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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: Affirmation of interim final rule.

SUMMARY: We are adopting as a final rule, without change, an interim final rule that established definitions for the terms *common cultivar* and *common food crop* and several related terms. The 2008 amendments to the Lacey 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 required 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. The interim final rule specifically requested comment on definitions of two related terms: *Commercial scale* and *tree.* This document responds to comments we received on those definitions.

DATES: Effective on January 25, 2016, we are adopting as a final rule the interim final rule published at 78 FR 40940–40945 on July 9, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Parul Patel, Senior Agriculturalist, Imports, Regulations, and Manuals, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; 301–851–2351.

SUPPLEMENTARY INFORMATION:

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 to 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 the U.S. Department of Agriculture and the U.S. Department of the Interior (DOI) to define these terms by regulation.

Comments on the proposed rule were required to be received on or before November 29, 2010. The comments we received on the proposed rule included concerns about two additional terms used in the regulations. Specifically, some commenters asked that we define the term *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.

[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 agreed with the commenters that adding definitions of these terms would improve clarity. Therefore, in an interim final rule [3] published in the **Federal Register** on July 9, 2013 (78 FR 40940–40945, Docket No. APHIS–2009–0018), we proposed 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, or the purpose of an individual shipment'' and *tree* as ''a woody perennial plant that has a well-defined stem or stems and a continuous cambium, and that exhibits true secondary growth.''

We invited public comment on these two definitions. Comments on the interim final rule were required to be received on or before August 8, 2013. We received two comments by that date. The comments were from an organization of State plant pest regulatory agencies and a retailer selling home furnishings.

One commenter supported the additional definitions as proposed. The other commenter stated that the definitions of *common cultivar, common food crop,* and *tree* do not provide enough clarity for importers to determine whether certain products are subject to provisions of the Act, but did not address the specific wording of the definitions. The commenter also asked whether certain products, including rattan, palm leaves, and willow and osier branches, were considered common cultivars and if they would be included on the list of common cultivars.

Willows and osiers are trees and therefore cannot be excepted from the declaration requirement. We note that several species of palms, including African oil palm (*Elaeis guineensis*), carnauba palm (*Copernicia spp.*), and palms in the genera *Astrocaryum, Bactris,* and *Euterpe* are included on the list of common cultivars and common food crops that are excepted from the declaration requirement. Rattan and other palms are not currently excepted from the declaration requirement but may be evaluated as common food crops or common cultivars if a member of the public submits a request as described below.

As we explained in the interim final rule, the list of common cultivars and common food crops is intended to be illustrative, not exhaustive. 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. 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' Lacey Act Web site mentioned above.

Therefore, for the reasons given in the interim final rule and in this document, we are adopting the interim final rule as a final rule without change.

This action also affirms the information contained in the interim final rule concerning Executive Orders 12866 and 13563 and the Regulatory Flexibility Act, Executive Orders 12988 and 13175.

Paperwork Reduction Act

Section 3 of the Lacey Act makes it unlawful to import certain plants and plant products without an import declaration, which must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country in which the plant was harvested. In addition, there is a supplemental form that must be completed if additional space is needed to declare additional plants and plant products. Also, records of the import declaration and supplemental form must be retained for at least 5 years. These collection activities have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0349. We published a notice in the **Federal Register** on August 21, 2014 (79 FR 49491–49492, Docket No. APHIS–2014–0073) seeking an extension of the approval for this information collection.

Common cultivars and common food crops are among the categorical exclusions to the provisions of the Act. In the July 2013 interim final rule, we advised the public that inquiries about specific taxa or commodities and requests to add taxa or commodities to the list, or remove them from the list, be sent in writing to APHIS, including information as to the 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.

We inadvertently did not obtain OMB approval for this information collection activity. Therefore, in accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we published a notice in the **Federal Register** on October 15, 2014 (79 FR 61846–61847, Docket No. APHIS–2014–0082), announcing our intention to initiate this information collection and to solicit comments. We have asked OMB to approve our use of this information collection for 3 years. When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number, and we will combine this collection with OMB control number 0579–0349 once it is approved by OMB.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects in 7 CFR Part 357

Endangered and threatened species, Plants (Agriculture).

PART 357—CONTROL OF ILLEGALLY TAKEN PLANTS

■ Accordingly, we are adopting as a final rule, without change, the interim final rule that amended 7 CFR part 357 and that was published at 78 FR 40940–40945 on July 9, 2013.

