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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0105]

Asian Longhorned Beetle; Removal of Quarantined Area in Illinois

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended Asian longhorned beetle regulations by removing the Oz Park area in Cook County, IL, from the list of quarantined areas and removing restrictions on the interstate movement of regulated articles from those areas. We have determined that the Asian longhorned beetle no longer presents a risk of spread from that area and that the quarantine and restrictions are no longer necessary. With that action, there are no longer any areas in Illinois that are quarantined because of the Asian longhorned beetle.

DATES: Effective on July 2, 2007, we are adopting as a final rule the interim rule that was published at 71 FR 40879–40880 on July 19, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, National Coordinator, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–7338.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.51–1 through 301.51–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas in order to prevent

the artificial spread of the Asian longhorned beetle (ALB) into noninfested areas of the United States. Quarantined areas are listed in § 301.51–3 of the regulations.

In an interim rule¹ effective July 13, 2006, and published in the **Federal Register** on July 19, 2006 (71 FR 40879–40880, Docket No. APHIS–2006–0105), we amended the regulations in § 301.51–3(c) by removing the entry for Cook County, IL, from the list of quarantined areas.

Comments on the interim rule were required to be received on or before September 18, 2006. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 71 FR 40879–40880 on July 19, 2006.

Done in Washington, DC, this 26th day of June 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–12754 Filed 6–29–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. APHIS–2006–0050]

Cold Treatment Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the phytosanitary treatment regulations by making several changes to the requirements for cold treatment enclosures and the requirements for conducting cold treatment. The changes include: Adding more specific and stringent requirements for precooling fruit prior to cold treatment, requiring the use of temperature recording devices that are password-protected and tamperproof, adding requirements to increase the effectiveness of cold treatment conducted in vessel holds, and providing for officials authorized by the Animal and Plant Health Inspection Service to conduct audits of the cold treatment process. We are making these changes in response to the results of external and internal reviews of the cold treatment requirements that have been in place. The changes we are making will improve the effectiveness of cold treatment and thus will help to prevent the introduction of quarantine plant pests into the United States.

DATES: This interim rule is effective on August 31, 2007. We will consider all comments that we receive on or before August 31, 2007.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2006–0050 to submit or view public comments and to view supporting and related materials available electronically. Information on using [Regulations.gov](http://www.regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is

¹ To view the interim rule, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=APHIS-2006-0105-0001>.

available through the site's "User Tips" link.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2006-0050, 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-2006-0050.

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: Dr. Inder P. S. Gadh, Senior Risk Manager—Treatments, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 734-8758.

SUPPLEMENTARY INFORMATION:

Background

The phytosanitary treatments regulations contained in 7 CFR part 305 set out standards and schedules for treatments required in 7 CFR parts 301, 318, and 319 for fruits, vegetables, and articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States. Within 7 CFR part 305, the cold treatments subpart (§§ 305.15 and 305.16, referred to below as the regulations) sets out requirements for performing cold treatment and cold treatment schedules for imported fruits and vegetables and for regulated articles moved interstate from quarantined areas within the United States.

Section 305.15 sets out the requirements for performing cold treatment. These include standards that must be met by the facility performing cold treatment and the enclosure in which cold treatment is performed; monitoring requirements; procedural requirements for performing cold treatment; and a required compliance agreement or workplan to ensure that these requirements are followed, under appropriate oversight from the Animal and Plant Health Inspection Service (APHIS).

Industry representatives and other interested parties have expressed concern that the procedural requirements that were in place prior to the publication of this interim rule were not adequate to prevent the development of "hot spots," which are areas in the treatment enclosure in which the temperature of fruit being treated rises above the temperature required by a cold treatment schedule for extended periods. Fruit in these hot spots would thus not be treated at the proper temperature to neutralize pests of concern. To assess this risk, APHIS commissioned an evaluation of the process and design of cold treatment from the firm Cannon Design. Their report, dated June 30, 2004, and titled "Supplementary Guidelines for Cold Treatment Application," included specific recommended changes to the cold treatment requirements to prevent the development of hot spots and other failures of the treatment process.¹ In addition, an internal review of the cold treatment procedures by the Center for Plant Health Science and Technology (CPHST) of APHIS' Plant Protection and Quarantine program indicated that additional changes were necessary to ensure that cold treatment is effective and to better allow officials authorized by APHIS to verify that treatment has been conducted properly.

