

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 305

[Docket No. APHIS-2006-0050]

#### Cold Treatment Regulations; Technical Amendment

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

**ACTION:** Interim rule; technical amendment.

**SUMMARY:** In an interim rule published in the *Federal Register* on July 2, 2007, with an effective date of August 31, 2007, we amended the phytosanitary treatment regulations by making several changes to the requirements for cold treatment enclosures and the requirements for conducting cold treatment. A final rule that was published in the *Federal Register* on July 18, 2007, and effective August 17, 2007, reorganized the cold treatment regulations by moving requirements regarding cold treatment that had previously been contained in the regulations governing the importation of fruits and vegetables to the section of the regulations containing the requirements for cold treatment enclosures and conducting cold treatment. This technical amendment indicates how the changes in the July 2 interim rule will appear in the regulations as they have been reorganized by the July 18 final rule.

**DATES:** This technical amendment is effective on August 31, 2007.

**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 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 requirements 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).

In an interim rule<sup>1</sup> titled “Cold Treatment Regulations” and published in the *Federal Register* on July 2, 2007, with an effective date of August 31, 2007 (72 FR 35909-35915, Docket No. APHIS-2006-0050), we amended § 305.15 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.

In a separate final rule<sup>2</sup> titled “Revision of Fruits and Vegetables

Import Regulations” and published in the *Federal Register* on July 18, 2007 and effective August 17, 2007, we revised and reorganized the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations into territories under U.S. administration, and make various editorial and nonsubstantive changes to regulations to make them easier to use. As part of this final rule, we reorganized the cold treatment regulations in § 305.15 by moving requirements to § 305.15 that had previously been found in the regulations governing the importation of fruits and vegetables, specifically in § 319.56-2d. The final rule moved into § 305.15 all the provisions contained in § 319.56-2d that were not already present in § 305.15. The regulations were otherwise not amended. However, these changes necessitated a reorganization of the regulations in § 305.15.

Due to this reorganization, the amendatory language in the July 2 interim rule no longer refers to the provisions in the regulations that we intended to amend through that interim rule. This technical amendment sets out the regulations in § 305.15 as they will appear when the July 2 interim rule and this technical amendment become effective on August 31, 2007. This technical amendment does not change the provisions of the July 2 interim rule; it only establishes how the provisions of the July 2 interim rule will appear in § 305.15 as amended by the July 18 final rule.

We have provided a table showing where the provisions of the July 2 interim rule will appear in § 305.15 as that section was reorganized by the July 18 final rule for the convenience of the reader.

TABLE 1.—LOCATION OF PROVISIONS FROM JULY 2, 2007, INTERIM RULE IN THE REORGANIZED § 305.15

Subparagraph from July 2 interim rule:	Now appears in § 305.15 as:
(b)(1) .....	(c)(1).
(b)(2) .....	(c)(2).
(f)(1) .....	(d)(1).
(f)(2) .....	(d)(3).

<sup>1</sup> To view the interim rule, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0050>.

<sup>2</sup> To view the final rule, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=APHIS-2005-0106-0060>.

TABLE 1.—LOCATION OF PROVISIONS FROM JULY 2, 2007, INTERIM RULE IN THE REORGANIZED § 305.15—Continued

Subparagraph from July 2 interim rule:	Now appears in § 305.15 as:
(f)(3) .....	(d)(4).
(f)(4) .....	(d)(5).
(f)(5) .....	(d)(6).
(f)(6) .....	(d)(7) (see below).
(f)(7) .....	(d)(8).
(f)(8) .....	(d)(9).
(f)(9) .....	(d)(10) (see below).
(f)(10) .....	(d)(11).
(f)(11) .....	(d)(12) (see below).
(f)(12) .....	(d)(13).
(f)(13) .....	(d)(14).

Paragraph (d) of § 305.15 as amended by the July 18 final rule sets out requirements related to precooling fruit. The precooling requirements in the July 2 interim rule (which that rule would have added in paragraph (f)(3)) were intended to replace all previous precooling requirements. Accordingly, this technical amendment will remove paragraph (d) of § 305.15 from the regulations. Paragraphs (e), (f), (g), and (h) in § 305.15 will be redesignated as (d), (e), (f), and (g), respectively.

