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ALEXANDER L. STEVAS,
CLERK

No. 87, Original

In The Supreme Court of The United States

October Term, 1980

STATE OF CALIFORNIA, Plaintiff

v.

STATE OF TEXAS, Defendant

Original Action

MOTION TO INTERVENE

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Attorney for Intervenors/ Amici Curiae
California Avocado Commission
Calavo Growers of California, Inc.
Charles G. Henry
H & H Packing House, Inc.
Western Growers Association
Sunkist Growers, Inc.
California-Arizona Citrus League
California Citrus Mutual

Of Counsel:

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MOTION TO INTERVENE

California Avocado Commission, Calavo Growers of California, Inc., Charles G. Henry, H & H Packing House, Inc., Western Growers Association, Sunkist Growers, Inc., California-Arizona Citrus League and California Citrus Mutual respectfully move this Court to grant leave to intervene as plaintiffs and file a proposed Complaint attached hereto in the above-entitled cause for the following reasons:

1. Movants or their members are engaged in growing, shipping, handling, selling, packing, or marketing of California avocados, peppers, tomatoes, and/or citrus fruits, among other fruits and vegetables.

2. Texas is the second largest market in the United States for avocados, consuming about 10 percent of California's avocado production, or an estimated 40 million pounds of avocados in 1981. The members of Calavo Growers of California, Inc., anticipate sales of avocados to Texas for 1981 at a value of \$19,593,904.00, and sales of avocados shipped through Texas to the Southeast at a value of \$4,835,000.00. Sunkist

Growers, Inc., estimates 1981 sales of California citrus to Texas customers to be valued at \$10,000,000.00 while its shipments through Texas are estimated at a value of \$19,000,000.00. Western Growers Association anticipates its members' shipments of affected fruit to be \$119,000,000.00. California-Arizona Citrus League projects member shipments to Texas in 1981 to be valued at \$14,700,000.00 and shipments through Texas to be \$29,000,000.00.

3. Movants seek injunctive relief against enforcement of the Order complained of in the main cause as it applies to them and declaratory relief that the Order is unconstitutional.

4. Rule 9.2 of this Court states that the Federal Rules of Civil Procedure may be taken as a guide to procedure in Original actions. Federal Rule of Civil Procedure 24(b) governs permissive intervention and states that when an applicant's claim and the main action have a question of law or fact in common, that applicant may be permitted to intervene. Movants' claims have questions of law and fact in common with the main action herein.

5. Pursuant to the Federal Plant Pest Act, 7 U.S.C. §150aa et seq., the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) has promulgated regulations which restrict the interstate movement of certain fruits and vegetables, from areas in Santa Clara and Alameda Counties in California because of the occurrence of the Mediterranean fruit fly. Movants neither grow, ship to consumers, nor market any fruit in Texas that is produced near or in either infested county. The Movants' representation in the main action by the State of California is inadequate for the reason that there are distinct questions of fact relating to Movants.

6. The Order complained of in the main action will effectively prevent Movants from shipping any produce to or through Texas. Movants will suffer direct and immediate economic losses as a result of that Order. For this reason, Movants have a right at stake distinct from that of the people of the State of California as represented by the Attorney General of that state.

7. Without the relief requested, Movants would effectively be bound by the decision rendered in the action herein.

Movants will suffer irreparable damage even if a decision is rendered for California if an injunction is not granted by March 1, 1981. An adverse decision by this Court against the State of California will operate as a bar to further action by Movants against similar quarantines in other states.

8. If Movants are not provided this forum in which to adjudicate their claim, they will be faced with the burden of litigating the same questions of law in every state in which a similar quarantine is proposed.

WHEREFORE, the Movants request that leave be granted to intervene and file the Complaint attached hereto.

Respectfully submitted,

Julian B. Heron, Jr.
Attorney for Intervenors/Amici Curiae

Of Counsel:

Alexander M. Heron
David R. Rivero
Mitchell H. Stabbe
Rowena M. Young

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COMPLAINT IN INTERVENTION FOR
DECLARATORY AND INJUNCTIVE RELIEF

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

STATE OF CALIFORNIA, *Plaintiff*

v.

STATE OF TEXAS, *Defendant*

Original Action

**COMPLAINT IN INTERVENTION FOR
DECLARATORY AND INJUNCTIVE RELIEF**

1. This action, as hereinafter more particularly shown, arises under the Constitution and laws of the United States. The original jurisdiction of this Court is invoked under the authority of Article III, Section 2, of the Constitution of the United States and 28 U.S.C. Section 1251.

2. Plaintiff-Intervenor, California Avocado Commission, is organized under the laws of California, and has offices located at 4533-B MacArthur Boulevard, Newport Beach, California. It represents over 8500 avocado growers in the State of California.

3. Plaintiff-Intervenor, Calavo Growers of California, Inc., is a farmer membership cooperative, with offices located in Los Angeles, California, and is organized by California avocado growers who regularly market avocados in the State of Texas. It is engaged in the packing, selling, and shipping of avocados to the State of Texas.

4. Plaintiff-Intervenor, Charles G. Henry, is a citizen of the United States, a resident in the City of Escondido in the

State of California, and is a grower of avocados, some of which are for sale in the State of Texas.

5. Plaintiff-Intervenor, H & H Packing House, Inc., is a California corporation, with offices located at 18040 Lemon Street, Yorba Linda, California. It is engaged in the growing and packing of avocados for shipment to customers in the State of Texas.

6. Plaintiff-Intervenor, Western Growers Association, is a nonprofit agricultural association located at 17620 Fitch, Irvine, California 92714 with approximately 700 members in California who grow, ship and pack approximately 80% of the fresh fruit and vegetables produced in California and Arizona.

7. Plaintiff-Intervenor, Sunkist Growers, Inc., is a non-profit cooperative marketing association with offices located in Van Nuys, California. It markets fresh and processed citrus fruit, including oranges, lemons, grapefruit, limes and tangerines, produced by 6500 grower-members in the States of California and Arizona.

8. Plaintiff-Intervenor, California-Arizona Citrus League, is a voluntary, nonprofit trade association of shippers and handlers of California and Arizona citrus fruits, including oranges, lemons, grapefruit, limes and tangerines, and has offices located in Van Nuys, California. Members are farmer co-operatives and independent shippers which represent over 90 percent of the 10,500 citrus fruit growers in California and Arizona. Its members handle approximately 85 percent of all fresh citrus grown in California and Arizona. This fruit is marketed in both fresh and processed forms.

9. California Citrus Mutual is an agricultural cooperative association, organized and operated under the California Food and Agricultural Code. It represents 856 farming corporations and families producing approximately 52,000 acres of oranges throughout California.