In this interim rule, we are amending the regulations to incorporate the changes recommended by the Supplementary Guidelines for Cold Treatment Application and by CPHST. The key change we are making is to require that fruit intended for in-transit cold treatment be pre-cooled to the temperature at which it will be treated, as verified by an official authorized by APHIS. If treatment is conducted at a cold treatment facility in the United States, the fruit must be pre-cooled to the temperature at which it will be treated, as verified by an official authorized by APHIS, prior to beginning treatment.

Other changes we are making include requiring that fruit pulp temperature be maintained following the treatment schedule and within a specific temperature range; requiring the use of temperature recording devices that are password-protected and tamperproof; requiring the use of a minimum of four temperature probes or sensors when cold treatment is conducted in a vessel

hold; prohibiting the use of hanging decks or hatch coamings as treatment enclosures without prior written approval from APHIS; and providing for officials authorized by APHIS to conduct audits of the cold treatment process.²

Within § 305.15, this interim rule revises paragraph (b), which sets out performance requirements for cold treatment enclosures, and paragraph (f), which sets out procedural requirements for cold treatment. We are retaining most provisions that have been in paragraph (f), while adding many provisions to it; we are also reorganizing paragraph (f) so that the procedural requirements for performing cold treatment are set out in roughly the order in which they should be followed while performing cold treatment. As an aid to the reader, the derivation of each subparagraph of the new paragraph (f) is listed in table 1. We have set out the entire text of the new paragraph (f) in the regulatory text at the end of this document.

TABLE 1.—DERIVATION OF NEW § 305.15(f)

New subparagraph	Derived from
(f)(1)	(f)(1).
(f)(2)	First sentence of (f)(2).
(f)(3)	New language.
(f)(4)	(f)(3) and new language.
(f)(5)	(f)(6) and new language.
(f)(6)	New language.
(f)(7)	(f)(4) and new language.
(f)(8)	New language.
(f)(9)	(f)(5).
(f)(10)	Last two sentences of (f)(7) and new language.
(f)(11)	(f)(8) and new language.
(f)(12)	(f)(10).
(f)(13)	New language.

We are removing the second sentence of former paragraph (f)(2), which had addressed precooling of fruit to be cold treated, and replacing it with new paragraph (f)(3), which sets out substantially more rigorous precooling requirements. We are also removing the first sentence of former paragraph (f)(7) and all of former paragraph (f)(9).

The new requirements and our reasons for adopting them are discussed in detail directly below.

¹ Copies of this report are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or on Regulations.gov; see the **ADDRESSES** block for instructions on accessing Regulations.gov. If you access the report through Regulations.gov, please be aware that the PDF file of the report is approximately 17 megabytes in size and may take a long time to download.

² Officials authorized by APHIS may include inspectors as defined in § 305.1 (any individual authorized by the Administrator of APHIS or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in part 305) or officials employed by or authorized by foreign national plant protection organizations and authorized by APHIS to supervise treatment.

Precooling

In the Supplementary Guidelines for Cold Treatment Application, Cannon Design found that hot spots developed in cold treatment loads due to heat generated by respiration of the fruit and respiration of any insects that may have infested the fruit. (Fruit that is being shipped continues to convert oxygen to carbon dioxide during shipping. This process generates heat.) Given common fruit stacking configurations, respiration could produce areas within the fruit stacks in which some fruit reach a temperature significantly warmer than the temperature required by the cold treatment schedule. The goal of the Supplementary Guidelines for Cold Treatment Application was to determine methods by which the risk of development of such hot spots could be minimized. Cannon Design used both temperature observations from a simulation of real-world cold treatment conditions and observations from computational fluid dynamics modeling to draw its conclusions.