Paragraph (c)(4) of § 305.15 as amended by the July 18 final rule sets out requirements for temperature sensors. Paragraph (f)(6) in the July 2 interim rule contained requirements that complement those in (c)(4). To collect all the requirements relating to temperature sensors in one place, this technical amendment will add paragraph (f)(6) from the July 2 interim rule to § 305.15 as paragraph (d)(7), will incorporate into that paragraph (d)(7) the requirements from former (c)(4), and will remove paragraph (c)(4) of § 305.15.

In the July 2 interim rule, paragraph (f)(6) read:

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.

Paragraph (c)(4) indicates that the cold treatment enclosure must be equipped with recording devices, such that automatic, continuous temperature records are maintained and secured, and that recording devices must be capable of generating temperature charts for

verification of treatment by an inspector. The new paragraph (d)(7) in § 305.15 will thus read:

Temperature recording devices used during treatment must be password-protected and tamperproof. The devices must be able to record the date, time, and sensor number and automatic and continuous records of the temperature during all calibrations and during treatment. Recording devices must be capable of generating temperature charts for verification by an inspector. 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.

Paragraph (f)(9) in the July 2 interim rule stated: "The time required to complete the treatment begins when all temperature probes reach the prescribed cold treatment schedule temperature." This paragraph was intended to replace a more general provision requiring that the time to complete the treatment begins when the temperature inside the fruit reaches the required temperature. The July 18 final rule added to that provision a requirement that refrigeration continue until the vessel arrives at the port of destination and the fruit is released for unloading by an inspector even though this may prolong the period required for the cold treatment. This technical amendment will amend § 305.15 to retain both the requirement from the July 2 interim rule relating to the temperature probes and the refrigeration requirement established in the regulations by the July 18 final rule.

Paragraph (f)(11) of the July 2 interim rule referred to conditions under which shipments of treated commodities may be discharged. Paragraph (e)(10) contains a similar statement that refers to consignments, rather than shipments. The term "consignments" is the preferred term, as it is used in international standards. Accordingly, we will add (f)(11) to § 305.15 as (d)(12), but we will replace the word "shipments" with the word "consignments."

For the reasons given in the July 2 interim rule, this technical amendment will remove the requirements in the first sentence of paragraph (e)(9) and in paragraph (e)(11), as these paragraphs appear in the July 18 final rule.

Paragraphs (e)(13) and (e)(14) in the current form of § 305.15 will appear as paragraphs (d)(15) and (d)(16), respectively. However, the requirements in paragraph (e)(17) of § 305.15 will appear in a new paragraph (h) at the end

of the section. Paragraph (e)(17) sets out additional requirements for treatments performed after arrival in the United States at specific ports; we believe it will assist the reader to set out all the general conditions applying to cold treatment before listing port-specific conditions.

**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. Section 305.15 is amended as follows:

- a. By revising paragraph (c) to read as set forth below.
- b. By removing paragraph (d).
- c. By redesignating paragraphs (e), (f), (g), and (h) as paragraphs (d), (e), (f), and (g), respectively.
- d. By revising newly redesignated paragraph (d) to read as set forth below.
- e. By adding a new paragraph (h) to read as set forth below.

**§ 305.15 Treatment requirements.**

\* \* \* \* \*

(c) *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.

(3) Be structurally sound and adequate to maintain required temperatures.

(d) *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) Refrigeration must be completed in the container, compartment, or room in which it is begun.

(3) Fruit that may be cold treated must be safeguarded to prevent cross-

contamination or mixing with other infested fruit.

(4) 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. 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. 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.

(5) 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.

(6) 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.

(7) Temperature recording devices used during treatment must be password-protected and tamperproof. The devices must be able to record the date, time, and sensor number and automatic and continuous records of the temperature during all calibrations and during treatment. Recording devices must be capable of generating temperature charts for verification by an inspector. 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.

(8) 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.

(9) 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.

