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

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with changes, an interim rule that amended the phytosanitary treatment regulations for cold treatment enclosures and procedures, including regulations for precooling temperatures and temperature recording devices. The interim rule as amended by this document requires articles destined for cold treatment to be precooled at or below the highest temperature listed in the prescribed treatment schedule rather than at the intended treatment temperature. The amended interim rule also requires entities performing cold treatment to use measures approved by the Animal and Plant Health Inspection Service as adequate to ensure the security and integrity of cold treatment temperature data rather than requiring password-protected and tamperproof temperature recording devices specifically. These actions relieve certain requirements that we have determined are not necessary while continuing to ensure the effectiveness of cold treatment and prevent the introduction of plant pests into the United States.

EFFECTIVE DATE: August 25, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. S. Gadh, Senior Risk Manager–Treatments, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

The phytosanitary treatments regulations in 7 CFR part 305 set out general requirements for certifying or approving treatment facilities and for performing treatments listed in the Plant Protection and Quarantine (PPQ) Manual[1] for fruits, vegetables, and other articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States. Within part 305, § 305.6 (referred to below as the regulations) sets out requirements for treatment procedures, monitoring, facilities, and enclosures needed for performing cold treatment for imported fruits and vegetables and for regulated articles moved interstate from quarantined areas within the United States.

In an interim rule[2] published in the **Federal Register** on July 2, 2007 (72 FR 35909-35915, Docket No. APHIS-2006-0050), and effective on August 31, 2007, we amended cold treatment regulations by:

- Imposing more stringent requirements for precooling fruit prior to cold treatment;
- Requiring the use of password-protected and tamperproof temperature recording devices;
- Adding requirements to increase the effectiveness of cold treatment conducted in vessel holds and treatment enclosures; and
- Providing for officials authorized by APHIS to conduct audits of the cold treatment process.

We based these changes on recommendations made in an internal review of treatment procedures by the Center for Plant Health Science and Technology (CPHST) of APHIS' Plant Protection and Quarantine (PPQ) program and on the findings of an APHIS-commissioned study conducted by the Cannon Design firm. Their report, dated June 30, 2004, and titled "Supplementary Guidelines for Cold Treatment Application," analyzed cold treatment practices described in the regulations and the PPQ Treatment Manual and offered treatment recommendations.[3] Both the CPHST review and the Cannon Design study were initiated in response to concerns by industry representatives and other interested parties that existing procedural requirements were inadequate to prevent the development of "hot spots," in which parts of fruit consignments undergoing cold treatment remain several degrees warmer than the temperature prescribed in the cold treatment schedule.

[NOTE: On August 31, 2007, we published a technical amendment to the interim rule in the **Federal Register** (72 FR 50201-50204, Docket No. APHIS-2006-0050). The technical amendment, which was effective upon publication, was necessary because another rule (72 FR 39482-39528, Docket No. APHIS-2005-0106, published on July 18, 2007, and effective on August 17, 2007) reorganized the regulations by moving some of the treatment-related provisions of the fruits and vegetables regulations in 7 CFR part 319 to the cold treatments regulations. This reorganization meant that the amendatory instructions in the interim rule no longer matched up with the paragraph numbers that we intended to amend in the cold treatment regulations. The technical amendment corrected this problem by changing the paragraph numbers in the interim rule's amendatory instructions to reflect those that were changed in the cold treatments subpart. The technical amendment did not alter the provisions of the interim rule, but only presented how the changes to the interim rule appear in the cold treatments subpart of the regulations after the subpart was amended by the final rule that became effective on August 17, 2007.

Also, on December 11, 2007, we published a correction to the interim rule (72 FR 70219-70220, Docket No. APHIS-2006-0050) that reinstated provisions that were inadvertently dropped from the rule during the reorganization of the regulations described in the August 2007 technical amendment.

Finally, a final rule published in the **Federal Register** on January 26, 2010,

[1] The PPQ Treatment Manual is available at (*http://www.aphis.usda.gov/import_export/plants/manuals/ports/treatment.shtml*).

[2] To view the interim rule, the comments we received, and a distribution table listing changes to paragraph numbering in the regulations after publication of the interim rule, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0050*).