The key measure to mitigate the risk of hot spots that was identified by the Supplementary Guidelines for Cold Treatment Application is cooling fruit that is intended for cold treatment to the temperature required by the intended cold treatment schedule prior to beginning treatment, a process known as precooling. While the regulations have contained a precooling requirement, the requirement was not sufficiently stringent; prior to loading in cold treatment containers, fruit had been allowed to be either precooled to a uniform temperature up to 4.5 °C (40 °F), or precooled at the terminal to 2.2 °C (36 °F). However, the cold treatment schedules in § 305.16 require temperatures as low as 0 °C (32 °F), and most schedules require temperatures at or below 2.2 °C (36 °F). The cold treatment requirements that had been in the regulations also did not include any measures allowing officials authorized by APHIS to ensure that the precooling had been properly performed.

This interim rule adds a new paragraph (f)(3) to § 305.15 that sets out detailed requirements for precooling prior to cold treatment. These requirements are as follows:

- Fruit intended for in-transit cold treatment must be precooled to the temperature at which the fruit will be treated prior to beginning treatment. The in-transit treatment enclosure may not be used for precooling unless an official authorized by APHIS approves the loading of the fruit in the treatment enclosure as adequate to allow for fruit

pulp temperatures to be taken prior to beginning treatment.

Previously, the regulations required precooling to be performed either at an APHIS-approved dockside refrigeration warehouse or in an APHIS-approved enclosure aboard a vessel. However, when precooling is performed outside the treatment enclosure, we do not believe that it is necessary to specify the facility in which precooling is performed, as long as the other precooling requirements are fulfilled.

We are only allowing the use of in-transit enclosures for precooling subject to APHIS approval because the typical loading of fruit in an in-transit treatment enclosure does not allow for sampling fruit pulp temperatures prior to beginning treatment. If precooling is performed in the treatment enclosure, the loading of the fruit must be adequate to accommodate this essential step in the cold treatment process.

- If the fruit is precooled outside the treatment enclosure, an official authorized by APHIS will take pulp temperatures manually from a sample of the fruit as the fruit is loaded for in-transit cold treatment to verify that precooling was completed. If the pulp temperatures for the sample are 0.28°C (0.5°F) or more above the temperature at which the fruit will be treated, the pallet from which the sample was taken will be rejected and returned for additional precooling until the fruit reaches the treatment temperature.

These requirements allow officials authorized by APHIS to verify that precooling has been properly conducted and that the temperature of the fruit pulp has been reduced to the treatment temperature prior to beginning treatment.

- If fruit is precooled in the treatment enclosure, or if treatment is conducted at a cold treatment facility in the United States, the fruit must be precooled to the temperature at which it will be treated, as verified by an official authorized by APHIS, prior to beginning treatment.

In treatment enclosures that are approved for precooling and in cold treatment facilities, the loading of fruit allows fruit temperatures to be sampled, meaning that an official authorized by APHIS can verify that the fruit has been precooled to the treatment temperature. Since fruit in an approved enclosure or a cold treatment facility can simply be cooled for additional time if it has not yet reached the treatment temperature, we do not believe it is necessary to specify conditions under which precooling would be rejected if it takes place in an approved enclosure or a cold treatment facility in the United States.

We believe that precooling is essential to ensuring that cold treatment is effective, and these requirements will ensure that precooling is conducted properly.

In a related change, this interim rule also revises paragraph (b)(1) in § 305.15. This paragraph has required that cold treatment enclosures be capable of precooling, cooling, and holding fruit at temperatures less than or equal to 2.2 °C (36 °F). However, under this interim rule, some enclosures, such as vessel holds and containers, may only be used to precool fruit prior to in-transit cold treatment subject to APHIS approval. Additionally, we believe that the requirements for cold treatment enclosures should refer to holding fruit at or below the temperature that is required by the relevant cold treatment schedule, to avoid any possible confusion. Therefore, we are revising paragraph (b)(1) to require that cold treatment enclosures be capable of maintaining the treatment temperature before the treatment begins and holding fruit at or below the treatment temperature during the treatment.

Loading of Fruit in Treatment Enclosures

Paragraph (f)(3) of § 305.15 has required that breaks, damage, or other problems in the treatment enclosure that preclude maintaining correct temperatures be repaired before use and that an official authorized by APHIS approve loading of compartment, number and placement of sensors, and initial fruit temperature readings before beginning the treatment. In this interim rule, we are moving these requirements to paragraph (f)(4).