10. This action is brought to restrain the enforcement against Plaintiff-Intervenors of an emergency Order, Title 4, Section 5 (176.22.20.001) of the Texas Administrative Code, Exhibit A, attached, or any similar order, requiring treatment, certification and labelling of apples, apricots, avocados, bell peppers, Calamondin oranges, cherries (sweet and sour), citrus citron, cucumber, grapefruit, grapes, lemons, limes, mandarin

oranges, melons, mock oranges, nectarines, oranges, peaches, pears, peppers, plums, sour oranges, sweet oranges, tangerines, and tomatoes, among other fruits and vegetables from California, before they can enter Texas.

11. Pursuant to the Federal Plant Pest Act, 7 U.S.C. §150aa et seq., the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) has promulgated regulations which restrict the interstate movement of apples, avocados, Calamondin oranges, cherries (sweet and sour), citrus citron, grapefruit, grapes, lemons, limes, mandarin oranges, mock oranges, nectarines, peaches, pears, peppers, plums, sour oranges, sweet oranges, and tomatoes, among other fruits and vegetables, from areas in Santa Clara and Alameda Counties in California for the purpose of preventing the artificial spread of the Mediterranean fruit fly.

12. APHIS found that, except for the regulated areas in California and for Hawaii, the Mediterranean fruit fly is not known to occur in the United States. The relevant provisions of the *Federal Register* are attached hereto as Exhibit B.

13. Plaintiff-Intervenor California Avocado Commission submitted comments to the Department of Agriculture on the APHIS regulations. The State of Texas submitted no comments on these rules.

14. On February 17, 1981, pursuant to Art. 135a-1, Tex. Rev. Civ. Stat. Ann., Defendant, acting through Reagan V. Brown, Commissioner of the Texas Department of Agriculture, issued the emergency Order complained of establishing a quarantine on certain fruits and vegetables from all areas of California, and specifying certain conditions under which regulated articles may be certified as free of Mediterranean fruit fly before they enter Texas. The Order requires that each shipment must be accompanied by an official certificate of treatment, and each box or package must be stamped with the statement that the contents have been treated in compliance with the Texas requirements. The requirements apply whether or not the shipments come from an area which APHIS has deemed free of the Mediterranean fruit fly.

15. The Order will be effective as of March 1, 1981. The Order was promulgated without providing for a public hearing or affording an opportunity for public comment.

16. The Order is unconstitutional and void in the following respects:

a. The power of the Defendant to promulgate the Order is preempted under the Supremacy Clause of the Constitution of the United States, Article VI, Section 2, because Congress has acted and occupied the field by virtue of the enactment of the Federal Plant Pest Act;

b. The power of the Defendant to promulgate the Order is preempted under the Supremacy Clause of the Constitution of the United States, Article VI, Section 2, because where, as here, the Secretary of Agriculture has acted pursuant to the Federal Plant Pest Act, Congress has occupied the field; and

c. The Order as applied, would impose an unconstitutional burden on interstate commerce in violation of the Commerce Clause of the Constitution of the United States, Article I, Section 8, Clause 3.

17. Plaintiff-Intervenor California Avocado Commission's members invest approximately 4.5 percent of their returns on avocados in advertising and promotion of California avocados. Since 1962, California Avocado Commission has invested approximately \$40 million in advertising and promotion of California avocados.

18. Plaintiff-Intervenor Calavo Growers of California's members anticipate selling in Texas in 1981 over 35,384,000 pounds of avocados at an estimated dollar value of \$19,593,904.00.

19. Plaintiff-Intervenor Charles G. Henry presently has contract obligations to deliver avocados to Texas wholesalers and retailers in the amount of approximately \$80,000.00 worth of avocados per week.

20. Plaintiff-Intervenor H & H Packing House, Inc., anticipates and is planning for delivery of 5 million pounds (200,000 boxes) of California avocados to Texas customers at an estimated value of \$1,800,000.00.

21. Plaintiff-Intervenor Western Growers Association anticipates its members' shipments of affected fruit to be in excess of \$119,000,000.00.

22. Plaintiff-Intervenor Sunkist Growers, Inc., in March 1980, shipped 232,000 cartons or approximately 4,640 tons

of citrus fruit for use in Texas. For the month of March 1981, it is estimated that Sunkist will ship 200,000 cartons into Texas for use in Texas at an estimated value of \$1 million. In addition, Sunkist currently utilizes shipping routes through Texas as a corridor to its Southeastern United States markets.

23. Plaintiff-Intervenor California-Arizona Citrus League's members ship fresh citrus to the Southeastern United States through a Texas corridor.

24. Neither the United States Department of Agriculture nor the State of California is prepared to issue the certifications required by the State of Texas at this time.

25. No fumigation facilities are available to Plaintiff-Intervenors to permit them to comply with the Texas treatment requirements.

26. It is not practicable for Plaintiff-Intervenors to comply with the Order's fumigation requirements.

27. The required treatment will render much of Plaintiff-Intervenors' produce unmarketable.

28. The fumigation requirements which require seven to ten days treatment before shipment, and the cold storage requirements which require ten to sixteen days treatment cannot be met by March 1, 1981.

29. The Order would effectively prohibit Plaintiff-Intervenors from shipping their products to Texas.

30. Plaintiff-Intervenors have no adequate remedy except by way of an injunction to restrain Defendant from enforcing against them the provisions of the Order.

31. Plaintiff-Intervenors will suffer irreparable injury unless they are afforded a preliminary injunction, before March 1, 1981, effective until these matters have been resolved.

WHEREFORE, Plaintiff-Intervenors demand judgment against Defendant and pray that Defendant be both temporarily and permanently restrained and enjoined from enforcing the aforesaid Order, or any similar order, here tofore complained of, and that this Court enter a Declaratory Judgment in accordance with the provisions of the United States Code, Title 28, Sections 2201 and 2202, declaring that the provisions of the Order, or any similar order, are null, void and have no

effect, as being a contravention of the applicable provisions of the Constitution of the United States.

Julian B. Heron, Jr.
Attorney for Plaintiff-Intervenors

Of Counsel:

Alexander M. Heron
David R. Rivero
Mitchell H. Stabbe
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TEXAS DEPARTMENT OF AGRICULTURE QUARANTINES

The Texas Department of Agriculture adopts on an emergency basis section 176.22.20.001 to prevent the introduction of the Mediterranean Fruit Fly, *Ceratitis capitata*, into the State of Texas. Due to the presence of this serious pest in the State of California, or in any area in which it may become established, it is necessary to exclude from entry into Texas certain fruit hosts, soil, and products which may transport the Mediterranean fruit fly from California or any infested area. The established infestation of Mediterranean fruit fly in the State of California and the tremendous volume of host fruit moving in interstate commerce from California to Texas pose an extremely serious treat to Texas' agricultural industry.