[3] Copies of this report are available on Regulations.gov at the address in footnote 2. 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.

and effective on February 25, 2010 (75 FR 4228-4253, Docket No. APHIS-2008-0022), removed treatments and treatment schedules from part 305 (and elsewhere in 7 CFR chapter III) and relocated them to the PPQ Treatment Manual. As part of this change, the section containing requirements for performing cold treatment was redesignated from § 305.15 to § 305.6, and minor changes were made to the section. The amendatory instructions in this document reflect that change.

To help guide the reader through this reorganization of the regulations, a distribution table laying out the changes in paragraph numbers from the interim through the final rule can be found on the Regulations.gov Web site (see footnote 2).

We solicited comments on the interim rule for 60 days ending August 31, 2007, and received three comments by that date. They were from foreign national plant protection organizations (NPPOs) and a private citizen. We have carefully considered the comments we received. One commenter raised no issues related to cold treatment or the changes we made in the interim rule. The issues raised by the other two commenters are discussed below.

General Comments

One commenter expressed concern that, because the rule was published as an interim rule, the commenter and other interested parties were not given an opportunity to contribute to the wording of the rule before it became effective.

Immediate action was necessary to amend the cold treatment regulations to ensure that such treatment continued to be effective against quarantine plant pests and thus prevent their introduction into the United States. During the 60 days between publication of the rule and its effective date, commenters were given the opportunity to review the rule and submit comments.

The same commenter also noted that the changed regulations would become effective during the produce export season of the commenter's country, giving exporters insufficient time for implementing the changes required for conducting cold treatment.

We made the interim rule effective 60 days after publication so that affected parties would have time to prepare for the changes in operations that would become necessary on the effective date of the rule.

Precooling Requirements

The interim rule amended the requirements for precooling, a procedure that involves cooling fruits or other regulated articles to a specified temperature before initiating cold treatment. To gain a better understanding of the precooling process, we commissioned Cannon Design to conduct a study and report their conclusions and recommendations. Cannon Design focused their investigation on the problem of "hot spots" in pallets of fruit undergoing cold treatment while in transit. Hot spots can occur when fruit continues to convert oxygen to carbon dioxide, a process that generates heat. After 7 days of treatment, fruit respiration can raise temperatures and create hot spots at the center of large fruit consignments several degrees warmer than fruit stacked at the perimeter. In their study, Cannon Design established that, in pallets of fruit loaded at 20 °C (68 °F) without significant air gaps between them, the fruit could maintain temperatures at or above the loading temperature during cold treatment. They concluded in their report that precooling before beginning treatment was essential to reducing the likelihood of hot spots.

The cold treatment schedules in the PPQ Treatment Manual allow for treatment temperatures ranging from -17.8 °C to 2.2 °C (0 °F to 36 °F), depending on the treatment schedule and the article to be treated. The highest treatment temperature listed in the treatment schedules, 36 °F (2.2 °C), was used by Cannon Design as the threshold for defining a hot spot. Through their modeling, they determined that precooling the fruit to 5 °C (41 °F) or lower eliminated hot spots (spots where the temperature was greater than 2.2 °C). Based on their findings, Cannon Design recommended that all fruit in a consignment be precooled to at least 5 °C before initiating cold treatment.

Prior to the interim rule, the regulations allowed precooling temperatures up to 4.5 °C (40 °F) for articles before undergoing cold treatment. However, based on our ongoing experience with administering cold treatments, we determined that this requirement was not sufficient to ensure that plant pests would be treated successfully. Accordingly, in the interim rule we amended the regulations to require that fruit intended for in-transit cold treatment be precooled to the treatment temperature. With that change, the required precooling temperature will always be 2.2 °C or lower, because none of the treatment options in the cold treatment schedules uses a treatment temperature above 2.2 °C. As a result of the August 2007 technical amendment and the January 2010 final rule, this requirement now appears in § 305.6(d)(4).

One commenter stated that APHIS has not established that precooling to the treatment temperature is necessary to achieve an effective treatment and that the requirements as amended in the interim rule are more restrictive than necessary.