We are also adding two more specific requirements regarding the loading of fruit within the treatment enclosure. Specifically, we are prohibiting the use of hanging decks and hatch coamings within vessels as enclosures for in-transit cold treatment without prior written approval from APHIS. If additional cargo is loaded into these enclosures above the fruit that is stacked for cold treatment, it can be difficult to ensure that airflow around the fruit is sufficient to maintain temperature properly during the cold treatment. Additionally, some of these spaces have structures that make it difficult to generate sufficient airflow. While some hanging decks and hatch coamings are suitable for use as cold treatment enclosures, we believe it is necessary to verify that prior to authorizing their use.

In addition, we are prohibiting the double-stacking of pallets. As stated earlier, hot spots are more likely to develop when large quantities of fruit

are stacked together; prohibiting double-stacking of pallets is one way to help ensure that this does not occur.

Sealing of Cold Treatment Containers

Paragraph (f)(6) of § 305.15 has required that only the same type of fruit in the same type of package be treated together in a container, with no treatment of any mixture of fruits in a container. In this interim rule, we are moving this requirement to paragraph (f)(5) and adding a new requirement that a numbered seal be placed on the doors of the loaded container. The seal may be removed only at the port of destination by an official authorized by APHIS. This is a standard requirement for shipment of containers that prevents tampering with the fruit loaded in the container during transit. Adding this requirement to the cold treatment procedures will help to ensure the integrity of the cold treatment process.

Requirements for Temperature Recording Devices

Paragraph (c) in § 305.15 requires that APHIS approve the recording devices and sensors used to monitor temperatures during cold treatment. However, the regulations in § 305.15 have not contained any more specific requirements for temperature recording devices. In this interim rule, we are adding a new paragraph (f)(6) that contains requirements intended to ensure the integrity of temperature recording devices used during cold treatment. (A temperature recording device records the temperatures from each of the temperature probes or sensors that are used in the cold treatment enclosure.) Specifically, paragraph (f)(6) requires that:

- Temperature recording devices used during treatment must be password-protected and tamperproof.
- The devices must be able to record the date, time, sensor number, and temperature during all calibrations and during treatment.

Additionally, paragraph (f)(6) provides that, if records of calibrations or treatments are found to have been manipulated, the vessel or container in which the treatment is performed may be suspended from conducting cold treatments until proper equipment is installed and an official authorized by APHIS has recertified it. APHIS' decision to recertify a vessel or container will take into account the severity of the infraction that led to suspension. This provision ensures that APHIS is able to take action in the event that the integrity of the temperature recording devices is compromised.

Use of Additional Temperature Probe or Sensor in Vessel Holds

Paragraph (f)(4) has required that a minimum of three temperature sensors be used in the treatment compartment during treatment. In this interim rule, we are moving this requirement to paragraph (f)(7) and additionally requiring that a minimum of four temperature probes or sensors be used when cold treatment is conducted in vessel holds, while retaining the requirement that a minimum of three temperature probes or sensors be used in other enclosures. (We are adding "probe" as a synonym for "sensor" in the regulations because both terms are commonly used.) Vessel holds are larger than containers, and thus more temperature probes or sensors must be used in vessel holds to ensure that treatment is being conducted at the proper temperatures. Paragraph (f)(7) also provides that an official authorized by APHIS will have the option to require that additional temperature probes or sensors be used, depending on the size of the treatment enclosure.

Maintaining Fruit Pulp Temperatures

In this interim rule, we are revising paragraph (b)(2), which has required cold treatment enclosures to maintain fruit pulp temperatures according to treatment schedules with no more than a 0.3 °C (0.54 °F) variation in temperature, to refer instead to maintaining no more than a 0.39 °C (0.7 °F) variation in temperature. In addition, we are adding a new paragraph (f)(8) that requires that fruit pulp temperatures be maintained at the temperature specified in the treatment schedule with no more than a 0.39 °C (0.7 °F) variation in temperature between two consecutive hourly readings.

