (42 U.S.C. 6834(a)(3)(B)) It is this requirement that today's rulemaking addresses. ASHRAE Standard 90.1 has been updated from the version currently referenced in DOE's regulations at 10 CFR part 433. DOE is now revising the latest baseline Federal building standard for 10 CFR part 433 from ASHRAE Standard 90.1–2007 to ASHRAE Standard 90.1–2010.

Section 306(a) of ECPA provides that each Federal agency and the Architect of the Capitol must adopt procedures to ensure that new Federal buildings will meet or exceed the Federal building energy efficiency standards established under section 305. (42 U.S.C. 6835(a)) Section 306(b) bars the head of a Federal agency from expending Federal funds for the construction of a new Federal building unless the building meets or exceeds the applicable baseline Federal building energy standards established under section 305. (42 U.S.C. 6835(b)) This includes both the requirement that all new Federal buildings comply with the baseline standards in ASHRAE Standard 90.1 and the IECC and the requirement that new Federal buildings achieve energy consumption levels at least 30 percent below these minimum