

(i) Non-essential—If the agency determines that a maximum-entry-age is not essential to the performance of the duties of the position, then the agency must waive the age requirement for qualified veterans' preference eligible applicants as prescribed by 5 U.S.C. 3312.

(ii) Essential—If the agency determines that a maximum-entry-age is essential to the performance of the duties of the position, the veterans' preference eligible applicant must meet the maximum-entry-age requirement established by the agency under 5 U.S.C. 3307.

5. Add § 338.602 to read as follows:

**§ 338.602 Minimum-entry-age requirements.**

Minimum-entry-age requirements for all Federal positions are prescribed in § 551.601 of this chapter.

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**COMMODITY FUTURES TRADING COMMISSION**

**5 CFR Chapter XLI**

**17 CFR Chapter I**

**Reducing Regulatory Burden; Retrospective Review Under E.O. 13563**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Request for information.

**SUMMARY:** In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," the Commodity Futures Trading Commission ("CFTC" or "Commission") intends to review its existing regulations to evaluate their continued effectiveness in achieving the objectives for which they were adopted. In this regard, the Commission has developed a plan to identify and evaluate its regulations periodically to determine whether any such regulations should be modified, expanded, streamlined or repealed in order to make the agency's regulatory program more effective (the "Plan").

**DATES:** Interested parties are encouraged to submit their views on the Plan on or before August 29, 2011.

**ADDRESSES:** You may make your submission, identified by "Plan for Retrospective Review," by any of the following methods:

• The agency's Web site, at <http://comments.cftc.gov>. Follow the

instructions for submitting comments through the Web site.

• *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

• *Hand Delivery/Courier:* Same as mail above.

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

Please make your submission using only one method. All submissions must be in English, or if not, accompanied by an English translation. Your submission may be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.<sup>1</sup>

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language.

**FOR FURTHER INFORMATION CONTACT:**

Maria D. Godel, Assistant General Counsel, Office of General Counsel, 1155 21st Street, NW., Washington, DC 20581. *Telephone:* 202-418-5120 and *electronic mail:* [mgodel@cftc.gov](mailto:mgodel@cftc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. The Executive Order**

On January 18, 2011, President Obama issued Executive Order 13563 entitled "Improving Regulation and Regulatory Review." The Executive Order emphasizes several guiding principles, including that: agencies consider the costs and benefits of their regulations and choose the least burdensome path; the regulatory process must be transparent and include public participation; and agencies must attempt to coordinate, simplify and harmonize regulations to reduce costs and promote certainty for businesses and the public. Section 6 of the Executive Order focuses on the importance of maintaining a consistent culture of retrospective review and analysis by agencies of their regulatory programs. To that end, section 6 includes a "look-back" provision for agencies to develop a preliminary plan

<sup>1</sup> 17 CFR 145.9.

under which the agency will periodically review its existing significant regulations to determine whether any should be modified, streamlined, expanded or repealed in order to make the agency's regulatory program more effective and less burdensome.

In a memorandum dated February 2, 2011, the administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs ("OIRA") provided guidance to the heads of executive departments and agencies and independent regulatory agencies regarding the principles and requirements of Executive Order 13563 (the "OIRA Memorandum"). While Executive Order 13563 does not apply to independent agencies, such as the Commission, the OIRA Memorandum encourages independent agencies to give consideration to its provisions, consistent with their legal authority, and to consider undertaking voluntarily retrospective analysis of existing rules.

The OIRA Memorandum emphasizes that in formulating its plan for retrospective review, "each agency should exercise its discretion to develop a plan tailored to its specific mission, resources, organizational structure and rulemaking history and volume."

**II. The Commission's Plan**

As part of the implementation of the Dodd-Frank Wall Street Transparency and Accountability Act ("Dodd-Frank Act"), the Commission already has reviewed many of its existing regulations. In determining the extent to which these existing regulations have needed to be modified to conform to the Dodd-Frank Act's new requirements, the Commission already has subjected many of its rules to scrutiny.<sup>2</sup> As such, "Phase

<sup>2</sup> For example, the Commission has published notices of proposed rulemakings addressing conforming amendments to its regulations regarding the registration of intermediaries under 17 CFR part 3, 76 FR 12888, Mar. 9, 2011; to conform the requirements under 17 CFR part 4 governing the operations and activities of commodity pool operators and commodity trading advisors consistent with title VII of the Dodd-Frank Act, 76 FR 11701, Mar. 3, 2011; and to make consistent with title VII of the Dodd-Frank Act part 40's provisions common to all registered entities, 75 FR 67282, Nov. 2, 2010. Further, the Commission has published notices of proposed rulemaking to implement changes to core principles for designated contract markets ("DCMs") and derivatives clearing organizations ("DCOs") under title VII of the Dodd-Frank Act by revising part 38, applicable to DCMs, and part 39, applicable to DCOs, 75 FR 80572, Dec. 22, 2010; 75 FR 63113, Oct. 14, 2010; 75 FR 77576, Dec. 13, 2010; 75 FR 78185, Dec. 15, 2010; 76 FR 3698, Jan. 20, 2010; and 76 FR 13101, Mar. 10, 2011. The Commission also is engaged in a proposed rulemaking to adapt all applicable CFTC regulations to the Dodd-Frank Act: proposed revisions to part 1 of the Commission's regulations would amend certain fundamental

One” of the Commission’s retrospective review of its existing regulations is (and has been) well underway as a significant effort prior to the issuance of Executive Order 13563 and the OIRA Memorandum.

