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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: Proposed 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 proposing 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. We are also proposing that all Lacey Act declarations be submitted within 3 business days of importation.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0055>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2013-0055, 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-2013-0055> 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: Ms. Parul Patel, Senior Agriculturalist, Permitting and Compliance Coordination, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737-1231; (301) 851-2351.

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 for combatting the illegal trade in timber and timber products by ensuring importers provide required information. Through the declaration requirement, the importer maintains accountability for exercising reasonable care regarding the content of the shipment before it arrives in the United

States. 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 proposed rule would establish limited exceptions to the declaration requirement for entries of products containing minimal plant material. This action would relieve 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 Section[s] 3372(f) of this title.”

Summary of Major Provisions of the Regulatory Action

This proposed rule would establish certain exceptions from the requirement that a declaration be filed when importing certain plants and plant products. Specifically, it would establish an exception to the declaration requirement for products with minimal amounts of plant material. The proposed rule would also establish 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 would provide additional context for the proposed exceptions.

Costs and Benefits

To the extent that the proposed rule would provide exceptions from the provisions of the Act, it would benefit U.S. importers. Establishing a de minimis exception from the declaration requirement for products with minimal amounts of plant material would relieve importers of the burden of identifying 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, made 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. Through the declaration requirement, the importer maintains accountability for exercising reasonable care regarding the content of the shipment before it arrives in the United States. 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.

On June 30, 2011, we published an advance notice of proposed rulemaking (ANPR) in the *Federal Register* (76 FR 38330, Docket No. APHIS-2010-0129),¹ soliciting public comment on several regulatory options to address certain issues that have arisen with the implementation of the declaration requirement. These options included establishing certain exceptions to the declaration requirement for products with minimal amounts of plant material and for products containing composite plant materials. We solicited comments on these options for 60 days ending on August 29, 2011, and received 37 comments by that date. The comments received were from academics, environmental groups, importers and exporters, industry associations, a trade union, representatives of foreign governments, and private citizens. We discuss the comments received on the approaches for composite plant materials in a new ANPR published today in the *Federal Register*, in which we invite comment on additional questions regarding implementation of the declaration requirement for these products.

Most of the commenters on the 2011 ANPR supported establishing exceptions to the declaration requirement for products with minimal amounts of plant material and suggested a

¹ To view the advance notice of proposed rulemaking and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0129>.

range of possible levels at which the threshold for exceptions could be set. We took those comments into consideration when developing this proposed rule. We are proposing to establish an exception to the declaration requirement for products containing a minimal amount of plant materials. We are also proposing that all Lacey Act declarations be submitted within 3 business days of importation.

Purpose and Scope

As a result of the changes proposed in this document, it is necessary to amend the statement of purpose and scope in 7 CFR 357.1. At the time this section was established, part 357 contained only definitions. However, because this proposed rule would add more sections to the regulations, containing provisions that address the declaration requirement of the Act, we would amend the statement to remove the third sentence, which references the declaration requirement, and add a new final sentence that acknowledges that the regulations in part 357 address the declaration requirement of the Act.

Definitions

We are proposing 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. We would define *import* as meaning 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. We would define *person* as 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. These definitions are the same as those in the Act and will help ensure that the declaration

requirement continues to fulfill the purposes of the Lacey Act without unduly burdening commerce.

For the same reason we are proposing to amend the definition of *plant* to include the exception provision of the statute. The definition currently in the regulations, while consistent with the definition in the Act, does not include the exclusions for common cultivars and common food crops, scientific specimens, and plants for planting that are included in the definition in the Act. The definition currently in the regulations also does not include the exceptions to the application of exclusions for plants that 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), or 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. We are proposing to amend the definition in the regulations to add the exclusions for common cultivars, common food crops, scientific specimens used only for laboratory or field research, and any plant that is to remain planted or to be planted or replanted, and also to add the exceptions to the application of those exclusions so that the proposed definition conforms with the statutory definition.

Declaration Requirement

We are proposing 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 would provide additional context for the proposed exceptions.