Maintaining fruit pulp temperatures at the treatment temperature is essential to ensuring that cold treatment is effective. We have determined that allowing fruit pulp temperatures to vary by up to 0.39 °C (0.7 °F) will not threaten the effectiveness of the treatment while accounting for normal variation in fruit pulp temperatures. We are amending the temperature variation for cold treatment enclosures allowed by paragraph (b)(1) to make it consistent with the temperature variation allowed by the new paragraph (f)(8).

Paragraph (f)(8) also explicitly provides that failure to comply with this requirement will result in invalidation of the treatment unless an official authorized by APHIS can verify that the pulp temperature was maintained at or below the treatment temperature for the

duration of the treatment. An official authorized by APHIS has the option to accept a treatment in which fruit pulp temperature varies by amounts greater than those required in the regulations if the official authorized by APHIS can determine from other evidence that the fruit was adequately treated. If there is no evidence confirming that the fruit was adequately treated, an official authorized by APHIS will invalidate the treatment.

Auditing Cold Treatment

We are adding a new paragraph (f)(13) that provides for officials authorized by APHIS to perform audits to ensure that the treatment procedures comply with the regulations. The official authorized by APHIS must be given the appropriate materials and access to the facility, container, or vessel necessary to perform the audits. This provision will ensure that, if officials authorized by APHIS become concerned about whether cold treatment is being conducted according to the regulations, they will be able to gather any necessary information in order to investigate the matter.

Other Changes

The first sentence of paragraph (f)(7) has read as follows: "Fruit must be stacked to allow cold air to be distributed throughout the enclosure, with no pockets of warmer air, and to allow random sampling of pulp temperature in any location in the load." The random sampling requirement did not reflect the conditions under which in-transit cold treatment is typically performed. To maximize the volume of fruit that can be treated during shipment, fruit is typically packed tightly into the treatment enclosure, leaving a crawl space above the fruit for circulation of air. Random sampling of the fruit during treatment thus could not take place. Instead, we have relied on data gathered from temperature probes or sensors to determine whether cold treatment is being effectively administered, as described earlier. In addition, the requirement that fruit be stacked to allow cold air to be distributed throughout the enclosure is unnecessary given the specific requirement for maintaining a constant fruit pulp temperature added by this interim rule. Therefore, the revised paragraph (f) set out by this interim rule does not include the first sentence of former paragraph (f)(7).

Paragraph (f)(9) has read as follows: "Pretreatment conditioning (heat shock or 100.4 °F for 10 to 12 hours) of fruits is optional and is the responsibility of

the shipper.” Because this step is optional, we would prefer to convey information about pretreatment conditioning through the guidance provided in the Plant Protection and Quarantine Treatment Manual rather than through the regulations. We have therefore not included any information about pretreatment conditioning in the revised paragraph (f) set out by this interim rule.

This interim rule moves the temperature recording requirements that had previously been in the last two sentences of paragraph (f)(7) to a new (f)(10). In addition, we are amending the sentence “Gaps of longer than 1 hour may invalidate the treatment or indicate treatment failure” to indicate that the treatment will be invalidated unless an official authorized by APHIS can verify that the pulp temperature was maintained at or below the treatment temperature for the duration of the treatment, for reasons discussed earlier under the heading “Maintaining Fruit Pulp Temperatures.”

This interim rule moves the requirements that had previously been in paragraph (f)(8) to a new paragraph (f)(12). We are also amending the sentence “Cold treatment is not completed until so designated by an official authorized by APHIS or the certifying official of the foreign country” by replacing the word “designated” with the word “declared.” We believe this word more clearly indicates that an official authorized by APHIS must serve as the final authority in determining whether cold treatment has been completed.

The changes we are making in this interim rule are designed to ensure that cold treatment neutralizes the target pests in shipments of fruit and to ensure that officials authorized by APHIS are able to review accurate records of treatment and take action if the cold treatment is not being conducted in accordance with the regulations. We welcome public comment on any aspect of these changes.

Immediate Action

Immediate action is necessary to ensure that cold treatment is effective at neutralizing quarantine plant pests and thus preventing their introduction into the United States.

