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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 357

[Docket No. APHIS–2013–0055]

RIN 0579–AD44

Lacey Act Implementation Plan: De Minimis Exception

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food, Conservation, and Energy Act of 2008 amended the Lacey Act to provide, among other things, that importers submit a declaration at the time of importation for certain plants and plant products. The declaration requirement of the Lacey Act became effective on December 15, 2008, and enforcement of that requirement is being phased in. We are amending the regulations to establish an exception to the declaration requirement for products containing a minimal amount of plant materials. This action would relieve the burden on importers while continuing to ensure that the declaration requirement fulfills the purposes of the Lacey Act.

DATES: Effective April 1, 2020.

FOR FURTHER INFORMATION CONTACT: Mrs. Dorothy Wayson, Agriculturist, Permitting and Compliance Coordination, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 851–2036.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Need for the Regulatory Action

Section 3 of the Lacey Act makes it unlawful to import certain plants, including plant products, without an import declaration. The import declaration serves as a tool to collect information regarding the content of a shipment, which aids in combatting illegal trade in timber and timber products by ensuring importers provide required information. Information from the declaration is also used to monitor implementation of Lacey Act requirements. The declaration must contain 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. However, the Act does not explicitly address whether the declaration requirement is intended to apply to imported products that contain minimal plant material. This final rule establishes limited exceptions to the declaration requirement for entries of products containing minimal plant material. This action relieves the burden on importers while ensuring that the declaration requirement continues to fulfill the purposes of the Lacey Act.

Legal Authority for 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 than was previously provided by the Act. The requirement that importers of plants and plant products file a declaration upon importation is set forth in 16 U.S.C. 3372(f). In 16 U.S.C. 3376(a)(1), the statute further provides rulemaking authority to the Secretary of Agriculture with respect to the declaration requirement: ''the Secretary, after consultation with the Secretary of the Treasury, is authorized to issue such regulations . . . as may be necessary to carry out the provisions of sections 3372(f), 3373, and 3374 of this title.''

Summary of Major Provisions of the Regulatory Action

This final rule establishes certain exceptions from the requirement that a declaration be filed when importing certain plants and plant products. Specifically, it establishes an exception to the declaration requirement for products with minimal amounts of plant material. The final rule also establishes a new section to specify the conditions under which a plant import declaration must be filed and what information it must include. These conditions reflect the provisions of the Act and provide additional context for the exceptions.

Costs and Benefits

To the extent that the rule provides exceptions to declaration submission, it will benefit certain U.S. importers. It relieves importers of the burden of submitting declarations for products with very small amounts of plant material, while continuing to ensure that the declaration requirement fulfills the purposes of the Lacey Act.

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 illegally taken wildlife, fish, or plants. The Food, Conservation and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act by expanding its protection to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). 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 law, treaty, or regulation of the United States or in violation of any Indian tribal law,'' or in violation of any State or foreign law that protects plants or that regulates certain specified plant-related activities. 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.

In addition, Section 3 of the Lacey Act, as amended, makes it unlawful, beginning December 15, 2008, to import certain plants, including plant products, without an import declaration. The import declaration serves as a tool for combatting the illegal trade in timber and timber products by ensuring importers provide required information. Information from the declaration is also used to monitor compliance with Lacey Act prohibitions. The declaration must contain 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.

On July 9, 2018, we published in the **Federal Register** (83 FR 31697–31702, Docket No. APHIS–2013–0055) a

proposal [1] to amend the regulations by establishing an exception to the declaration requirement for products containing a minimal amount of plant materials. We also proposed that all Lacey Act declarations be submitted within 3 business days of importation.

We solicited comments concerning our proposal for 60 days ending September 7, 2018. We received 11 comments by that date. They were from private citizens, trade and industry associations, courier delivery services, and conservation groups. They are discussed below by topic.

Scope

Two commenters stated that it is unclear from the rule if the exceptions to the declaration requirement would apply only to those products on the Lacey enforcement schedule or if they would apply to all products, and asked that we clarify the scope of the proposed rule.

The de minimis exception to the declaration requirement will apply to all products subject to the Lacey Act. Importers of articles currently listed on the Lacey Act enforcement schedule will receive the most immediate benefit from the exception.[2]

Another commenter stated that the economic analysis must consider the full scope of the proposal and not just current practice. The same commenter added that the Animal and Plant Health Inspection Service (APHIS) only considered the impact on importers and wholesalers, noting that it is common for manufacturers, retailers, and distributors to also directly import wood products.