Exception From Declaration Requirement for Entries Containing Minimal Plant Materials

The requirement that importers of plants and plant products file a declaration upon importation is set forth in 16 U.S.C. 3372(f). The Lacey Act does not explicitly address whether the declaration requirement is intended to apply to products containing minimal amounts of plant materials, but it is questionable whether the regulatory objectives of the Lacey Act are furthered by applying this requirement to minimal amounts of non-listed (i.e., not of conservation concern) plant materials contained in an otherwise non-plant product. We believe that this issue would be efficiently addressed by establishing a level at which the declaration requirement does not apply.

We seek public comment on two options with respect to a de minimis exception to the declaration requirement. Under the first option, we propose 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 propose 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 invite 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 *Guaiacum officinale* and *Guaiacum sanctum*) as an appropriately minimal amount of plant material. A board-foot (that is, 12 x12 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 cannot be determined, then we propose 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 cannot be determined, we propose 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. Under this second option, we invite comment on what would be an appropriate maximum amount allowable by value or board feet under the de minimis exception. In either case, the exception would not apply to products containing plant material from species of conservation concern that 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. All other requirements of the Lacey Act would still apply to entries or persons claiming this exception.

We invite comment on the method of determining de minimis content. Specifically, we would appreciate information on whether it is feasible to set the threshold for the maximum amount of plant material at the entry line level, and invite comment on the thresholds that are

proposed, including 2.9 kilograms in total weight or volume of less than 1 board foot per entry line level of the plant product.

We also seek comment on whether the de minimis threshold should be calculated on a per product unit basis, at least for certain products, and if so what would be an appropriate amount of plant material on a per product basis, by weight or by board foot.

We also invite comment on whether the 5 percent threshold should be higher or lower, and why. For example, a number of commenters on the ANPR suggested setting the threshold at 10 percent. Additional data from commenters in support of either the 5 percent threshold or an alternative threshold would be useful for the rulemaking process. We also solicit comment on whether the 5 percent threshold or any alternative threshold proposed by commenters is appropriate as a de minimis exception and consistent with the statute.

Time Limit for Submission of Declarations

While the majority of importers submit their Lacey Act declarations at the time of formal customs entry, there has been some confusion about the time frame in which declarations should be submitted, with some importers submitting declarations up to a year after importation. While the declarations are required pursuant to the language of the statute “upon importation,” that is, upon landing in United States jurisdiction, we are proposing to allow importers to file Lacey Act declarations within 3 business days of importation without facing any enforcement action or penalty for late filing. This would accommodate the needs of industry while ensuring that declarations are submitted in a timely manner for the purposes of the statute.

Executive Orders 12866 and 13771 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. This

proposed rule, if finalized as proposed, 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 an initial 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 by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov website (see ADDRESSES above for instructions for accessing Regulations.gov).

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 proposing to establish an exception to the declaration requirement for products containing a minimal amount of plant materials. We are also proposing that all Lacey Act declarations be submitted within 3 business days upon importation.

The proposed rule would benefit some U.S. importers, large or small. The provisions of this proposed rule would relieve importers of the burden of identifying very small amounts of plant material incorporated into a product 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 for products in parts of the Harmonized Tariff Schedule of the United States (HTS) Chapters 44, 66, 82, 92, 93, 94, 95, 96 and 97, is currently being enforced. We are currently considering products for inclusion in the next phase of implementation.

If this proposed rule is finalized, some importers of products containing a minimal amount of plant material who are currently required to file declarations upon importation of their products would be excepted from that requirement. The cost savings from not having to file those declarations is one measure of the expected benefits of this proposed rule. From July 2015 through mid-June 2017, there were about 715 weekly shipments of commodities currently requiring declarations and containing amounts of plant material that potentially would have been

eligible for de minimis status under the proposed rule. Based on information available on those shipments, we estimate that between 10 and 20 percent of those commodities would have met the proposed definitions for de minimis exception. Had those commodity shipments not needed to be accompanied by declarations, we estimate the annual cost savings for affected producers would have ranged in total from a low of about \$56,700 to a high of about \$407,900 annually, with annual government processing savings of between about \$1,000 and \$1,900. In accordance with guidance on complying with Executive Order 13771, the primary estimate of the annual private sector cost savings for this rule is \$232,300. This value is the mid-point estimate of cost savings annualized in perpetuity using a 7 percent discount rate.