This rule is being made effective 60 days after publication because affected parties will need time to prepare for the changes in operations that will become necessary on the effective date of this rule. Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these

circumstances, we find good cause under 5 U.S.C. 553 to make this rule effective 60 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this interim rule on small entities. Based on the information we have, there is no reason to conclude that adoption of this interim rule will result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this interim rule on small entities that may incur benefits or costs from the implementation of this interim rule.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.

This interim rule amends the cold treatment regulations by making several changes to the requirements for cold treatment enclosures and the requirements for conducting cold treatment. The changes include: Adding more specific and stringent requirements for precooling fruit prior to cold treatment, requiring the use of temperature recording devices that are password-protected and tamperproof, adding requirements to increase the effectiveness of cold treatment conducted in vessel holds, and providing for officials authorized by APHIS to conduct audits of the cold treatment process. We are making these changes in response to the results of external and internal reviews of the cold treatment requirements that have been in place. These changes will improve the effectiveness of cold treatment and thus will help to prevent the

introduction of quarantine plant pests into the United States.

Operational costs of precooling under this interim rule are expected to be largely the same as they were prior to the publication of this interim rule, when precooling was allowed to be conducted on vessels without APHIS approval of the treatment enclosure. There may be a cost increase per quantity of fruit shipped due to the pulp temperature sampling requirements, but we do not have information that would enable us to quantify the increase. Similarly, precooling costs for fruit that undergoes cold treatment at a facility in the United States are expected to be largely the same as they are under the regulations that have been in place.

Fruit intended for cold treatment may still be precooled in the treatment enclosure subject to APHIS approval of the loading of the fruit. However, because loading of fruit in the treatment enclosure is, in most cases, not adequate to allow an official authorized by APHIS to sample the pulp temperatures of the precooled fruit, we expect that most fruit intended for cold treatment will be precooled outside the treatment enclosures. If countries decide to construct dockside refrigeration warehouses to meet these requirements, the warehouses themselves could be a potential additional cost. (To find the additional cost, one would subtract any ship utilization costs forgone by not conducting the precooling in ship holds from the total cost of constructing and using a dockside refrigeration warehouse.) Based on costs for the construction of such facilities in the United States, a medium-sized refrigerated facility (between 60,000 square feet and 100,000 square feet) may cost between \$7 million and \$10 million.³

In theory, if exporters do experience a cost increase because of this interim rule, the quantity of fruit supplied may decrease. This decrease could result in an increase in the price of fruit, benefiting U.S. producers and suppliers. However, these impacts are expected to be negligible; any additional precooling

³ The Port of Corpus Christi, TX, completed, in July 2000, a new 99,520-square-foot refrigerated warehouse at a total cost of \$9.2 million (about \$92.5 per square foot) for importing and exporting fruits, vegetables, meats, and other commodities. See <http://www.mgn.com/pressreleasedetails.cfm?id=1200> and <http://www.expansionmanagement.com/cmd/articledetail/articleid/15068/default.asp>. As another example, a new 60,000-square-foot refrigerated warehouse at the Port of Wilmington, DE, was completed at a total cost of \$7.5 million (about \$125 per square foot). The facility will be used primarily for fresh fruit. (See <http://www.drba.net/press/releases/files/20040615drbarowanuniversity.pdf>.)

costs will represent a small fraction of the price of the fruit.

Nine countries (Chile, Mexico, Spain, New Zealand, Argentina, South Africa, Canada, Australia, and Italy) supplied over 95 percent of total U.S. fruit imports in 2005. These nine countries have large worldwide markets, accounting for 54 percent of world exports of fresh fruits. About 10.3 percent of their fruit exports in 2005 were shipped to the United States.⁴ We expect that many if not all of these major fruit-exporting countries already have facilities available for precooling, and that any cost increases attributable to the interim rule will be minimal.