The commenter stated that Cannon Design's modeling approach treats groups of pallet stacks as a single undifferentiated mass, with no gaps between stacks for airflow factored into the model. Should different pallet configurations be modeled, the commenter stated, the resulting changes in airflow could affect the size, location, and duration of any hot spots, which in turn could change the minimum precooling temperature needed to eliminate them.

The commenter suggested that APHIS revisit the modeling and include options in the final rule for equivalent methods of precooling that consider different pallet configurations and different precooling temperatures for each cold treatment, or range of treatments, within a treatment schedule and for each type of treatment enclosure. The commenter added that our requirements do not follow the less stringent precooling temperature of 5 °C or below recommended in the Cannon Design report we commissioned, and suggested that, in the case of cold treatment performed at temperatures up to 3 °C (37.4 °F), precooling to 5 °C is likely to be more than adequate.

We used the Cannon Design report as guidance in formulating the precooling requirements, but it should not be considered the definitive source for our decisions. The CPHST internal review and our experience in administering cold treatment also provided us with information for this purpose.

We acknowledge the commenter's point that further modeling of pallet configurations and airflow may yield additional information about the development of hot spots and optimal precooling temperatures. However, every consignment of shipped fruit is subject to numerous variables, including treatment enclosure conditions, pallet configurations, and airflow patterns, all of which can influence fruit temperatures within the consignment. Given these variables, we consider it infeasible to model scenarios and develop separate requirements for each different treatment environment.

As for the commenter's suggestion to raise the required precooling temperature to 5 °C, our review indicates that doing so would not provide adequate protection against

plant pests. In fact, we initiated the interim rule because we determined that the previous required precooling temperature of 4.5 °C, a lower precooling temperature than that recommended by the commenter, was not sufficient to eliminate hot spots for all treatment schedules at all temperatures.

However, we acknowledge that the amended precooling temperature requirements in the interim rule, which required precooling the entire consignment to the prescribed treatment temperature, can be made less restrictive and yet maintain an effective level of phytosanitary security.

A cold treatment "passes" when an official authorized by APHIS verifies that the fruit was held at the correct temperature for the correct time period in accordance with the regulations, and no hot spots are observed to have developed. Our past experience has established that cold treatments initiated after the fruit had been precooled to the highest temperature within the applicable treatment schedule can pass at treatment temperatures lower than the temperature at which the fruit was precooled. To cite an example, cold treatment schedule T107-a contains three treatment options: 36 °F or lower for 18 days, 35 °F or lower for 16 days, or 34 °F or lower for 14 days. Under T107-a, a consignment of fruit might first be precooled to the highest temperature in the schedule, 36 °F, and then begin treatment at 36 °F for 18 days. Soon after treatment begins, if the shipper estimates that the shipping time will be shorter than initially expected and subsequently decides to treat at 34 °F for 14 days, the fruit could be cooled to 34 °F for at least 14 days, and the treatment would pass, with no hot spots observed. Based on this experience, we have determined that the treatment temperature does not necessarily have to be equal to the precooling temperature to result in an effective treatment, although we also established that the previous precooling temperature of 4.5 °C is too high.

Given these considerations, we are changing the precooling temperature requirement to allow fruit intended for in-transit cold treatment to be precooled to a temperature no higher than the highest temperature of the treatment schedule under which the fruit will be treated. With the change we are making to the precooling temperature requirements, the maximum allowable precooling temperature will never be above 36 °F (2.2 °C), which is 2.3 °C lower than the precooling temperature required prior to publication of the interim rule.

It should be noted that this change does not affect any of the required cold treatments themselves; it only slightly adjusts the precooling requirements. Depending on what treatment option is selected from a schedule, some fruit will still require precooling at the actual treatment temperature. However, our experience indicates that as long as a consignment of fruit is precooled to the highest treatment temperature listed in the applicable schedule and treatment is performed in accordance with all other treatment requirements, any of the treatment options within that schedule can be administered to provide effective phytosanitary security against the plant pests of concern.

The interim rule required that fruit precooled outside the treatment enclosure be no more than 0.28 °C (0.5 °F) above the temperature at which the fruit will be treated prior to loading for treatment. We are amending that requirement in this final rule because in some cases the difference between the treatment temperature and the highest temperature in the overall treatment schedule is greater than 0.28 °C. As amended, § 305.6(d)(4) requires that fruit precooled outside the treatment enclosure be no more than 0.28 °C above the highest treatment temperature in the schedule under which the fruit will be treated, as listed in the applicable treatment schedule.