This rule is promulgated to provide a quarantine on the State of California or on any infested area, and to specify conditions under which regulated articles may be certified as free of Mediterranean fruit fly, when moved from the quarantined area to Texas. Article 135A-1 of V.A.C.S., known as the General Pest Control Law of Texas states in Section 6 that if a public emergency arises at any time in which there is a likelihood of the introduction into this State or dissemination within the State of any plant disease or insect pest dangerous to the interests of horticulture and agriculture within this State, the Commissioner of Agriculture is hereby authorized to immediately establish an emergency quarantine at the boundaries of this State, or elsewhere within the State, and immediately make and enforce such rules and regulations as may be deemed necessary to prevent the introduction of any dangerous insect pests or plant disease into this State, and to prevent the carrying of such dangerous insect pest or plant disease from one part of the State into another part of the State, except under safeguards deemed adequate to prevent the dissemination of the pest; provided however, that this emergency quarantine shall not remain in effect for more

“Exhibit A”

than thirty (30) days from date of promulgation, unless repromulgated and perpetuated by the Commissioner after official hearing, as provided herein.

This emergency rule is being promulgated in accordance with the above provision of the General Pest Control Law.

This rule is promulgated to provide a quarantine on the State of California or on any infested area, and to specify conditions under which regulated articles may be certified as free of Mediterranean fruit fly, when moved from the quarantined area to Texas. Under the authority of the Pest Control Law, I, Reagan V. Brown, Commissioner of Agriculture, do hereby promulgate the following emergency order to become effective on March 1, 1981.

176.22.20.001. Mediterranean Fruit Fly Quarantine.

(a) Definitions. For the purpose of this chapter, the following definitions shall apply.

Certificate. An official document stipulating compliance with the requirements of the Texas Department of Agriculture.

Common carrier. An individual or corporation licensed to transport persons, goods, or messages for compensation.

Host plant. A plant or part thereof known or suspected of harboring or transporting Mediterranean fruit fly in any of its stages.

Infested. Actually harboring Mediterranean fruit fly in any of its stages or so exposed to infestation by Mediterranean fruit fly that it is reasonable to believe that an infestation could exist.

Movement (movement, move). Shipped, deposited for transmission in the mail, otherwise offered for shipment, received for transportation, carried or otherwise transported, or moved or allowed to be moved, by mail or otherwise.

Mediterranean fruit fly. The insect known as the Mediterranean fruit fly, *Ceratitis capitata* (Wiedeman), in any state of its development.

Person. Any individual, partnership, corporation, company, society, association, or other organized group.

Regulated area. Any state or portion thereof designated by the Texas Department of Agriculture, the USDA, or

the affected state as an area infested with or regulated due to the presence of Mediterranean fruit fly.

Regulated articles. Any article, including soil, capable of transporting or harboring Mediterranean fruit fly.

Shipment or shipments. The act or process of transferring or moving products from one point to another, or the products being transferred or moved.

USDA. United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS).

(b) **Quarantined Area.** The entire State of California.

(c) **Shipping Requirements.** All movements of regulated articles including host fruit and soil from a designated regulated area, or from any infested area, are prohibited entry into Texas, unless accompanied by an official certificate of inspection or treatment issued by or under the authority of USDA or the appropriate official of the State of California. Such certificates shall denote compliance with the regulations of the Texas Department of Agriculture. In addition each box, bag, crate, or container of regulated articles must be stamped with the statement "THIS PRODUCT HAS BEEN TREATED FOR COMPLIANCE WITH THE MEDITERRANEAN FRUIT FLY QUARANTINE OF THE STATE OF TEXAS." Included are commercial shipments, shipment by common carrier, personal cargo in private vehicles and aircraft, and personal possessions of persons being transported by common carrier.

(d) **Regulated Articles.** Any fruit, berries, or vegetables of the host plant included in the following host list and soil, both separate from or attached to plants, or plant parts. The purpose of the list is to provide information as to the preferred hosts of Mediterranean fruit fly; however, it is not to be considered as all inclusive.

(e) **Host List.** All fruits, vegetables, or berries of the following plants:

- Almond (*Prunus duleis* (*P. amygdalus*))
- Apple (*Malus sylvestria*)
- Apricot (*Prunus armeniaca*)
- Avocado (*Persea americana*)
- Barbados cherry (*Malpighia glabra*)
- Bell Pepper (*Capsicum frutescens*)
- Calamondin orange (*Citrus mitis*)

Ceylon-gooseberry, Kei apple (*Dovyalis* spp.)
 Cherries (sweet and sour) (*Prunus avium*, *Prunus cerasus*)
 Citrus citron (*Citrus medica*)
 Coffee (*Coffea arabica*)
 Cucumber, muskmelon, melon, and other species of genus (*Cucumis* spp.)
 Date (*Phoenix dactylifera*)
 Fig (*Ficus carica*)
 Grape (*Vitis vinifera*)
 Grapefruit (*Citrus paradisi*)
 Guava (*Psidium guajava*)
 Japanese persimmon (*Diospyros kaki*)
 Kumquat (*Fortunella japonica*)
 Lemon (*Citrus limon*)
 Litchi (*Litchi chinensis*)
 Lime (*Citrus aurantiifolia*)
 Logan (*Euphonia longana*)
 Loquat (*Eriobotrya japonica*)
 Mandarin orange (tangerine) (*Citrus reticulata*)
 Mock orange (*Murraya exotica*)
 Mango (*Mangifera indica*)
 Mountain apple (*Syzygium malaccense* (*Eugenia malaccensis*))
 Natal plum (*Carissa macrocarpa* and *Terminalia chebula*)
 Nectarine (*Prunus persica*)
 Olive (*Olea europaea*)
 Opuntia cactus (*Opuntia* spp.)
 Orange (*Citrus* spp.)
 Papaya (*Carica papaya*)
 Peach (*Prunus persica*)
 Pear (*Pyrus communis*)
 Pepper (*Capsicum annuum* and *Capsicum frutescens*)
 Pineapple guava (*Feijoa sellowiana*)
 Pummelo (shaddock) (*Citrus grandis*)
 Pomiform guajava (*Psidium guajava pomiferum*)
 Plum (*Prunus domestica*)
 Pyriform guajava (*Psidium guajava pyriferum*)
 Quince (*Cydonia oblonga*)

Rose apple (*Syzygium jambos* (*Eugenia jambos*))
 Sour orange (*Citrus aurantium*)
 Spanish cherry (Brazilian plum) (*Eugenia dombeyi*
 (*E. brasiliensis*))
 Strawberry guava (*Psidium cattleianum*)
 Surinam cherry (*Eugenia uniflora*)
 Sweet orange (*Citrus sinensis*)
 Tomato (pink and red ripe) (*Lycopersicon esculen-*
tum)
 Tangerine (*Citrus* spp.)
 White sapote (*Casimiroa edulis*)
 Yellow oleander (bestill) (*Thevetia peruviana*)

Except that the list does not include any fruits, vegetables, or berries which have been canned, or frozen below -17.8°C . (0°F .).