(10) The time required to complete the treatment begins when all temperature probes reach the prescribed cold treatment schedule temperature. Refrigeration continues until the vessel arrives at the port of destination and the fruit is released for unloading by an inspector even though this may prolong the period required for the cold treatment.

(11) 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.

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

(13) 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.

(14) 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.

(15) *Inspection of fruits after cold treatment for Mediterranean fruit fly.* An inspector will sample and cut fruit from each consignment cold treated for Mediterranean fruit fly (Medfly) to monitor treatment effectiveness. If a single live Medfly in any stage of development is found, the consignment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the safeguards contained in this section do not appear to be effective against the Medfly, APHIS may suspend the importation of fruits from the originating country and conduct an investigation into the cause of the deficiency.

(16) *Caution and disclaimer.* The cold treatments required for the entry of fruit are considered necessary for the elimination of plant pests, and no liability shall attach to the U.S. Department of Agriculture or to any officer or representative of that Department in the event injury results to fruit offered for entry in accordance with these instructions. In prescribing cold treatments of certain fruits, it should be emphasized that inexactness and carelessness in applying the treatments may result in injury to the fruit or its rejection for entry.

\* \* \* \* \*

(h) *Additional requirements for treatments performed after arrival in the United States.*

(1) *Maritime port of Wilmington, NC.* Consignments of fruit arriving at the maritime port of Wilmington, NC, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(ii) Bulk and containerized consignments of fruit must be cold-treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of

the customs and navigation laws in force.

(iii) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(iv) The cold treatment facility must remain locked during non-working hours.

(2) *Maritime port of Seattle, WA.* Consignments of fruit arriving at the maritime port of Seattle, WA, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(ii) Bulk and containerized consignments of fruit must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(iii) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(iv) The cold treatment facility must remain locked during non-working hours.

(v) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(vi) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

(3) *Airports of Atlanta, GA, and Seattle, WA.* Consignments of fruit arriving at the airports of Atlanta, GA, and Seattle, WA, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) Bulk and containerized consignments of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(ii) Bulk and containerized consignments of fruit arriving for cold treatment must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to

enforce the various provisions of the customs and navigation laws in force.

(iii) The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the aircraft on which they arrived at the airport and the cold treatment facility. The movement of consignments from aircraft to a cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(iv) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(v) The cold treatment facility must remain locked during non-working hours.

(vi) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(vii) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

(4) *Maritime ports of Gulfport, MS, and Corpus Christi, TX.* Consignments of fruit arriving at the ports of Gulfport, MS, and Corpus Christi, TX, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) All fruit entering the port for cold treatment must move in maritime containers. No bulk consignments (those consignments which are stowed and unloaded by the case or bin) are permitted.

(ii) Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(iii) All consignments of fruit arriving at the port for cold treatment must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(iv) The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the vessel on which they arrived at the port and the cold treatment facility. The movement of consignments from vessel to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(v) Advance reservations for cold treatment space at the port must be made prior to the departure of a consignment from its port of origin.

(vi) Devanning, the unloading of fruit from containers into the cold treatment facility, must adhere to the following requirements:

(A) All containers must be unloaded within the cold treatment facility; and  
(B) Untreated fruit may not be exposed to the outdoors under any circumstances.

(vii) The cold treatment facility must remain locked during non-working hours.

(viii) Blacklights or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility at the maritime port of Gulfport, MS, and within the 5 square miles surrounding the cold treatment facility at the maritime port of Corpus Christi, TX.

(ix) During cold treatment, a backup system must be available to cold treat the consignments of fruit should the primary system malfunction. The facility must also have one or more reefers (cold holding rooms) and methods of identifying lots of treated and untreated fruits.

(x) The cold treatment facility must have the ability to conduct methyl bromide fumigations on site.

(xi) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

Done in Washington, DC, this 27th day of August 2007.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7-17295 Filed 8-30-07; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-23072; Directorate Identifier 2005-NE-38-AD; Amendment 39-15186; AD 2007-18-06]

**RIN 2120-AA64**

#### **Airworthiness Directives; Pratt & Whitney JT9D-7R4 Turbofan Engines**

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

**ACTION:** Final rule.