Impact on Small Entities

If the price of imported fruit increases because of this rule, U.S. entities that may be affected include producers of crops that are hosts for fruit flies, many of which are categorized within the following North American Industry Classification System [NAICS] subsectors: NAICS 111310 Orange Groves, NAICS 111320 Citrus (except Orange) Groves, NAICS 111331 Apple Orchards, NAICS 111332 Grape Vineyards, NAICS 111333 Strawberry Farming, NAICS 111334 Berry (except Strawberry) Farming, NAICS 111335 Tree Nut Farming, NAICS 111336 Fruit and Tree Nut Combination Farming, and NAICS 111339 Other Noncitrus Fruit Farming. These entities would benefit from the price effects, which would reduce the supply of imported crops that are hosts for fruit flies. Affected entities may also include fruit and vegetable wholesalers (NAICS 422480), supermarkets and other grocery stores (NAICS 445110), warehouse clubs and superstores (NAICS 452910), and fruit and vegetable markets (NAICS 445230). If the theoretical price effects associated with this interim rule actually occur, these entities would experience negative effects from the higher prices and smaller supply of imported fruit.

The vast majority of the businesses that comprise these industries are small entities. The Small Business Administration (SBA) classifies the farming operations identified above as small entities if their annual receipts are not more than \$750,000.⁵ According to the 2002 Census of Agriculture, there were over 119,000 operations that were engaged in the production of citrus and noncitrus fruits. Over 98 percent of

these entities were designated as small entities. The SBA classifies fresh fruit and vegetable merchant wholesalers (NAICS 422480) as small entities if they employ 100 or fewer employees. According to the 2002 Economic Census, there were 4,644 of these entities, with 484 (or 10.4 percent) of them considered to be large. SBA classifies supermarkets and other grocery stores as small entities if their annual receipts are not more than \$23 million. There were 56,577 supermarkets and other grocery stores in 2002. Of these, only 3,477, or 6.1 percent, are considered to be large. There were 2,761 warehouse clubs and superstores (NAICS 452910), and these are considered small if their annual sales are less than \$25 million. Of the above total, 2,593, or 93.9 percent, are considered to be large. Fruit and vegetable markets (NAICS 445230) are considered small if their annual sales are less than \$6.5 million. In 2002, the most recent year for which data are available, there were 2,257 fruit and vegetable markets.⁶ Approximately 96 percent of these are considered to be small entities under the SBA's standards. However, for all of these categories of businesses, we do not know what proportion of them will be affected by this interim rule. We welcome comments on the economic effects of this interim rule on small entities and on how many small entities might be affected by the rule.

No significant alternatives were identified that would meet the objectives of the interim rule.

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 7 CFR part 3015, subpart V.)

Executive Order 12988

This 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.

Paperwork Reduction Act

This interim 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 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 7 CFR part 305 as follows:

PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for 7 CFR part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 305.15, paragraphs (b) and (f) are revised to read as follows:

§ 305.15 Treatment requirements.

* * * * *

(b) *Cold treatment enclosures.* All enclosures in which cold treatment is performed, including refrigerated containers, must:

(1) Be capable of maintaining the treatment temperature before the treatment begins and holding fruit at or below the treatment temperature during the treatment.

(2) Maintain fruit pulp temperatures according to treatment schedules with no more than a 0.39 °C (0.7 °F) variation in temperature.

* * * * *

(f) *Treatment procedures.* (1) All material, labor, and equipment for cold treatment performed on vessels must be provided by the vessel or vessel agent. An official authorized by APHIS monitors, manages, and advises in order to ensure that the treatment procedures are followed.

(2) Fruit that may be cold treated must be safeguarded to prevent cross-contamination or mixing with other infested fruit.

(3) Fruit intended for in-transit cold treatment must be pre-cooled to the temperature at which the fruit will be treated prior to beginning treatment. The in-transit treatment enclosure may not be used for precooling unless an official authorized by APHIS approves the loading of the fruit in the treatment enclosure as adequate to allow for fruit pulp temperatures to be taken prior to beginning treatment. If the fruit is pre-cooled outside the treatment enclosure, an official authorized by APHIS will take pulp temperatures

⁴ Fruit imports from other countries were much smaller, with 22 countries shipping less than a single bulk shipment (8,000 metric tons).

⁵ SBA, Small Business Size Standards matched to North American Industry Classification System 2002, Effective January 2006 (www.sba.gov/size/sizetable2002.html).

