

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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:** Proposed rule.

**SUMMARY:** In response to recent amendments to the Lacey Act, we are proposing to establish definitions for the terms “common cultivar” and “common food crop.” 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 exemptions 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 proposed definitions would specify which plants and plant products will be subject to the provisions of the Act, including the declaration requirement.

**DATES:** We will consider all comments that we receive on or before October 4, 2010.

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

- Federal eRulemaking Portal: Go to (<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0018>) to submit or view comments and to view supporting and related materials available electronically.

- Postal Mail/Commercial Delivery: Please send two copies of 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. Please state that your comment refers to Docket No. APHIS-2009-0018.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room 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) 690-2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at (<http://www.aphis.usda.gov>).

**FOR FURTHER INFORMATION CONTACT:** Mr. George Balady, Senior Staff Officer, Quarantine Policy Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737-1231; (301) 734-8295.

#### 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 import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken in violation of any Federal, State, tribal, or foreign law that protects plants. 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 certain 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** (74 FR 5911-5913 and 74 FR 45415-45418, Docket No. APHIS-2008-0119).

Under the Act, “Plant” means: “Any wild member of the plant kingdom, including roots, seeds, parts or products thereof, and including trees from either natural or planted forest stands.” There are three categories of plants that are exempt from the provisions of the Act:

1. Common cultivars, except trees, and common food crops (including roots, seeds, parts, or products thereof);
2. Scientific specimens of plant genetic material (including roots, seeds, germplasm, parts, or products thereof) that are to be used only for laboratory or field research;

3. Plants that are to remain planted or to be planted or replanted. The amendments to the Lacey Act, including the declaration requirements, still apply for items described under 2 and 3 if the plant is 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 (ESA, 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.

#### Purpose and Scope

The U.S. Department of Agriculture (USDA) and the U.S. Department of the Interior (DOI) have been given authority under the Lacey Act to define the terms “common cultivar” and “common food crop.” In accordance with this authority, USDA’s Animal and Plant Health Inspection Service (APHIS) and DOI’s U.S. Fish and Wildlife Service (FWS) have developed definitions for those terms. We propose to establish a new part in the plant-related provisions of title 7, chapter III of the Code of Federal Regulations (CFR), which will contain these definitions.

The definitions, which are discussed below, are designed to ensure that the exemptions do not place at risk plants of conservation concern. Species of plants listed as endangered or threatened under the Endangered Species Act, listed in the CITES Appendices, or protected under State law are excluded from exemption because they are, for purposes of the Lacey Act, not common. However, 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 exemption 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.

As we propose to define them, these terms would 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. The definition for "common cultivar" is consistent with the definition of "cultivar" contained in 50 CFR 23.5 (the CITES regulations promulgated by FWS). The definition for "common food crop" was developed with consideration of, and is consistent with, common dictionary definitions and terms in commercial use.

### Definitions

We propose to define the terms "common cultivar" and "common food crop" as follows:

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

(a) Has been developed through selective breeding or other means for specific morphological or physiological characteristics; and

(b) Is a species or hybrid that is cultivated on a commercial scale; and

(c) Is not 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.

*Common food crop.* A plant that:

(a) Has been raised, grown, or cultivated for human or animal consumption; and

(b) Is a species or hybrid that is cultivated on a commercial scale; and

(c) Is not 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.

In addition, we propose to add a definition for "plant" consistent with the definition in the Act, to read as follows: "Any wild member of the plant kingdom, including roots, seeds, parts or products thereof, and including trees from either natural or planted forest stands."

As we explained above, these definitions are designed to ensure that the exemptions do not place at risk plants of conservation concern, while exempting plants grown on a commercial scale. They are also designed to be consistent with existing and commonly understood definitions of the terms, as well as to be consistent with the provisions of the Lacey Act.

To supplement these definitions, we will provide guidance in the form of a list of examples of plant taxa or commodities that qualify for exemption from the provisions of the Act as common cultivars and common food crops. USDA and DOI will develop and maintain this list on a Web site and update it when necessary. 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 Web site. This list will not be exhaustive, but we will provide an email address to which the public can send inquiries about specific taxa or commodities and request to add taxa or commodities to the list.

### Executive Order 12866 and Regulatory Flexibility Act

This proposed 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.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The 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).

Recent 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 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 exemptions to the provisions of the Act. The Act does not define the terms "common cultivar" or "common food crop," but instead gives authority to the USDA and the DOI to define these terms by regulation. This proposed rule provides these definitions.

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

"Common cultivar" and "common food crop" are defined in this proposed rule to ensure that the exemptions 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 an importer would be required because of this rule to make declarations for commodities that are not now being declared. In other words, the definitions presented in this rule and the related exemptions should 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 exempted under the proposed definitions. 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 these declarations alone would be between \$900,000 and \$2.8 million. Note that the full implementation of the declaration requirement would cover far more product categories than currently require a declaration.

### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and

regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This proposed 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 proposing to amend Title 7, subtitle B, chapter III, of the Code of Federal Regulations as follows:

1. A new part 357 is added 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 import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken 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 certain plants and plant products. Common cultivars and common food crops are among the categorical exemptions 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.

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

(a) Has been developed through selective breeding or other means for specific morphological or physiological characteristics; and

(b) Is a species or hybrid that is cultivated on a commercial scale; and

(c) Is not 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.

**Common food crop.** A plant that:

(a) Has been raised, grown, or cultivated for human or animal consumption; and

(b) Is a species or hybrid that is cultivated on a commercial scale; and

(c) Is not 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.

**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.

Done in Washington, DC, this 26<sup>th</sup> day of July 2010.

**Ann Wright,**

*Acting Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2010-19098 Filed 8-3-10; 8:45 am]

**BILLING CODE 3410-34-S**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-1212; Directorate Identifier 2008-NM-167-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A330-200 and -300 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. This proposed AD results from mandatory continuing

airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

\* \* \* \* \*

The airworthiness limitations applicable to the Certification Maintenance Requirements (CMR) are given in Airbus A330 ALS Part 3, which is approved by the European Aviation Safety Agency (EASA).

The revision 02 of Airbus A330 ALS Part 3 introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with this revision constitutes an unsafe condition.

\* \* \* \* \*

The unsafe condition is safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by August 30, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** (202) 493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail [airworthiness.A330-A340@airbus.com](mailto:airworthiness.A330-A340@airbus.com); Internet <http://www.airbus.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m.