Soil within the drip area of plants which produce the fruits, vegetables, or berries listed above, and

Any other product, article, or means of conveyance, of any character whatsoever, not covered by subparagraphs above, when it is determined by an inspector that it presents a risk of spread of the Mediterranean fruit fly and the person in possession thereof has actual notice that the product, article or means of conveyance is subject to the restrictions of this section.

(f) Certification treatment. Treatment for regulated articles shall be as follows:

(A). Avocado: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m^3 for $2\frac{1}{2}$ hours at 21°C . (70°F .) or above followed by refrigeration for 7 days at 7.22°C . (45°F .) or below. The 7 day period may include up to 24 hours precooling time. Time between fumigation and start of cooling not to exceed 24 hours, but must include at least 30 minutes aeration.

(B). Calamondin orange, citrus citron, grapefruit, kumquat, lemon, lime, mandarin orange, tangerine, orange, and pomelo: Fumigation with ethylene dibromide (EDB) at normal atmospheric pressure. Dosage as follows:

Fruit Load in Chamber	Dosage of EDB in g/m ³ for 2 hrs.	
	15.5°-20.5°C. (60°-69°F.)	21°C. or above (70°F. or above)
25% or less	10 g	8 g
More than 25% but less than 50%	12 g	10 g
50% or more	14 g	12 g

Required post treatment aeration: Forced circulation in the fumigation chamber for ½ hour following treatment and then placed in a well ventilated area.

(C) Tomato: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21°C. (70°F.) or above.

(D) Bell pepper, tomato, and zucchini squash: heat the article by saturated water vapor at 44.44°C. (112°F.) until approximate center of article reaches 44.44°C. (112°F.) and maintain at 44.44°C. (112°F.) for 8¾ hours, then immediately cool.

NOTE: Commodities should be tested by shipper at the 44.44°C. (112°F.) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures the shipper believes necessary. It is common to perform pretreatment conditioning. For example, it is the practice to condition eggplant at 43.3°C. (110°F.) at 40 percent relative humidity for 6 to 8 hours.

(E) Apple, apricot, cherry, grape, peach, pear, and plum: Fumigation with 32 g/m³ methyl bromide at 21°C. (70°F.) or above (chamber load not to exceed 80 percent of volume), and at normal atmospheric pressure, followed by refrigeration, as set forth below.

Fumigation exposure time	Refrigeration
2 hours	4 days at 0.55°-2.7°C. (33°-37°F.) or 11 days at 3.33°-8.3°C. (38°-47°F.)
2½ hours	4 days at 1.11°-4.44°C. (38°-40°F.) or 6 days at 5.0°-8.33°C. (41°-47°F.) or 10 days at 8.88°-13.33°C. (48°-56°F.)
3 hours	3 days at 6.11°-8.33°C. (43°-47°F.) or 6 days at 8.88°-13.33°C. (48°-56°F.)

Minimum concentrations for above fumigations. (25 g minimum gas concentration at first ½ hour).

(18 g minimum gas concentration at 2 or 2½ hours).

(17 g minimum gas concentration at 3 hours).

Aerate all fruit at least 2 hours following fumigation. Time lapse between fumigation and start of cooling not to exceed 24 hours.

NOTE: Some varieties of fruit may be injured by the 3 hour exposure. Shippers should test treat before making commercial shipments.

(F) Bell peppers: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 2½ hours at 21°C. (70°F.) or above.

NOTE: Bell peppers have been found marginally tolerant to methyl bromide fumigation. Shelf life after treatment is reduced to between 5 to 7 days. Injury may appear as pitting on the skin of the pepper, darkening of the seed and placental material, and internal decay resulting from killing of the stem and calyx.

(G) Apple, apricot, Calamondin, orange, cherry, citrus citron, grape, grapefruit, mandarin orange, nectarine, peach, pear, plum, prune, sour orange and sweet orange: Cold treat the article according to one of the following:

10 days at 0°C. (32°F.) or below

11 days at 0.55°C. (33°F.) or below

12 days at 1.11°C. (34°F.) or below

14 days at 1.66°C. (35°F.) or below

16 days at 2.22°C. (36°F.) or below

(H) Accepted treatments for regulated articles not listed above will be those methods published in the USDA-APHIS treatment manual under 331.1-9 Treatments.

(2) Soil and plants with soil attached.

(A) Soil and plants with soil attached may be certified by the State of origin if upon inspection, it is determined they are not under the drip line of a host plant, and if the plant to be certified is not a host plant bearing fruit or which has borne fruit in the previous 60 days.

(B) Soil and plants with soil attached may be certified under the following treatment schedule:

Hosts and nonhosts without fruit under the drip line of a host and hosts which are bearing or have borne fruit within the previous 60 days.

Remove all host fruit.

Treat soil with Baytex as follows: Four and one-half (4½) ounces of Baytex formulation, 50% emulsifiable concentrate, mixed with 20 gallons of water, per 1,000 square feet of soil surface. Spray the above mix evenly on the surface of the soil, or on the soil around container-grown or balled plants.

(g) Inspection Authority: The Commissioner or his agent may enter upon the premises of any person who distributes, receives for distribution, processes, transports or stores any regulated articles for the purpose of inspection for compliance of this order.

The inspection will include examination of commodities, shipping and receiving records, and collection of samples when necessary.

(h) Penalties: Any regulated article from the quarantined area that is found in Texas without proof of proper treatment or certification may be required to be treated at the owners expense, to be returned to the original shipper, or to be destroyed at the discretion of the Commissioner of Agriculture.

(2) Under provisions of the Pest Control Act, Article 135a-1 of Revised Civil Statutes of Texas as amended, any person who shall violate any provision of this order shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not more than One Hundred Dollars

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(\$100.00) and each thing sold or transported, and each act in violation hereof, shall be considered a separate offense.

Issued in Austin, Texas

**Reagan V. Brown
Commissioner of Agriculture
Texas Department of Agriculture**

Subpart D—Appeals to the MRL Systems Protection Board

(Pub. L. 95-454; Reorganization Plan No. 2 of 1978)
 [FR Doc. 80-22748 Filed 7-26-80; 8:45 am]
 BILLING CODE 8325-01-46

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****7 CFR Part 331****Mediterranean Fruit Fly**

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Plant Pest Act this document establishes regulations for the purpose of restricting the interstate movement of certain articles from areas in Los Angeles County and Santa Clara County in California because of the occurrence of the Mediterranean fruit fly. This action is necessary as an emergency measure for the purpose of preventing the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Effective date of regulations July 29, 1980. Written comments concerning this final rule must be received on or before September 29, 1980.