Impacts of the exception to the declaration requirement for articles currently listed on the Lacey Act enforcement schedule were evaluated in the initial regulatory impact analysis. We have prepared a final regulatory impact analysis for this rule in which we evaluate potential impacts of the de minimis exception to the declaration requirement for articles currently in the enforcement schedule. The de minimis exception will not immediately impact articles that are not yet on the enforcement schedule because they do not currently require submission of a declaration. Impacts on manufacturers and retailers are included in the Regulatory Impact Analysis & Final Regulatory Flexibility Analysis supporting this rule. A summary of the analysis appears below under the heading ''Executive Orders 12866, 13563, 13771, and Regulatory Flexibility Act.'' Copies of the full analysis are available on the *Regulations.gov* website (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. For the sake of clarity, the term ''importer'' is used to represent import agents, as well as wholesalers, manufacturers, retailers, and distributors who import products directly.

Definitions

We proposed to define the terms *import* and *person,* and to amend the definition for *plant* so that all three definitions in the regulations conform to the definitions in the statute.

Some commenters expressed concern that the definition of *import* that we proposed is too broad. These commenters stated that adopting this definition would increase regulatory burden on importers and place burden on individuals traveling with their musical instruments. The commenters stated that the declaration requirement should apply only to formal consumption entries, and not to informal entries, personal importations, transit and exportation customs bonds, carnet importations, foreign trade zones, and warehouse entries (with some exceptions). Two commenters stated that APHIS should align the definition of *import* with the customs definition.

The definition of *import* that we proposed is the same as the definition in the Lacey Act. In a notice published in the **Federal Register** on February 3, 2009 (74 FR 5911, Docket No. APHIS–2008–0119),[3] we stated that we would be enforcing the declaration requirement only for formal consumption entries (*i.e.,* most commercial shipments). In that notice we also stated that we did not intend yet to enforce the declaration requirement for informal entries (*i.e.,* most personal shipments), personal importations, mail (unless subject to formal entry), transportation and exportation entries, in-transit movements, carnet importations (*i.e.,* merchandise or equipment that will be re-exported within a year), or upon admittance into a U.S. foreign trade zone or bonded warehouse. We clarified that the declaration is currently being enforced for all formal consumption entries of plant and plant products into the United States, including those entries from foreign trade zones and bonded warehouses, in a notice published in the **Federal Register** on June 16, 2016 (81 FR 39247–39248, Docket No. APHIS–2008–0119).

Some commenters stated that there should be an exception to the declaration requirement for items in transit. One commenter stated further that such an exception is supported by the definition of import suggested by the Model Law of International Trade in Wild Fauna and Flora.[4]

As we explained above, the definition of *import* that we proposed is the same definition that appears in the Lacey Act, and we have stated that we do not intend at this time to enforce the declaration requirement for in-transit movements.

One commenter noted that the current declaration form asks for ''country of harvest'' rather than ''the name of the country from which the plant was taken'' and suggested adding a definition of *taken* to prevent confusion.

APHIS notes that the term *taken* is defined in 16 U.S.C. 3371(j). We agree with the commenter that a definition of *taken,* consistent with the language of the Act, should be added to the regulations. We have therefore added a definition of *taken* to read ''captured, killed, or collected, and with respect to a plant, also harvested, cut, logged, or removed'' to § 357.2. This definition is the same definition that appears in the Act.

Declaration Requirement

We proposed to add a new § 357.3, ''Declaration Requirement,'' to specify the conditions under which a plant import declaration must be filed and what information it must include. These conditions reflect the provisions of the Act and provide additional context for the proposed exceptions.

One commenter asked for clarification that this section does not require fewer fields than appear on the declaration form.

The information specified in this section is the same information that is required by the Act. We continue to require additional information on the declaration form that links the declaration to the shipment. This is necessary to carry out the provisions of the Lacey Act. If we make any changes to the declaration form in the future, we will announce them through the stakeholder registry after receiving any necessary approvals under the

[1] To view the proposed rule, supporting document, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0055*.

[2] The Lacey Act plant declaration enforcement schedule can be viewed on the APHIS website at *http://www.aphis.usda.gov/plant_health/lacey_act*.

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

[4] The Model Law can be viewed online at *https://cites.org/sites/default/files/eng/prog/Legislation/E-Model%20law-updated-clean.pdf*.