Temperature Monitoring Requirements

In the interim rule, we added a requirement that allowed precooling in in-transit treatment enclosures only if 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. In order to manually monitor fruit temperatures prior to treatment, an official must ensure that there is sufficient space within the enclosure to gain access to the entire consignment. If fruit is precooled outside the treatment enclosure, an official authorized by APHIS must 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.

One commenter stated that the requirement for manual sampling was unnecessary, adding that it fails to recognize alternative and equivalent options for using remote monitoring to measure fruit temperature. As support, the commenter cited a test conducted by Cannon Design in which a pallet of citrus was cooled, followed by pulp temperature readings being taken in fruit throughout the pallet. While readings taken at the bottom of the pallet were lower due to direct airflow, fruit temperatures throughout the rest of the pallet were nearly uniform due to thermal conduction. The commenter reasoned from this finding that the specific fruit sampled, and the carton from which it is chosen, are essentially unimportant to determining whether precooling requirements for a given pallet have been met, so there should be no requirement for an inspector to have the ability to manually monitor fruit temperatures prior to beginning treatment. The commenter suggested that we amend the regulations to provide for methods other than the manual sampling of pulp temperatures.

We acknowledge that the Cannon Design report found that pallets of fruit are cooled primarily by thermal conduction, although the report also cites airflow through box openings as a contributing factor to the cooling process. Cooler temperature readings at the bottom of the pallet indicate that airflow can influence temperature variations among individual pallets of fruit. Depending on the type of enclosure and the configuration of pallets, differences in airflow patterns can accelerate or impede cooling in different parts of a consignment. For this reason, an official must be able to sample a pallet on all sides to verify that precooling has uniformly and sufficiently cooled the entire consignment. Remote probes will not achieve the same result; they remain in a fixed position and cannot account for container and airflow variables, meaning they cannot provide as thorough or reliable a level of verification.

Continuation of Current Procedures

A commenter representing a foreign NPPO asked whether that organization could continue using its own requirements for precooling prior to cold treatment instead of following the new requirements for precooling in the interim rule (which now appear in § 305.6(d)(4)). The commenter's NPPO observes the following requirements: 1) Fruit must be precooled to the target temperature for 72 hours and must be at the target temperature for the last 24 hours of this period (APHIS imposes no time requirement for cooling in the regulations); and 2) a variance of 0.3 °C is allowed when the temperature is checked with a handheld thermometer (we allowed a variance of 0.28 °C in the interim rule, though it did not specify the type of thermometer).

We have determined that the precooling requirements observed by the commenting NPPO are consistent with the new requirements established in the interim rule, as the NPPO already requires precooling to the treatment temperature. However, for fruit precooled outside the treatment enclosure, we require that fruit pulp temperature samples be taken prior to loading the fruit, and that these sample temperatures not vary more than 0.28 °C above the highest temperature of the prescribed treatment schedule.

Sampling Location

The interim rule provided that an official authorized by APHIS must 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. One commenter asked whether sampling can be conducted after removing the fruit from the precooling space and before loading it into the treatment enclosure.

Temperature sampling should be conducted immediately before the fruit is loaded into the treatment enclosure. If the fruit sits outside the precooling space for any length of time before loading into the treatment enclosure, this location should be where the temperature sampling is conducted.

Officials Authorized by APHIS

The interim rule also included requirements that only officials authorized by APHIS may oversee proper administration of cold treatment, which includes approving the loading of fruit in the treatment enclosure and sampling fruit pulp temperatures. One commenter, a foreign NPPO, sought confirmation that an official authorized by APHIS can be an NPPO official from the commenter's country. Likewise, a commenter from another foreign NPPO requested that inspectors from that country be allowed to act as an official authorized by APHIS as defined in the interim rule.