ADDRESSES: Written comments should be submitted to H. V. Autry, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, Chief Staff Officer, Regulatory Support Staff, Plant Protection and Quarantine, APHIS, USDA, Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, MD 20782, (301) 436-6247.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "significant." The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement. A Final Impact Statement will be developed after public comments have been received.

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without

opportunity for a public comment period on this final action because of the possibility that the Mediterranean fruit fly could be spread artificially to noninfested areas of the United States. This situation requires immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the Federal Register. Comments have been solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the Federal Register as soon as possible.

Written Comments

Interested persons are invited to submit written comments concerning the final rule. Comments should bear a reference to the date and page numbers of this issue of the Federal Register. All written comments made pursuant to this document will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, MD 20782, during regular hours of business, 9 a.m. to 4:30 p.m., Monday through Friday, except holidays, in a manner convenient to the public business (7 CFR 1.27(b)).

Background

The Mediterranean fruit fly, *Ceratitis capitata* Wiedeman, is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. It can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. Its short life cycle permits the rapid development of serious outbreaks.

Infestations of the Mediterranean fruit fly were found in California in areas of Los Angeles County on June 5, 1980, and in areas of Santa Clara County on June 6, 1980. These areas remain infested at this time. These areas are specifically described in section 331.1-2(c). These findings are based on trapping surveys by inspectors of the U.S. Department of Agriculture and State agencies of California. Except for these infestations in California and general infestations in Hawaii, the Mediterranean fruit fly is not known to occur in the United States.

Officials of the U.S. Department of Agriculture and State agencies of California have begun an intensive Mediterranean fruit fly eradication program in the infested areas of California. Also, as further explained below, California has taken action to impose restrictions on the interstate movement of certain articles from the infested areas in order to prevent the artificial spread of the Mediterranean fruit fly within California. However, it is also necessary to impose restrictions on the interstate movement of certain articles from the infested areas in order to prevent the artificial spread of the Mediterranean fruit fly to noninfested areas in other States. Accordingly, it is necessary as an emergency measure to establish Federal regulations for the purpose of preventing the artificial spread of the Mediterranean fruit fly.

Sections 8 and 9 of the Plant Quarantine Act (7 U.S.C. 161, 162) contain authority to implement regulations quarantining any State, Territory, or District of the United States, or any portion thereof, and prohibiting or restricting the movement of articles from such quarantined areas into or through any other State, Territory, or District when the Secretary of Agriculture or his delegate determines, after a public hearing, that it is necessary to prevent the spread of a dangerous plant disease or insect infestation, new to or not theretofore widely prevalent or distributed within and throughout the United States. Under sections 105 and 106 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee) there is authority for similar action without a public hearing for short periods of time on an emergency basis. Also, under sections 105 and 106 of the Federal Plant Pest Act there is authority to take emergency measures not specified in the regulations against any product, article, or means of conveyance moving into or through the United States or interstate and which there is reason to believe is infested or infected by or contains a plant pest. Pursuant to these authorities in the Federal Plant Pest Act, this document establishes emergency regulations for the purpose of preventing the artificial spread of the Mediterranean fruit fly from the infested areas in California into any noninfested area in any other State, Territory, or District of the United States.

If it appears that the Mediterranean fruit fly will be eradicated before a public hearing to set up regulations pursuant to section 8 of the Plant Quarantine Act (7 U.S.C. 161) could feasibly be held, then a public hearing would not be scheduled and the subject

"Exhibit B"

regulations would be revoked after eradication has been achieved. However, if it appears that the regulations would be necessary on a more extended basis a public hearing to consider the implementation of a quarantine and regulations will be scheduled under the provisions of the Plant Quarantine Act.

Under § 331.1-1 the term "State" is defined to mean "Any State, Territory, or District of the United States, including Puerto Rico." Further, § 331.1-1 defines the term "Interstate" to mean "From any State into or through any other State."

Under the regulations regulated articles are prohibited from moving interstate from regulated areas except in accordance with specified conditions.

The following products, articles, or means of conveyance, other than those articles listed in subsection (1) which have been canned, or frozen below -17.8°C (0°F), are designated in § 331.1-1(k) (1), (2) and (3) as regulated articles: (1) Almond, apple, apricot, avocado, Calamondin orange, cantaloupe, chayote, cherries [sweet and sour], citrus citra, cucumber, date, eggplant, fig, grape, grapefruit, guava, Japanese persimmon, kumquat, lemon, lime, loquat, mandarin orange (tangerine), melon, mockorange, mountain apple, natal plum, nectarine, olive, opuntia cactus, peach, pear, pepper, pineapple guava, pomelo (shaddock), ponifrom guajava, plum, prune, pumpkin, pyriferum guajava, quince, rose apple, sour orange, Spanish cherry (Brazilian plum), strawberry guava, Surinam cherry, sweet orange, tomato (pink and red ripe), watermelon, white sapote, yellow oleander (bestill); (2) soil within the drip area of plants which produce berries, fruits or vegetables listed in category (1); and (3) any other product, article, or means of conveyance, of any character whatsoever, not covered in § 331.1-1(i) (1) or (2), when it is determined by an inspector that it presents a risk of spread of the Mediterranean fruit fly and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions in the regulations.

Articles that are canned, or frozen below -17.8°C (0°F) are not included as regulated articles since the Mediterranean fruit fly could not survive under such conditions. Otherwise, based on research and experience, it appears that the articles listed in § 331.1-1(k) (1) and (2) as regulated articles are the articles that are likely to cause the artificial spread of the Mediterranean fruit fly. However, other products, articles, or means of conveyance could

be found to present a risk of spreading the Mediterranean fruit fly. These would have to be determined by an inspector on a case-by-case basis since it cannot be anticipated which such other products, articles, or means of conveyance, if any, could present such a risk. There is authority to regulate nonlisted products, articles, or means of conveyance as set forth in § 331.1-1(k)(3) on an emergency basis under the provisions of §§ 105 and 106 of the Federal Plant Pest Act. However, it appears that additional products, articles, or means of conveyance present such a risk, amendment of this rule to include such items in the list of regulated articles will be considered.

Section 331.1-2(a) provides that the Deputy Administrator shall list as a regulated area each State, or each portion thereof, in which the Mediterranean fruit fly has been found by an inspector or in which the Deputy Administrator has reason to believe that the Mediterranean fruit fly is present, or each portion of a State which the Deputy Administrator deems necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for enforcement purposes from localities in which the Mediterranean fruit fly occurs.

Section 331.1-2(a) further provides that less than an entire State will be designated as a regulated area only if the Deputy Administrator determines that (1) the State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under the emergency regulations; and (2) the designation of less than the entire State as a regulated area will be adequate to prevent the artificial interstate spread of the Mediterranean fruit fly. This would not appear to lessen protection against the spread of the Mediterranean fruit fly compared to the designation of the entire State as a regulated area. It appears that such State activities would help confine infestations to the regulated areas and eliminate the need for designating larger portions of a State as regulated areas.