Paperwork Reduction Act. We encourage interested persons to register for our stakeholder registry at *https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new/* and select ''Lacey Act Declaration'' under Plant Health Information as a topic of interest.

One commenter stated that the section should list the current enforcement schedule or reference the existence of a separate enforcement schedule in another section of the regulations.

The enforcement schedule is available on the APHIS website at *http://www.aphis.usda.gov/plant_health/lacey_act.* The list is arranged by provisions of the Harmonized Tariff Schedule of the United States (HTSUS). Adding the enforcement schedule to the regulations is not feasible because HTSUS provisions change frequently. However, we agree with the commenter that a reference to available guidance, including the enforcement schedule, in the regulations would be helpful, and have amended § 357.3 to add a new paragraph that directs the reader to the APHIS website for more information. Any new guidance or enforcement schedule, or modifications to a previous guidance or enforcement schedule document, will be issued with appropriate public notice and opportunity for feedback.

Exception From Declaration Requirement for Entries Containing Minimal Plant Materials

We sought public comment on two options with respect to a de minimis exception to the declaration requirement. Under the first option, we proposed to adopt an exception from the declaration requirement for products containing plant material that represents no more than 5 percent of the total weight of the individual product unit, provided that the total weight of the plant material in an entry of such products (at the entry line level) does not exceed 2.9 kilograms. Alternatively, as a second option, we proposed an exception from the declaration requirement for products containing plant material that represents no more than 5 percent of the total weight of the individual product unit, provided that the total weight of the plant material in an individual product unit does not exceed some amount of plant material by weight or board feet. Under this second option, we invited comment on what would be an appropriate maximum amount allowable by weight or board feet under the de minimis exception. The figure of 2.9 kilograms in the first option was selected based on the weight of a board-foot of lignum vitae (*Guaiacum officinale* and *Guaiacum sanctum*) as an appropriately minimal amount of plant material. A board-foot (that is, 12 x 12 x 1 inches or 30.48 x 30.48 x 2.54 centimeters) is a common unit of volume in the timber industry, and the woods of these species are among the densest known, weighing 1.23 grams per cubic centimeter.

In the event that the weight of the plant material in an individual product unit could not be determined, we proposed an exception from the declaration requirement for products containing plant material that represents no more than 10 percent of the declared value of the individual product unit, provided that the total quantity of the plant material in an entry of such products (at the entry line level) has a volume of less than 1 board-foot. Alternatively, as a second option in the event that the weight of the plant material in an individual product unit could not be determined, we proposed an exception from the declaration requirement for products containing plant material that represents no more than 10 percent of the declared value of the individual product unit, provided that the total quantity of the plant material in an individual product unit does not exceed some amount of plant material by weight or board feet. We invited comment on what would be an appropriate maximum amount allowable by value or board feet under the de minimis exception.

The commenters were generally supportive of the idea of establishing a de minimis exception from the plant declaration requirement for products with minimal amounts of plant material. These commenters stated that whatever approach is adopted, it should be simple, straightforward, and affordable for small and medium entities.

One commenter suggested that we adopt a conservative approach to any exceptions so as not to exempt future product categories that include illegal timber even in small quantities.

APHIS agrees with the commenter. Although importers will still be responsible for meeting Lacey Act requirements other than the declaration, setting the threshold for the de minimis exception to the declaration requirement at too high a level would not be consistent with the intent of the Lacey Act. For this reason we proposed and are adopting a threshold of no more than 5 percent of the total weight of the individual product unit, provided that the total weight of the plant material in an entry of products in the same 10-digit HTSUS provision does not exceed 2.9 kilograms.

One commenter stated that the declaration skews the volume figures because importers take different approaches to the reporting requirements. The commenter stated that some importers split the volume among possible species, while others report the maximum volume possible for each species. The same commenter also stated that for the value option, it is unclear how such a calculation would be made as the value of the imported item is known, but the value of the plant product prior to its incorporation into a final product may not be known.

We agree with the commenter that implementation of de minimis exceptions based on volume or value would present challenges. We have therefore decided not to implement de minimis exceptions based on volume or value at this time. We will continue to consider ways to implement de minimis exceptions based on criteria other than weight to the plant declaration requirement.

One commenter stated that they supported modified versions of the proposed weight and volume exceptions with fixed and measurable weight and volume limits per entry line. The commenter suggested that there also be a value threshold that works in tandem with either of the options (weight or volume) chosen to qualify for the de minimis exception.