The NPPOs of both these countries are signatories to the International Plant Protection Convention (IPPC) and therefore observe phytosanitary treatment standards that are recognized by other signatories, including the United States. Officials from any IPPC member country who are trained and authorized by APHIS can verify compliance with precooling requirements, approve the loading of fruit into treatment enclosures, initiate in-transit cold treatment, and exercise other responsibilities specified in the regulations.

Pallet Stacking

In the interim rule, we added requirements regarding vessel enclosures used for in-transit cold treatment of fruit. One specific change we made was to prohibit double-stacking of pallets, because doing so can constrict airflow to the fruit and allow hot spots to form.

A commenter requested that we define the term double-stacking with regard to pallets of fruit.

We define the term to mean one loaded pallet physically resting atop another loaded pallet.

Another commenter disagreed with our prohibition on double-stacking of pallets. They noted that the Cannon Design report recommended placing spacers between pallets to maintain adequate cooling airflow.

The Cannon Design study examined the effects of airflow on temperature in pallets of fruit. Through computer modeling and real-world simulations, Cannon Design determined that airflow patterns around pallet stacks influence the rate of cooling. To speed the rate of cooling in fruit, they recommended that air gaps be maintained by placing spacers between pallet stacks.

We concur with Cannon Design's conclusion that air gaps between and around pallets can affect the rate of cooling, but the report does not discuss using spacers as part of the physical testing that was conducted. We therefore lack sufficient data to determine the actual implications of using spacers between double-stacked pallets of fruit. For this reason, we are not changing the regulations established by the interim rule regarding double-stacking of pallets.

Security of Temperature Recorders

In the interim rule, we added requirements to the treatment procedures to help ensure the integrity of temperature recording. We required the temperature recording devices used during treatment to be password-protected and tamperproof. In addition, we required the devices to be capable of recording the date, time, and sensor number and automatic and continuous records of the temperature during all calibrations and during treatment.

One commenter stated that the requirement for password-protected and tamperproof temperature recording devices does not allow for equivalent measures for recording fruit temperatures. The commenter added that the security and integrity of cold treatment data could be achieved by other methods, such as proprietary software for interfacing with temperature recorders, encrypted data, limited distribution of necessary software, or locking doors to rooms containing recording equipment. The commenter requested that APHIS recognize equivalent temperature recording methods that can provide an effective level of security.

We agree that the security and integrity of cold treatment data is achievable through equivalent measures, as long as the recording devices and methods used conform to all applicable requirements. For this reason, we are revising the sentence "Temperature recording devices used during treatment must be password-protected and tamperproof" in § 305.6(d)(7) to read "Temperature recording devices used during treatment must be secured using measures approved by APHIS as adequate to ensure the security and integrity of cold treatment data." Regardless of which measures are employed to ensure the security and integrity of temperature recording devices, officials authorized by APHIS are required to identify instances of recording device manipulation or malfunction and make decisions about certifying consignments as necessary.

One commenter asked APHIS which organization was responsible for ensuring that shippers comply with the requirements for password-protected and tamperproof temperature recording devices. The commenter, a foreign NPPO, also asked whether officials of its organization with access to temperature recording devices and passwords would be liable for any problems involving the equipment, and expressed concerns about the availability and cost to exporters of such devices.

As noted above, we are amending the regulations established by the interim rule so that they no longer specifically require that temperature recording devices be password-protected and tamperproof. As a result, exporters will have the flexibility to use other measures to ensure adequate data security and integrity. APHIS and other NPPOs work in cooperation to ensure compliance with treatment requirements, including data security and integrity.

Placement of Temperature Probes or Sensors

In the interim rule, we added provisions specifying that a minimum of four temperature probes or sensors is required for vessel holds used as treatment enclosures, and a minimum of three temperature probes or sensors is required for other treatment enclosures.

One commenter stated that it is standard practice for APHIS to require a minimum of four pulp temperature sensors and two air sensors in an independent deck; six pulp sensors (three per deck) and three air sensors (one in the bottom deck and two in the upper deck) for a common deck; and two pulp sensors in a small lower bow deck. The commenter noted the interim rule requires a minimum of four temperature probes or sensors for vessel holds used as treatment enclosures and three sensors for other types of treatment enclosures and asked where the additional temperature sensors are to be placed in the vessel hold.