The total cost of compliance with the declaration requirement of the Act as currently enforced is estimated to be between \$11.6 million and \$50.3 million. The estimated reduction in compliance costs of about \$56,700 to \$407,900 would represent a cost savings of between 0.1 and 3.5 percent.

Both the declaration costs and the cost savings expected with this proposed rule are small when compared to the value of the commodities imported. In 2016, the value of U.S. imports of products currently requiring a declaration totaled about \$20.4 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 \$2.7 billion.

The full schedule for enforcement of the declaration requirement has not yet been determined. Because enforcement of the declaration requirement in the Act is being phased in, some products that would meet the de minimis criteria do not currently require a declaration; their importation would 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 HTS code are not part of the current enforcement schedule.

While the volume of imported commodities for which the exceptions would be applicable could be large, the cost savings for affected importers are expected to be small relative to the value of the commodities.

We are also proposing to require that Lacey Act declarations be submitted within 3 business days of importation. This change should have little impact on importers. Over 90 percent of current declarations are already submitted at the time of arrival and there is no reason to believe that the burden associated with submitting a declaration within 3 business days would be significantly greater than the burden associated with submitting a declaration more than 3 business days of importation. An importer reasonably knows the contents of a shipment before it arrives in the United States, and the information necessary for submitting a declaration should be available easily within 3 business days upon importation.

This action would result in some cost savings for importing businesses, most of which are small entities. Based on our review of available information, APHIS does not expect the proposed rule to have a significant economic impact on small entities. We have prepared an initial regulatory flexibility analysis because the information used in this analysis may not address all possible economic effects of this proposed rule on small entities. The savings are likely to represent a very small share of the overall value of the imported goods, and are not expected to significantly affect most importers of goods covered by the Lacey Act, whether large or small.

Average annual receipts of small, potentially affected entities under the proposed thresholds range from \$843,000 to \$1.4 million. We estimate that the average cost savings for an affected entity from not needing to file a single declaration may range between about \$15 and

\$55. For the cost savings to equal 5 percent of average annual receipts and thereby reasonably be considered a significant effect would require that an affected entity have from about 770 to nearly 4,600 exempted declarations in a year, a range that is highly unlikely.

APHIS has considered alternative thresholds for determining the criteria for a de minimis exception from the declaration requirement, including the specific percentage of total weight of an individual product unit that is plant material in an entry, the maximum total weight of that plant material, and the maximum total volume of that plant material. We are inviting comment on the specific threshold levels in this proposal, alternative thresholds, and their impact. To the extent that alternative thresholds result in broader or narrower de minimis criteria, the cost savings associated with such de minimis designation would be expanded or constrained. However, regardless the number of exemptions for which an entity qualifies, they would be beneficial and small entities would not be disadvantaged.

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.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order (EO) 13175, "Consultation and Coordination with Indian Tribal Governments." EO 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 our knowledge, have Tribal implications that require Tribal consultation under EO 13175. If a Tribe requests consultation, APHIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the reporting requirements included in this proposed 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 proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

List of Subjects in 7 CFR Part 357

Endangered and threatened species, Plants (Agriculture).

Accordingly, we propose to amend 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 definitions for *Import* and *Person* in alphabetical order; and

b. By revising the definition for *Plant*.

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.

* * * * *

4. Section 357.3 is 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.

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

5. Section 357.4 is added to read as follows:

§ 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 such products][a product unit] does not exceed [2.9 kilograms] [or other amount]; or, if the weight cannot be determined, the value of the plant material in the individual product unit represents no more than 10 percent of the declared value of the product, provided that the total quantity of plant material in [an entry of such products][a product unit] has a volume of less than [1 board foot (that is, 12 x12 x 1 inches or 30.48 x 30.48 x 2.54 centimeters)] [or other amount].

(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.

6. Section 357.5 is added to read as follows:

§ 357.5 Time limit for submission of plant declarations.

In the case of commodities for which a plant declaration is required, the declaration must be submitted within 3 business days of importation.

Done in Washington, DC, this 3rd day of July 2018 .

Greg Ibach

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2018-14630 Filed: 7/6/2018 8:45 am; Publication Date: 7/9/2018]