APHIS agrees that these modifications could provide an effective way to implement de minimis exceptions and will consider them if we propose additional exceptions in the future. One commenter supported providing multiple options to importers to determine if their product meets the threshold requirement (*i.e.,* weight and value). The commenter stated that as proposed, the regulations would only allow importers to choose the second method of calculation if the first method cannot be calculated. The commenter suggested that we should provide importers with discretion to choose whichever option that makes most sense for their business operations. As noted above, we have decided to implement only the de minimis exception based on weight at this time. We will take these suggestions into consideration if we propose additional exceptions in the future.

Commenters expressed concern that using percentage of weight would be a new process that importers would have to develop in order to take advantage of the de minimis exception.

The commenters are correct that they may have to develop a new process to take advantage of the de minimis exception. We anticipate, however, that once importers have determined the percentage weight of an individual

product unit and the maximum number of individual product units that will meet the de minimis threshold, they will be able to use that as a model for future shipments. We also anticipate that importers will only develop a new process if they consider doing so to be less onerous than filing the declaration.

One commenter stated that the cost of any procedure that depends on trying to calculate the percentage of plant material as part of the importing process on a transaction-by-transaction basis would far outweigh any benefit gained from the proposed change and suggested that APHIS allow importers to register their standard products that meet the de minimis criteria, and in return APHIS would grant a blanket exception for that set of products. Another commenter supported the use of what they described as ''representative samples'' so that an importer could use that analysis on multiple entries eliminating the need for complex calculations on each and every entry.

As we explained above, we expect that once importers determine the percentage weight for individual product units, they will be able to use that as a model for future shipments. With respect to registering representative samples or granting blanket exceptions, APHIS has concerns that such measures could be difficult to enforce and are not being pursued at this time.

One commenter expressed support for the current exceptions from the declaration requirement for packaging material. The commenter stated that APHIS should retain these exceptions and make it clear that the requirements have not changed from current guidance.

APHIS notes that for purposes of the Lacey Act plant declaration requirement, packaging material is any material used to support, protect, or carry another item. This includes, but is not limited to, items such as wood crating, wood pallets, cardboard boxes, and packing paper used as cushioning. Under 16 U.S.C. 3372(f)(3), packaging material is excluded from the declaration requirement unless the packaging material itself is the item being imported. This is unchanged by this final rule.

It may take some time for the de minimis exception to be implemented in ACE. APHIS will announce the availability of the disclaim code through the stakeholder registry, and importers may begin using the disclaim code for the de minimis exception as soon as it is available in ACE.

Time Limit for Submission of Declarations

Lacey Act plant declarations are required pursuant to the language of the statute ''upon importation,'' that is, upon landing in United States jurisdiction. We proposed to allow importers to file Lacey Act plant declarations within 3 business days of importation without facing any enforcement action or penalty for late filing. This change was intended to accommodate the needs of industry while ensuring that declarations are submitted in a timely manner for the purposes of the statute.

Commenters were generally opposed to establishing a 3-day grace period. One commenter stated that allowing this grace period was contrary to the statute. Several commenters stated that allowing importers to file declarations within 3 days constituted establishing a new deadline where one did not exist before. Some commenters suggested setting longer time frames for the submissions of the declaration, either to correspond with customs regulations or to allow for administrative corrections.

As we explained above, Lacey Act plant declarations are required to be filed upon landing in United States jurisdiction. Allowing importers to file declarations within 3 days would have established a grace period, not a new deadline. However, after considering the comments we received, we believe it is necessary to reexamine the establishment of a grace period and therefore are not adopting this aspect of the proposed rule at this time. We note that there are already mechanisms in place to allow importers to submit corrections to declarations. These mechanisms vary depending on which method of submission was used.

Miscellaneous

Some commenters expressed concern that establishing a de minimis exception to the Lacey Act plant declaration requirement would increase the risk of plant pests and diseases being introduced into the United States.

As we explained in the proposed rule, the intent of the Lacey Act is to prevent trade in illegally taken wildlife or plants. APHIS' authority to enforce the Lacey Act plant declaration requirement is distinct from our authority to regulate the movement of plant pests, noxious weeds, plants, plant products, and articles capable of harboring plant pests or noxious weeds in interstate commerce or foreign commerce under the Plant Protection Act (7 U.S.C. 7701 *et seq.*) We are making no changes to the plant protection regulations in this final rule.