The requirements established in the interim rule set the minimum number of probes or sensors required for an approved vessel hold regardless of deck size or type, and provide that an official authorized by APHIS will have the option to require that additional temperature probes or sensors be used depending on variables such as treatment enclosure conditions, pallet configurations, and airflow patterns.[4]

Therefore, for the reasons given in the interim rule and this document, we are adopting the interim rule as a final rule with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning 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.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This rule revises the precooling temperature and temperature recording device requirements included in the interim rule to make them less restrictive. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Regulatory Flexibility Act

This final rule follows an interim rule that amended the regulations for cold treatment enclosures and procedures, including regulations for precooling temperatures and temperature recording devices.

We have prepared an economic analysis for this final rule. The analysis, which considers the number and types of entities that are likely to be affected by this action and the potential economic effects on those entities, provides the basis for the Administrator's determination that the rule will not have a significant economic impact on a substantial number of small entities. The full economic analysis may be viewed on the Regulations.gov Web site (see footnote 2 for instructions for accessing Regulations.gov). Copies of the economic analysis are also available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

This final rule follows an interim rule that amended the phytosanitary treatment regulations for cold treatment enclosures and procedures, including regulations for precooling. As described in the economic analysis, it is unlikely that U.S. entities will be directly affected by the new cold treatment requirements; compliance will be the responsibility of the exporting entity. Any reporting or recordkeeping requirements for U.S. entities will be those normally associated with importing fruit from abroad. In theory, if foreign exporters do experience a cost increase because of this amendment, the quantity of fruit supplied may decrease. This decrease could result in an increase in the price of fruit, costing U.S. consumers and benefiting U.S. producers and suppliers. However, these impacts, if they occur, are expected to be negligible. Any additional costs because of this amendment will represent only a small fraction of the price of the fruit.

The number of U.S. industries that could be potentially affected by this amendment are small, and any impacts on these industries due to these changes in the cold treatment regulations will be insignificant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 305

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

■ Accordingly, the interim rule amending 7 CFR part 305 that was published at 72 FR 35909-35915 on July 2, 2007, and amended in documents published at 72 FR 50201-50204 on August 31, 2007, and 72 FR 70219-70220 on December 11, 2007, is adopted as a final rule with the following changes:

PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for 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 305.6 is amended as follows:

■ a. In paragraph (c)(1), by removing the words "treatment temperature" the first time they occur and adding the words "highest temperature of the treatment schedule under which the fruit will be treated" in their place.

■ b. By revising paragraph (d)(4) to read as set forth below.

■ c. In paragraph (d)(7), by removing the words "password-protected and tamperproof" and adding the words "secured using measures approved by APHIS as adequate to ensure the security and integrity of cold treatment data" in their place.

§ 305.6 Cold treatment requirements.

* * * * *

(d) * * *

(4) Fruit intended for in-transit cold treatment must be precooled to no more than the highest temperature of the treatment schedule under 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 highest temperature of the treatment schedule under 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 highest temperature of the treatment schedule under which the fruit will be treated. 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 highest temperature of the treatment schedule under which the fruit will be treated, as verified by an

[4] See Chapter 6 of the PPQ Treatment Manual for practices regarding sensor placement on vessels: (*http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf*).

official authorized by APHIS, prior to beginning treatment.

* * * * *

Done in Washington, DC, this 18th day of August 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–21134 Filed 8–24–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC10

Common Crop Insurance Regulations; Apple Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Apple Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The changes will apply for the 2011 and succeeding crop years.

DATES: This rule is effective August 25, 2010.

FOR FURTHER INFORMATION CONTACT: Erin Albright, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through March 31, 2012.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. *See* the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes changes to the Common Crop Insurance Regulations, Apple Crop Insurance Provisions that were published by FCIC on September 8, 2009, as a notice of proposed rulemaking in the **Federal Register** at 74 FR 46023—46026. The public was afforded 60 days to submit written comments after the regulation was published in the **Federal Register**. Based on comments received and specific requests to extend the comment period, FCIC published a notice in the **Federal Register** at 74 FR 59108 on November 17, 2009, extending the initial 60-day comment period for an additional 30 days, until December 17, 2009.

A total of 193 comments were received from 39 commenters. The