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

Done in Washington, DC, this 15th day of January 2016.

Gary Woodward,

Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2016–01399 Filed 1–22–16; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 600 and 606

RIN 3052–AD08

Organization and Functions; Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Farm Credit Administration; Organization of the Farm Credit Administration

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA, we, Agency or our) amended our regulations to reflect internal organization changes and to update a statutory citation for the Farm Credit Act. In accordance with the law, the effective date of the rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session.

DATES: Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR parts 600 and 606 published on November 5, 2015 (80 FR 68427) is effective January 25, 2016.

FOR FURTHER INFORMATION CONTACT: Michael T. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4124, TTY (703) 883–4056, or Jane Virga, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4071, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration amended our regulations to reflect internal organization changes and to update a statutory citation for the Farm Credit Act. In accordance with 12 U.S.C. 2252, the effective date of the final rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is January 25, 2016. (12 U.S.C. 2252(a)(9) and (10))

Dated: January 20, 2016.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2016–01398 Filed 1–22–16; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG49

Small Business Size Standards: Employee Based Size Standards in Wholesale Trade and Retail Trade

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is increasing 47 small business size standards based on a concern's number of employees. These increases affect 46 industries in North American Industry Classification System (NAICS) Sector 42, Wholesale Trade, and one industry in NAICS Sector 44–45, Retail Trade. SBA retains the size standards for the remaining industries in those sectors and the 500-employee size standard for the Federal Government's procurement of supplies under the nonmanufacturer rule. As part of its comprehensive size standards review under the Small Business Jobs Act of 2010, SBA reviewed all 71 industries in NAICS Sector 42, as well as the two industries in NAICS Sector 44–45, that have employee based size standards. The revisions adopted in this rule primarily affect eligibility for SBA's financial assistance programs, and have no impact on Federal procurement programs.

DATES: This rule is effective on February 26, 2016.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: On May 19, 2014 (79 FR 28631), SBA proposed to increase employee based size standards for 46 industries in NAICS Sector 42, Wholesale Trade, and one industry in NAICS Sector 44–45, Retail Trade. The Agency proposed keeping the current size standards for the remaining industries in those sectors. SBA also proposed to retain the 500-employee size standard for Federal procurement of supplies under the nonmanufacturer rule (13 CFR 121.406).

The proposed rule sought comments from the public on the Agency's proposals and received seven comments. Generally, commenters opposed the proposed increases to the size standards in the wholesale trade industries. However, while some commenters appeared to be cognizant of the effects of the proposed increases and how they apply to various small business programs and their industries, others did not seem to be aware that the NAICS codes and size standards for the wholesale and retail trade industries do not apply to Federal Government procurement programs and the proposed increases would have no impact on size eligibility for Federal contracts.

What follows is a summary and discussion of the comments, their positions and the issues they raise, and SBA's responses. All comments are available for public review at the Federal Rulemaking Portal, *www.regulations.gov.*

Summary and Discussion of Public Comments to the May 19, 2014 Proposed Rule

Two parties submitted identical comments, opposing SBA's proposal to increase the size standards. The commenters stated that current size standards are already too high, and expanding them will make matters worse. The commenters contended that 98 percent of all businesses (including non-employer firms) have 1–19 employees, and those businesses mostly need loans of $50,000 to $250,000. Expanding the definition of ''small'' is crippling their ability to get loans, they added. The commenters maintained that the average size of SBA's loan increased from $182,000 in 2008 to $547,000 in 2013, while the share of loans under $100,000, which they claimed generally go to truly small businesses, decreased from 24 percent to 9 percent.

The European Union defines the smallest unit of small business as less than 10 employees, and Australia defines ''small'' as 1–14 employees under its Fair Work Act, the commenters noted. In addition, they stated that the U.S. Congress defines small business as 20–25 employees ''and rarely as high as 50.'' The commenters asked SBA to stop focusing on 2 percent of the largest small businesses and refocus on the remaining 98 percent of small businesses because they are the ones who really need the help. The higher size standards, if adopted, will put loan assistance out of reach for most small businesses, they argued.

Another commenter that offers startup workshops to entrepreneurs expressed concerns on how SBA defines small business. Specifically, the commenter stated that almost any business with up