One commenter stated that APHIS should maintain the current exception from the declaration requirement for composite plant material that acknowledges the need to conduct reasonable due care without mandating the tracking and reporting of species. Another commenter noted that there is currently an administrative Special Use Designation for composite material and stated that establishing de minimis exceptions for composite products would be more complex and costly than continuing to use the administrative designation.

APHIS notes that the provisions of the Act do not include permanent exceptions from the declaration requirement for composite products. On July 9, 2018, we published in the **Federal Register** an advance notice of proposed rulemaking (83 FR 31702–31704, Docket No. APHIS–2018–0017) [5] seeking public comment on regulatory options that could address certain issues that have arisen with the implementation of the declaration requirement for composite plant materials. The concerns and recommendations of all the commenters will be considered if any new proposed regulations regarding the Lacey Act plant declaration are developed for composite materials.

One commenter recommended that we specifically include ''hardboard'' among the examples of composite plant materials.

We do not reference such examples in the proposed rule, but in the advance notice of proposed rulemaking we refer to ''pulp, paper, paperboard, medium density fiberboard, high density fiberboard, and particleboard.''

A commenter stated that the final rule should include explicit provisions providing ample lead time of 1 year or longer for implementation by the regulated industry based on the complexity of product supply chains.

In our February 2009 notice, we committed to providing affected individuals and industry with at least 6 months' notice for any products that would be added to the phase-in schedule. The phased-in enforcement schedule began April 1, 2009. The most recent phase (V) began on August 6, 2015. The enforcement schedule is available on the APHIS website at *http://www.aphis.usda.gov/plant_health/lacey_act/*.

[5] To view the advance notice of proposed rulemaking and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0017*.

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.

Executive Orders 12866, 13563, 13771, and Regulatory Flexibility Act

This final 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. This final rule is expected to be an Executive Order 13771 deregulatory action. Assessment of the costs and cost savings may be found in the accompanying economic analysis.

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 provides a final regulatory flexibility analysis that 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 on the *Regulations.gov* website (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The Food, Conservation, and Energy Act of 2008 amended the Lacey Act to provide, among other things, that importers submit a declaration at the time of importation for certain plants and plant products. The declaration requirement of the Lacey Act became effective on December 15, 2008, and enforcement of that requirement is being phased in. We are establishing an exception to the declaration requirement for products containing a minimal amount of plant material.

This rule will benefit certain U.S. importers, large or small. The provisions of this rule relieve importers of the burden of submitting declarations for products containing very small amounts of plant material and for which obtaining declaration information may be difficult, while continuing to ensure that the declaration requirement fulfills the purposes of the Lacey Act.

The Lacey Act amendments included in the 2008 Farm Bill were effective as of May 22, 2008. As a practical matter, this means that enforcement actions may be taken for any violations committed on or after that date. The requirement to provide a declaration under the amended Act went into effect May 1, 2009. Declarations serve several purposes including but not limited to data acquisition and accountability, and they assist regulatory and enforcement authorities in monitoring implementation of the Lacey Act's prohibitions on importing illegally harvested plants. Enforcement of the declaration requirement is being phased in. The phase-in schedule is largely based on the degree of processing and complexity of composition of the affected products. The requirement that importers file a declaration upon importation is currently being enforced for products in parts of the Harmonized Tariff Schedule of the United States (HTSUS) Chapters 44, 66, 82, 92, 93, 94, 95, 96 and 97. Products in parts of HTSUS Chapters 33, 42, 44, 92 and 96 are to be included in the next phase of implementation.

Some importers of products containing a minimal amount of plant material who have been required to file declarations upon importation of their products will be excepted from the declaration requirement. The cost savings from not having to file those declarations is one measure of the expected benefits of this rule. In 2018, there was an average of about 400 weekly shipments of commodities requiring declarations that contained amounts of plant material that possibly would have been eligible for de minimis status under this rule. Based on information available on those shipments, we estimate that between 10 and 20 percent of those commodities would have actually met the definition for de minimis exception. Had those commodity shipments not needed to be accompanied by declarations, we estimate the annual cost savings for affected entities would have ranged in total from a low of about $31,800 to a high of about $229,500, with annual government processing savings of between about $250 and $500.