⁶ U.S. Census Bureau, 2002 Economic Census Geographic Area Series: Manufacturing and Wholesale Trade, Revised January 2006 (<http://www.census.gov/econ/census02/guide/geosumm.htm>).

manually from a sample of the fruit as the fruit is loaded for in-transit cold treatment to verify that precooling was completed. If the pulp temperatures for the sample are 0.28 °C (0.5 °F) or more above the temperature at which the fruit will be treated, the pallet from which the sample was taken will be rejected and returned for additional precooling until the fruit reaches the treatment temperature. If fruit is pre-cooled in the treatment enclosure, or if treatment is conducted at a cold treatment facility in the United States, the fruit must be pre-cooled to the temperature at which it will be treated, as verified by an official authorized by APHIS, prior to beginning treatment.

(4) Breaks, damage, etc., in the treatment enclosure that preclude maintaining correct temperatures must be repaired before the enclosure is used. An official authorized by APHIS must approve loading of compartment, number and placement of temperature probes or sensors, and initial fruit temperature readings before beginning the treatment. Hanging decks and hatch coamings within vessels may not be used as enclosures for in-transit cold treatment without prior written approval from APHIS. Double-stacking of pallets is not allowed.

(5) Only the same type of fruit in the same type of package may be treated together in a container; no mixture of fruits in containers may be treated. A numbered seal must be placed on the doors of the loaded container and may be removed only at the port of destination by an official authorized by APHIS.

(6) Temperature recording devices used during treatment must be password-protected and tamperproof. The devices must be able to record the date, time, sensor number, and temperature during all calibrations and during treatment. If records of calibrations or treatments are found to have been manipulated, the vessel or container in which the treatment is performed may be suspended from conducting cold treatments until proper equipment is installed and an official authorized by APHIS has recertified it. APHIS' decision to recertify a vessel or container will take into account the severity of the infraction that led to suspension.

(7) A minimum of four temperature probes or sensors is required for vessel holds used as treatment enclosures. A minimum of three temperature probes or sensors is required for other treatment enclosures. An official authorized by APHIS will have the option to require that additional temperature probes or sensors be used,

depending on the size of the treatment enclosure.

(8) Fruit pulp temperatures must be maintained at the temperature specified in the treatment schedule with no more than a 0.39 °C (0.7 °F) variation in temperature between two consecutive hourly readings. Failure to comply with this requirement will result in invalidation of the treatment unless an official authorized by APHIS can verify that the pulp temperature was maintained at or below the treatment temperature for the duration of the treatment.

(9) The time required to complete the treatment begins when all temperature probes reach the prescribed cold treatment schedule temperature.

(10) Temperatures must be recorded at intervals no longer than 1 hour apart. Gaps of longer than 1 hour will invalidate the treatment or indicate treatment failure unless an official authorized by APHIS can verify that the pulp temperature was maintained at or below the treatment temperature for the duration of the treatment.

(11) Cold treatment is not completed until so declared by an official authorized by APHIS or the certifying official of the foreign country; shipments of treated commodities may not be discharged until APHIS clearance has been fully completed, including review and approval of treatment record charts.

(12) Cold treatment of fruits in break bulk vessels or containers must be initiated by an official authorized by APHIS if there is not a treatment technician who has been trained to initiate cold treatments for either break bulk vessels or containers.

(13) An official authorized by APHIS may perform audits to ensure that the treatment procedures comply with the regulations in this subpart. The official authorized by APHIS must be given the appropriate materials and access to the facility, container, or vessel necessary to perform the audits.

Done in Washington, DC, this 26th day of June 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 353

[Docket No. APHIS-2006-0122]

RIN 0579-AC43

Export Certification for Wood Packaging Material

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the export certification regulations to clarify that an International Standards for Phytosanitary Measures No. 15 (ISPM 15) quality/treatment mark is an industry-issued certificate within the meaning of 7 CFR part 353 and thus may only be issued when the organization applying the certification mark has entered into an agreement with the Animal and Plant Health Inspection Service. We are also removing all references to a certificate of heat treatment from the regulations because those certificates have been replaced by the ISPM 15 quality/treatment mark. These changes are necessary in order to ensure the appropriate issuance of the ISPM 15 quality/treatment mark.

DATES: This interim rule is effective July 2, 2007. We will consider all comments that we receive on or before August 31, 2007.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS-2006-0122 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2006-0122, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your