Only the areas specifically described in § 331.1-2(c) are designated as regulated areas because of the Mediterranean fruit fly. Based on trapping surveys, it appears that the Mediterranean fruit fly occurs only in these areas in California. Also, it appears that the State of California has adopted and is enforcing regulations

imposing restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under these emergency regulations and there does not appear to be any reason for designation of any areas in California as regulated areas other than the areas referred to above.

Section 331.1-2(b) provides for the temporary designation of an area as a regulated area without publication in the Federal Register for short periods of time if there is a basis for listing the area as a regulated area under § 331.1-2(a) and if the owner or person in possession thereof is given written notice of such action. This appears to be necessary in order to prevent a further artificial spread of the Mediterranean fruit fly until a document imposing such requirements could be published in the Federal Register. There is authority for these provisions under § 105 of the Federal Plant Pest Act, as discussed above.

Section 331.1-3 specifies conditions concerning the interstate movement of regulated articles from regulated areas.

Under § 331.1-3(a) a regulated article is allowed to be moved interstate from a regulated area if a certificate or limited permit were issued and attached in accordance with §§ 331.1-4 and 331.1-7.

Under Federal domestic plant quarantine programs there is a difference between the use of certificates and limited permits. Certificates are issued for articles that are eligible for unrestricted interstate movement because of the absence of pest risk prior to movement. Limited permits are issued for articles that because of a possible pest risk may be moved interstate only subject to further restrictions, e.g., movement to limited areas, movement for limited purposes. These distinctions also apply under these emergency regulations.

Section 331.1-4(a) provides that a certificate shall be issued by an inspector for the movement of a regulated article if (1) the inspector determines that there is an approved treatment as outlined in § 331.1-6, and that the article has been so treated to destroy infestation, or the inspector determines based on inspection of the premises of origin that it is free of the Mediterranean fruit fly; (2) the inspector determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to § 105 of the Federal Plant Pest Act; and (3) the inspector determines that it is eligible for unrestricted movement under all other

Federal domestic plant quarantines and regulations applicable to such article. Based on research and field use in previous outbreaks, it appears that the treatments set forth in § 331.1-9 for certain of the regulated articles would be adequate to destroy the Mediterranean fruit fly in most cases without damage to the fruit. The Department is not aware of treatments for regulated articles which are not specified in § 331.1-9 which are adequate to destroy the Mediterranean fruit fly without damaging the regulated articles. Further, untreated regulated articles which an inspector determines are from premises free of the Mediterranean fruit fly would not likely be infested with the Mediterranean fruit fly or carry the Mediterranean fruit fly. Accordingly, compliance with the provisions in § 331.1-4(a) (including any emergency measures as explained below) appear adequate to allow the unrestricted interstate movement of regulated articles without a substantial risk of spread of the Mediterranean fruit fly.

Section 331.1-4(b) provides that a limited permit shall be issued by an inspector for the movement of a regulated article if (1) the inspector, in consultation with the Deputy Administrator, determines that it is to be moved to a specified destination for specified handling, utilization, processing, or for treatment in accordance with § 331.1-9 of the regulations (such destination and other conditions to be specified on the limited permit), when, upon evaluation of all of the circumstances involved in each case, it is determined that such movement will not result in the spread of the Mediterranean fruit fly because life stages of the pest will be destroyed by such specified handling, utilization, processing or treatment; (2) the inspector determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to § 105 of the Federal Plant Pest Act; and (3) the inspector determines that it is eligible for such movement under all other Federal domestic plant quarantines and regulations applicable to such article. It appears that these criteria would be adequate to prevent the spread of the Mediterranean fruit fly by the interstate movement of such articles.

In addition, as noted above, the destination of the regulated article and other conditions for movement are to be stated on the limited permit. This would provide a record that could be checked in order to determine that the article

was used in accordance with the request.

Certain determinations specified above concerning the issuance of limited permits would be required to be made by the inspector in consultation with the Deputy Administrator. This provision is designed to assure uniformity in application of the provisions relating to the issuance of limited permits.

It is anticipated that most interstate movements of regulated articles would be made pursuant to a certificate issued after treatment. This is because in most cases it would be impossible for an inspector to make a determination that a regulated article would be eligible for movement pursuant to a limited permit or pursuant to a certificate without treatment.

It is further anticipated that in most cases the imposition of emergency conditions would not be necessary for the movement of articles pursuant to certificates or limited permits. However, the imposition of any additional emergency conditions for certificates or limited permits would have to be made on a case-by-case basis, since it cannot be anticipated what additional emergency conditions might be necessary, if any. If it appears that general criteria can be developed to deal with such emergencies, amendment of the regulations governing issuance of certificates or limited permits, as appropriate, will be considered.

The regulations in § 331.1-4(c) allow inspectors and persons engaged in the business of growing, handling, or moving regulated articles to issue certificates and limited permits. A person engaged in such a business is allowed to issue certificates and limited permits for the movement of regulated articles if the person has entered into a compliance agreement in accordance with § 331.1-5 and thereby agrees to comply with all of the requirements of the regulations.

Any such person is authorized to execute and issue a certificate for the interstate movement of a regulated article if such person has treated such regulated article to destroy infestation in accordance with the provisions in § 331.1-9 and the inspector has made the determination that such article is otherwise eligible for a certificate in accordance with § 331.1-4(a); or if the inspector has made the determination that such article is eligible for a certificate in accordance with § 331.1-4(a) without such treatment. Also, any such person is authorized to execute and issue a limited permit for interstate movement of a regulated article if the inspector, in consultation with the Deputy Administrator has made the determination that such article is

eligible for a limited permit in accordance with § 331.1-4(b). All of the determinations under § 331.1-4 (a) and (b), other than the determinations that treatment requirements were met, are limited to inspectors because of the nature and complexity of the determinations. Further, treatments will be monitored by inspectors in order to assure compliance with the treatment procedures. These provisions are designed to assure that persons issuing certificates and limited permits are knowledgeable with respect to the requirements and have agreed to comply with them. Similar systems have been successfully implemented under other Federal domestic quarantine programs.

Sections 331.1-4(d) and 331.1-5(b) contain provisions for the withdrawal or cancellation by an inspector of certificates, limited permits, and compliance agreements upon a determination that conditions for their use under the regulations have not been met. Procedural requirements concerning such withdrawals or cancellations are set forth in these sections.

Section 331.1-7(a) provides that certificates and limited permits are required at all times during the interstate movement to be securely attached to the outside of the container containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document. However, under the provisions of § 331.1-7(a), attaching the certificate or limited permit to the consignee's copy of the accompanying waybill or other shipping document will meet the requirements of § 331.1-7(a) only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article. These requirements appear to be necessary and adequate for determinations during interstate movement concerning whether such articles are eligible for such movement.