In addition, we estimate that in 2018 about 1,300 weekly shipments of commodities contained amounts of plant material that possibly would have been eligible for *de minimis* status under the next phase of declaration enforcement. The cost savings for affected entities associated with those products would have ranged from about $103,300 to $745,900, with annual government processing savings of between about $800 and $1,600. In accordance with guidance on complying with Executive Order 13771, the primary estimate of the annual private sector cost savings, including those expected to be realized under the next phase of enforcement, is $555,300. This value is the mid-point estimate of cost savings annualized in perpetuity using a 7 percent discount rate.

The total cost of compliance directly associated with the collection, compilation and submission of declarations currently enforced is estimated to be between $12.5 million and $45 million, and between $5 million and $18.2 million under the next phase of enforcement. The total estimated reduction in compliance costs under both the current and next phase of enforcement ranges from about $135,100 to about $975,400, representing an overall cost savings of between 0.8 and 1.5 percent.

Both the declaration costs and the cost savings expected with this rule are small when compared to the value of the commodities imported. In 2018, the value of U.S. imports of products currently requiring a declaration totaled about $23.4 billion, and the value of U.S. imports of such commodities as umbrellas, walking sticks, and handguns that may include small amounts of plant material was $3.2 billion. In 2018, the value of imported commodities that will be included in the next phase of enforcement and may contain small amounts of plant material was $2.6 billion.

Because enforcement of the declaration requirement is being phased in, some products that meet the de minimis criteria do not currently require a declaration; their importation will not be initially affected. For example, apparel articles such as shirts with wood buttons may be considered to have minimal plant material, but the declaration requirement for products in that HTSUS code are not part of the current enforcement schedule. While the volume of imported commodities for which the exceptions will be applicable could be large, the cost savings for affected importers are expected to be small relative to the value of the commodities. Regardless of the number of declaration exceptions for which an entity qualifies, those exceptions will benefit affected entities, large and small.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This final 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.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

APHIS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to their knowledge, have Tribal implications that require Tribal consultation under Executive Order 13175. The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and determined that Tribal consultation under Executive Order 13175 is not required. If a Tribe requests consultation, APHIS will work with the OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this final rule have been approved under Office of Management and Budget control number 0579–0349.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government 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 Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects in 7 CFR Part 357

Endangered and threatened species, Plants (agriculture).

Accordingly, we are amending 7 CFR part 357 as follows:

PART 357—CONTROL OF ILLEGALLY TAKEN PLANTS

■ 1. The authority citation for part 357 continues to read as follows:

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

■ 2. Section 357.1 is revised to read as follows:

§ 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 or Tribal law, or in violation of a State or foreign law that protects plants or that regulates certain specified plant-related activities. 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. 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 authorizes 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. Additionally, the regulations in this part address the declaration requirement of the Act.

■ 3. Section 357.2 is amended as follows:

■ a. By adding in alphabetical order definitions for ''Import'' and ''Person'';

■ b. By revising the definition of ''Plant''; and

■ c. By adding in alphabetical order a definition for ''Taken''.

The additions and revision read as follows:

§ 357.2 Definitions.

* * * * *

Import. To land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

Person. Any individual, partnership, association, corporation, trust, or any officer, employee, agent, department, or instrumentality of the Federal Government or of any State or political subdivision thereof, or any other entity subject to the jurisdiction of the United States.

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. The term plant excludes:

(1) Common cultivars, except trees, and common food crops (including roots, seeds, parts, or products thereof);

(2) A scientific specimen of plant genetic material (including roots, seeds, germplasm, parts, or products thereof) that is to be used only for laboratory or field research; and

(3) Any plant that is to remain planted or to be planted or replanted.

(4) A plant is not eligible for these exclusions if it is 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.

Taken. Captured, killed, or collected, and with respect to a plant, also harvested, cut, logged, or removed.

* * * * *

■ 4. Sections 357.3 and 357.4 are added to read as follows:

§ 357.3 Declaration requirement.

(a) Any person importing any plant shall file upon importation a declaration that contains:

(1) The scientific name of any plant (including the genus and species of the plant) contained in the importation;

(2) A description of the value of the importation and the quantity, including the unit of measure, of the plant; and

(3) The name of the country from which the plant was taken.