Accordingly, the Commission’s Plan is as follows. After the substantial completion of the promulgation of final rules under the Dodd-Frank rulemaking process, including the revision of various existing Commission regulations to conform to the requirements of the Dodd-Frank legislation, the Commission intends to begin the process of the periodic, retrospective examination of the remainder of its regulations (*i.e.*, those regulations that were not reviewed as part of the Dodd-Frank effort). This process will constitute “Phase Two” of the Commission’s retrospective review. A Regulatory Review Group (“Group”), consisting of senior agency staff, will be formed to implement the CFTC Plan.

In accordance with the OIRA Memorandum, the Group will solicit public input on which rules should be reviewed. Subsequently, the Group will recommend to the Commission a list of candidate rules for review. To aid the Commission in its consideration, the Group will prioritize the rules recommended for review according to the Commission’s statutory mission and resources. The Commission then will determine which rules will be reviewed.

If, as a result of the retrospective review, the Commission determines to propose a revision to an existing regulation, the Commission will provide the public with notice and opportunity for comment as required by the Administrative Procedure Act. Additionally, section 15(a) of the Commodity Exchange Act (“CEA”) provides that before promulgating a regulation under the CEA, the Commission shall consider the costs and benefits of such an action. The CFTC publishes a list of proposed rules that becomes part of the “Unified Agenda of Federal Regulatory and Deregulatory Actions.”<sup>3</sup> The Unified Agenda provides uniform reporting of data on regulatory and deregulatory

definitions and recordkeeping rules; conforming changes to parts 5 (off-exchange foreign currency transactions); 7 (registered entity rules altered or supplemented by the Commission); 41 (Security futures products); 15 (general reports); 18 (reports by traders); 21 (special calls); 36 (exempt markets); 140 (organization, functions and procedures); 145 (Commission records and information); 155 (trading standards) and 166 (customer protection) also have been proposed, 76 FR 33066, Jun. 7, 2011.

<sup>3</sup> See the CFTC’s Unified Agenda at: [http://www.refinfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCd=3038&Image58.x=39&Image58.y=7](http://www.refinfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCd=3038&Image58.x=39&Image58.y=7).

activities under development throughout the federal government. The results of the foregoing process for developing the list of regulations for retrospective review will be integrated into the Unified Agenda.

The Commission encourages interested parties to submit their views on the Plan. Specifically, the Commission seeks submissions that address the following:

1. As stated above, as “Phase Two” of its retrospective review, the Commission intends to examine those regulations that were not reviewed as part of the Dodd-Frank rulemaking process (including the revision of various existing Commission regulations to conform to the requirements of the Dodd-Frank legislation). Are there any of the Commission’s other regulations, presently intended for potential examination under “Phase Two” that should, instead, be reviewed before the substantial completion of the Dodd-Frank rulemaking and conformation process?

2. What criteria should the Commission use to prioritize the review of existing regulations?

3. As the Executive Order and OIRA Memorandum indicate, the Executive Order does not apply to independent agencies. Which of the principles and guidelines with respect to retrospective review should the Commission voluntarily adopt? Are there any principles or guidelines that are not appropriate for the Commission to voluntarily adopt?

Issued in Washington, DC, on June 23, 2011, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

#### **Appendix to Retrospective Review of Agency Rules—Concurring Statement of Commissioner Jill E. Sommers**

I am pleased the Commission has expressed its intent to periodically engage in a retrospective review of its regulations to determine whether any should be modified, streamlined, expanded or repealed in accordance with Executive Order 13563. Executive Order 13563, which reaffirms and builds upon Executive Order 12866 of September 30, 1993, sets forth a blueprint for promulgating regulations in a manner that is transparent and designed to achieve regulatory goals in the least burdensome, most cost-effective way. Taken together, the orders emphasize the importance of public participation in rulemaking, adopting rules only upon a reasoned

determination that the benefits justify the costs, and maintaining flexibility by specifying performance objectives rather than prescriptive rules, where possible. I wholeheartedly agree with the regulatory philosophy embodied in the Executive Orders and support the Commission’s determination to seek comment on which of the principles and guidelines with respect to retrospective review the Commission should voluntarily adopt. I write separately to express my concern, based upon the record of the Dodd-Frank rulemaking process thus far, that the Commission is not complying with either the letter or the spirit of the Executive Orders.