Section 331.1-7(b) provides that the certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment. This is designed to assure the consignee that requirements for the movement of the regulated article had been met.

Section 331.1-3 also provides that regulated articles are allowed to be moved interstate from regulated areas without certificates or limited permits under certain conditions.

Under § 331.1-3(b) a regulated article may be moved to Hawaii without a certificate or limited permit if not moved

through any other State. As noted above, Hawaii is infested with the Mediterranean fruit fly and it does not appear that the introduction of additional Mediterranean fruit flies would have any significant effect on the infestation in Hawaii. Also, under § 331.1-3(b) a regulated article originating from outside the regulated areas may be moved interstate through a regulated area without a certificate or limited permit if moved directly through the regulated area, if the point of origin of the article is clearly indicated by shipping documents, and if the identity of the article has been maintained. There does not appear to be a significant risk that a regulated article would become infested with the Mediterranean fruit fly or carry the Mediterranean fruit fly under the specified conditions.

Section 331.1-6(a) provides that any person (other than a person authorized to issue certificates and limited permits) who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement) request an inspector to take any necessary action under the regulations prior to the movement of the regulated article. Section 331.1-6(b) further provides that such article shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of these regulations. These provisions appear to be necessary in order for the Plant Protection and Quarantine to have adequate notice to arrange for the services of an inspector and to facilitate inspections or other actions to be taken pursuant to the regulations.

Section 331.1-8 states that the services of inspectors shall be furnished without cost, but that the U.S. Department of Agriculture will not be responsible for any other costs or charges incident to inspections or compliance with the provisions of the regulations. This reflects the policy of Plant Protection and Quarantine with respect to these matters based upon the funds available to the Department for such purpose.

Also, § 331.1-1 contains definitions of "Deputy Administrator," "inspector," and "Plant Protection and Quarantine." In addition, § 331.1-1 contains definitions of the terms "move" and "person" which are in accordance with provisions in the Plant Quarantine Act and the Federal Plant Pest Act.

Under the circumstances referred to above, "Subpart—Mediterranean Fruit Fly" in 7 CFR Part 331, which was

designated as § 331.1 and marked "[Reserved]," is hereby revised to read as follows:

**Subpart—Mediterranean Fruit Fly
Emergency Regulations**

Sec.

331.1 Restrictions on interstate movement of specified articles.

331.1-1 Definitions.

331.1-2 Regulated areas.

331.1-3 Conditions governing the interstate movement of regulated articles from regulated areas.

331.1-4 Issuance and cancellation of certificates and limited permits.

331.1-5 Compliance agreement and cancellation thereof.

331.1-6 Assembly and inspection of regulated articles.

331.1-7 Attachment and disposition of certificates and limited permits.

331.1-8 Costs and charges.

331.1-9 Treatments.

Authority: Secs. 105 and 106, 71 Stat. 32, 71 Stat. 33; 7 U.S.C. 130dd, 150ee; 37 FR 28464, 28477, as amended; 38 FR 19141.

§ 331.1 Restrictions on interstate movement of specified articles.

(a) *Notice of emergency regulations.* Pursuant to the provisions of §§ 105 and 106 of the Federal Plant Pest Act (7 U.S.C. 130dd, 150ee), the Secretary of Agriculture hereby establishes emergency regulations governing the interstate movement of regulated articles specified in § 331.1-1(k) of this subpart from regulated area in California specified in § 331.1-2(c) of this subpart, in order to prevent the artificial spread of the Mediterranean fruit fly (*Ceratitidis capitata* Wiedeman), a dangerous insect of fruits and vegetables and not heretofore widely prevalent or distributed within and throughout the United States.

(b) *Restrictions on interstate movement of regulated articles.* No common carrier or other person shall move interstate from any regulated area any regulated article except in accordance with the conditions prescribed in this subpart.

§ 331.1-1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

(a) *Certificate.* A document which is issued for a regulated article by an

¹Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 105 of the Federal Plant Pest Act (7 U.S.C. 130dd).

inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 331.1-4(e) of this subpart.

(b) *Compliance agreement.* A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(c) *Deputy Administrator.* The Deputy Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture for the Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

(d) *Inspector.* Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the regulations in this subpart.

(e) *Interstate.* From any State into or through any other State.

(f) *Limited permit.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such regulated article is eligible for interstate movement in accordance with § 331.1-4(b) of this subpart.

(g) *Moved (movement, move).* Shipped, deposited for transmission in the mail, otherwise offered for shipment, received for transportation, carried, or otherwise transported, or moved, or allowed to be moved, by mail or otherwise.

(h) *Person.* Any individual, partnership, corporation, company, society, association, or other organized group.

(i) *Plant Protection and Quarantine.* The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act, and related legislation, and quarantines and regulations promulgated thereunder.

(j) *Regulated area.* Any State, or any portion thereof, listed as a regulated area in § 331.1-2(c), of this subpart, or otherwise designated as a regulated area in accordance with § 331.1-1(b) of this subpart.

(k) Regulated articles.

(1) The following fruits, vegetables and berries: almond, apple, apricot, avocado, Calamondin orange,

cantaloupe, chayote, cherries (sweet and sour), citrus citron, cucumber, date, eggplant, fig, grape, grapefruit, guava, Japanese persimmon, kumquat, lemon, lime, loquat, mandarin orange (tangerine), melon, mockorange, mountain apple, natal plum, nectarine, olive, opuntia cactus, peach, pear, pepper, pineapple guava, pomelo (shaddock), ponifrom guava java, plum, prune, pumpkin, pyramidal guava, quince, rose apple, sour orange, Spanish cherry (Brazilian plum), strawberry guava, Surinam cherry, sweet orange, tomato (pink and red ripe), watermelon, white sapote, yellow oleander (bestill). Except that the lists does not include any fruits, vegetables, or berries which have been canned, or frozen below -17.8°C. (0°F):

(2) Soil within the drip area of plants which produce the fruits, vegetables, or berries listed in paragraph (k)(1) of this section, and

(3) Any other product, article, or means of conveyance, of any character whatsoever, not covered by subparagraphs (1) or (2) of this paragraph, when it is determined by an inspector that it presents a risk of spread of the Mediterranean fruit fly and the person in possession thereof has actual notice that the product, article or means of conveyance is subject to the restrictions of this section.

(l) *State.* Any State, Territory, or District of the United States, including Puerto Rico.

§ 331.1-2 Regulated areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a regulated area in paragraph (c) of this section, each State, or each portion thereof, in which the Mediterranean fruit fly has been found by an inspector or in which the Deputy Administrator has reason to believe that the Mediterranean fruit fly is present, or each portion of a State which the Deputy Administrator deems necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly occurs. Less than an entire State will be designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mediterranean fruit fly.