(b) The declaration relating to a plant product shall also contain:

(1) If the species of plant used to produce the plant product that is the

subject of the importation varies, and the species used to produce the plant product is unknown, the name of each species of plant that may have been used to produce the plant product;

(2) If the species of plant used to produce the plant product that is the subject of the importation is commonly taken from more than one country, and the country from which the plant was taken and used to produce the plant product is unknown, the name of each country from which the plant may have been taken; and

(3) If a paper or paperboard plant product includes recycled plant product, the average percent recycled content without regard for the species or country of origin of the recycled plant product, in addition to the information for the non-recycled plant content otherwise required by this section.

(c) Guidance on completion and submission of the declaration form can be found on the APHIS website at *http://www.aphis.usda.gov/plant_health/lacey_act*.

(Approved by the Office of Management and Budget under control number 0579–0349)

§ 357.4 Exceptions from the declaration requirement.

Plants and products containing plant materials are excepted from the declaration requirement if:

(a) The plant is used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported; or

(b) The plant material in a product represents no more than 5 percent of the total weight of the individual product unit, provided that the total weight of the plant material in an entry of products in the same 10-digit provision of the Harmonized Tariff Schedule of the United States does not exceed 2.9 kilograms.

(c) A product will not be eligible for an exception under paragraph (b) of this section if it contains plant material listed:

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

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

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

Done in Washington, DC, this 24th day of February 2020.

Greg Ibach,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2020–04165 Filed 2–28–20; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1437

[Docket No. CCC–2019–0005]

RIN 0560–AI48

Noninsured Crop Disaster Assistance Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements changes to the Noninsured Crop Disaster Assistance Program (NAP) as required by the Agriculture Improvement Act of 2018 (the 2018 Farm Bill). The rule makes buy-up coverage levels available for 2019 and future years, increases service fees, and extends the service fee waiver and premium reduction to eligible veterans. The rule includes the changes to the payment limitation and native sod provisions and clarifies when NAP coverage is available for crops when certain crop insurance is available under the Federal Crop Insurance Act. This rule is adding provisions for eligibility and program requirements for new producers or producers with less than 1-year growing experience with a new crop (for example, most hemp producers). This rule also makes some additional minor changes to clarify existing NAP requirements and improve program integrity.

DATES: *Effective:* March 2, 2020.

FOR FURTHER INFORMATION CONTACT: Tona Huggins, (202) 720–7641; *Tona.Huggins@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

NAP provides financial assistance to producers of noninsurable crops to protect against natural disasters that result in crop losses or prevent crop planting. FSA administers NAP for the Commodity Credit Corporation (CCC) as authorized by section 196 of the Federal Agriculture Improvement and Reform Act of 1996, as amended (7 U.S.C. 7333). NAP is administered under the general supervision of the FSA Administrator and is carried out by FSA State and county committees.

NAP is available for crops for which catastrophic risk protection and additional coverage under the Federal Crop Insurance Act (7 U.S.C. 1508(b) and (c), and (h)) are not available or, if such coverage is available, it is only available under a policy that is in a ''pilot'' program category, provides coverage for specific intervals based on weather indexes or under a whole farm plan of insurance. The eligibility for NAP coverage is limited to:

- Crops other than livestock that are commercially produced for food and fiber, and
- Other specific crops including floricultural, ornamental nursery, and Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), sea grass and sea oats, camelina, sweet sorghum, biomass sorghum, and industrial crops (including those grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased products).

Qualifying losses to eligible NAP crops must be due to an eligible cause of loss as specified in 7 CFR part 1437, which includes damaging weather (drought, hurricane, freeze, etc.) or adverse natural occurrence (volcanic eruption, flood, etc.). In order to be eligible for a NAP payment, producers must first apply for NAP coverage and submit the required NAP service fee or service fee waiver to their FSA county office by the application closing date for their crop. The NAP application for coverage must be completed, including submission of the service fee or a service fee waiver, before NAP coverage can begin. Losses occurring outside a coverage period are not eligible for NAP assistance. Producers who choose not to obtain NAP coverage for a crop are not eligible for NAP assistance for the crop. This rule does not change the core provisions of NAP.

The 2018 Farm Bill (Pub. L. 115–334) made several changes to NAP. This rule amends the NAP regulations to be consistent with those changes. The mandatory changes make ''buy-up'' coverage available for 2019 and later crop years, allowing producers to buy additional NAP coverage for a premium, resulting in a risk management product that has equivalent coverage levels to some types of crop insurance offered by the Risk Management Agency (RMA). This rule also implements the 2018 Farm Bill's provisions regarding payment limitation, increased service fees, a service fee waiver and a premium