The Commission states that “Phase One” of a retrospective analysis is already well underway through its review of its pre-Dodd-Frank rulebook and various proposed conforming amendments. While I agree that amendments to the existing rules will be necessary to conform with new Dodd-Frank definitions and requirements, I objected to the timing of some of the proposals, which in my view were premature because final rules establishing certain definitions and requirements had not yet been adopted. We will inevitably have to engage in a round of conforming amendments to the conforming amendments once the rules upon which they are based are finalized. Rushing conforming amendment proposals in the guise of complying with Executive Order 13563 is, in my opinion, disingenuous and an inefficient use of both the Commission’s and the public’s resources.

The Commission also cites its proposed rulemakings to implement new requirements for complying with the core principles for designated contract markets and derivatives clearing organizations as a “Phase One” retrospective analysis initiative. Again, changes to the Commission’s guidance and acceptable practices for complying with core principles are in order given the Dodd-Frank amendments. My objection here is that, contrary to the Executive Orders, the Commission has proposed detailed prescriptive rules for complying with the core principles rather than preserving the flexibility that was intended by Congress and encouraged by the President.

I have objected in the past to the Commission’s failure to conduct a robust cost-benefit analysis in connection with its Dodd-Frank proposals. And I have yet to see evidence at the proposal stage that we are truly looking for the least burdensome, most cost-effective way to meet regulatory goals. I believe that a

retrospective review of rules is an important part of the regulatory process as long as it does not impose additional burdens to the agency and to the public. I urge the Commission as we move forward with finalizing rules to consider the goals of the Executive Orders.

[FR Doc. 2011-16430 Filed 6-29-11; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 357

[Docket No. APHIS-2010-0129]

RIN 0579-AD44

### Implementation of Revised Lacey Act Provisions

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Advance notice of proposed rulemaking.

**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 requirements of the Lacey Act became effective on December 15, 2008, and enforcement of those requirements is being phased in. We are soliciting public comment on regulatory options that could address certain issues that have arisen with the implementation of the declaration requirement. These options include establishing certain exceptions to the declaration requirement and modifying the Declaration Form PPQ 505 to simplify the collection of information.

**DATES:** We will consider all comments that we receive on or before August 29, 2011.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/documentDetail;D=APHIS-2010-0129-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2010-0129, 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/documentDetail;D=APHIS-2010-0129> 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) 690-2817 before coming.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Balady, Staff Officer, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737-1231; (301) 734-5783.

#### 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, 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 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 the laws of the United States, a State, an Indian tribe, or any 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.

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 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 October 8, 2008, we published a notice in the **Federal Register** (73 FR 58925-58927, Docket No. APHIS 2008-0119) announcing our plans to begin phased-in enforcement of the declaration requirement on April 1, 2009, and providing dates and products covered for the first three phases of enforcement. We solicited comments on the proposed plan for phasing in enforcement for 60 days ending on December 8, 2008, and received 124 comments by that date. On February 3, 2009, we published a second notice in the **Federal Register** (74 FR 5911-5913,

Docket No. APHIS 2008-0119) and provided a revised, more detailed phase-in schedule based on comments we received in response to the October notice. We solicited comment on the revised phase-in plan for 60 days ending on April 6, 2009, and received 41 comments by that date. The comments covered a range of topics, including the scope of the declaration requirement, the specific products covered in each phase, definitions of terms, length of phases, effects on trade and industry, and enforcement issues. On September 2, 2009, we published a third notice in the **Federal Register** (74 FR 45415-45418, Docket No. APHIS-2008-0119) and provided a further revised, more detailed phase-in schedule based on comments we received in response to the April notice as well as our experience with implementation to that date. We solicited comment on the revised phase-in plan for 60 days ending on November 2, 2009, and received 67 comments by that date.

We are publishing this advance notice of proposed rulemaking in order to seek information and develop regulatory options on the following issues:

1. Whether an exception from the declaration requirement for products containing minimal amounts of plant material could be developed that would be less burdensome while still carrying out the intent of the Lacey Act amendments;
2. How importers may comply with the declaration requirement when importing composite plant products whose genus, species, and country of harvest of some or all of the plant material may be extremely difficult or prohibitively expensive to determine;
3. How to accommodate products made of re-used plant materials, or plant materials harvested or manufactured prior to the 2008 Lacey Act amendments, and for which identifying country of harvest, and possibly species, would be difficult if not impossible; and
4. Whether groups of species commonly used in commercial production, could be given a separate name that could be entered on the declaration form as a type of shorthand identification of genus and species, such as the currently recognized "SPF" acronym for "spruce, pine, and fir."

#### Declaration Requirement for Shipments Containing Minimal Plant Materials

The Lacey Act does not explicitly address whether the declaration requirement is intended to apply to imported products that contain only minimal amounts of plant material. It is not ideal to apply this requirement to minimal amounts of non-listed (i.e., not