(b) The Deputy Administrator or an inspector may temporarily designate any nonregulated area in a State as a regulated area in accordance with the criteria specified in paragraph (a) of this section for listing such area. Written notice of such designation shall be given to the owner or person in possession of such nonregulated area and, thereafter, the interstate movement of any regulated articles from such area shall be subject to the applicable provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (c) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

(c) The areas described below are designated as regulated areas:

California

Los Angeles County. That portion of Los Angeles County bounded by a line beginning at a point where Simi Valley—San Fernando Valley Freeway intersects Interstate 5, then southerly on Interstate 5 to its intersection with Van Nuys Boulevard, then southerly on Van Nuys Boulevard to its intersection with Valley Vista Boulevard, then easterly on Valley Vista Boulevard to its intersection with Beverly Glen Boulevard, then southerly on Beverly Glen Boulevard to its intersection with Longview Valley Road, then due south on an imaginary line from said intersection to Mulholland Drive, then westerly on Mulholland Drive to its intersection with an imaginary line projected due north to the southern end of Fallbrook Avenue, then northerly on said imaginary line to its junction with Fallbrook Avenue, then northerly on Fallbrook Avenue to its end, then due north on an imaginary line from the north end of Fallbrook Avenue to the Simi Valley—San Fernando Valley Freeway, then easterly on the Simi Valley—San Fernando Valley Freeway (including portions of said Freeway that are proposed) to the point of beginning.

Santa Clara County. That portion of Santa Clara County bounded by a line beginning at a point where State Highway 237 intersects Interstate 680, then southerly on Interstate 680 to its intersection with U.S. Highway 101, then southerly on U.S. Highway 101 to its intersection with Capitol Expressway (G-21), then westerly on Capitol Expressway (G-21) to its intersection

with Almaden Expressway (G-8), then southerly on Almaden Expressway (G-8) to its intersection with Branham Lane, then southwesterly on Branham Lane to its intersection with Camden Avenue, then northwesterly on Camden Avenue to County Road G-4, then northwesterly on County Road G-4 to its intersection with Campbell Avenue, then westerly on Campbell Avenue to Prospect Road, then westerly on Prospect Road to its intersection with Saratoga/Sunnyvale Road, then northerly on Saratoga/Sunnyvale Road to its intersection with Remington Drive, then easterly and northerly on Remington Drive to Fair Oaks Avenue, then northerly on Fair Oaks Avenue to its intersection with State Highway 237, then easterly on State Highway 237 to the point of beginning.

§ 331.1-3 Conditions governing the interstate movement of regulated articles from regulated areas.*

Any regulated article may be moved interstate from any regulated area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 331.1-4 and 331.1-7 of this subpart; or

(b) Without a certificate or limited permit, if

(1) Moved to Hawaii without moving through any other State; or

(2)(i) Moved directly through any regulated area; and

(ii) The article originated outside of any regulated area; and

(iii) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.

§ 331.1-4 Issuance and cancellation of certificates and limited permits.

(a) A certificate shall be issued by an inspector for the movement of a regulated article if such inspector:

(1)(i) Determines that it has been treated under the direction of an inspector* in accordance with § 331.1-6 of this subpart; or

(ii) Determines based on inspection of the premises of origin that it is free from Mediterranean fruit fly; and

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to section 105 of the:

*Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

*Treatments shall be monitored by inspectors in order to ensure compliance with requirements in this subpart.

Federal Plant Pest Act (7 U.S.C. 150dd)*; and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(b) A limited permit shall be issued by an inspector for the movement of a regulated article if such inspector:

(1) Determines, in consultation with the Deputy Administrator, that it is to be moved to a specified destination for specified handling, utilization, processing, or for treatment in accordance with § 331.1-9 of this subpart (such destination and other conditions to be specified on the limited permit), when, upon evaluation of all of the circumstances involved in each case, it is determined that such movement will not result in the spread of the Mediterranean fruit fly because life stages of the pest will be destroyed by such specified handling, utilization, processing or treatment;

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); and

(3) Determines that it is eligible for such movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(c) Certificates and limited permits for use for shipments of regulated articles may be issued by an inspector or any person engaged in the business of growing, handling, or moving regulated articles provided such person is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of a regulated article if such person has treated such regulated article to destroy infestation in accordance with the provisions in § 331.1-9 of this subpart and the inspector has made the determination that such article is otherwise eligible for a certificate in accordance with paragraph (a) of this section; or if the inspector has made the determination that such article is eligible for a

certificate in accordance with paragraph

(a) of this section without such treatment. Any such person may execute and issue a limited permit for the interstate movement of a regulated article when the inspector has made the determination that such article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector if such inspector determines that the holder thereof has not complied with any condition under the regulations for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

§ 331.1-5 Compliance agreement and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart.⁴ The compliance agreement shall be a written agreement between a person engaged in such a business and the Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(b) Any compliance agreement may be canceled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefor shall be confirmed in writing.

⁴ Compliance Agreement forms are available without charge from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine. (Local offices are listed in telephone directories.)

as promptly as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Deputy Administrator within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

§ 331.1-6 Assembly and inspection of regulated articles.

(a) Any person [other than a person authorized to issue certificates or limited permits under § 331.1-4(c) of this subpart], who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector⁵ to take any necessary action under this subpart prior to movement of the regulated article.

(b) Such article shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

§ 331.1-7 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during such movement, shall be securely attached to the outside of the container containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document; *Provided however*, That the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping document only if the regulated article is sufficiently described on the certificates, limited permit, or shipping document to identify such article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the

*Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not therefore known to be widely prevalent or distributed within and throughout the United States seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means or conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest.

⁵ Inspectors are assigned to local offices of the Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782.

consignee at the destination of the shipment.

§ 331.1-8 Costs and charges.

The services of the inspector shall be furnished without cost. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

§ 331.1-9 Treatments.

Treatment for regulated articles shall be as follows:

(a) Avocado:

Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 4 hours at 21°C (70°F.) or above followed by refrigeration for 7 days at 7.22°C (45°F.) or below. The 7 day period may include up to 24 hours precooling time. Time between fumigation and start of cooling not to exceed 24 hours, but must include at least 30 minutes aeration.

(b) Bitter melon, citrus citron, grapefruit, lemon, mandarin orange (tangerine), and orange:

Fumigation with ethylene dibromide (EDB) at normal atmospheric pressure. Dosage as follows:

Fruit load in chamber	Dosage of EDB in g/m ³ for 2 hrs.	
	15.8°-20.5°C (60°-69°F.)	21°C or above (70°F. or above)
25% or less	10 g	8 g
More than 25% but less than 50%	12 g	10 g
50% or more	14 g	12 g

Required post-treatment aeration: Forced circulation in the fumigation chamber for ½ hour following treatment and then placed in a well ventilated area.

(c) Tomato:

Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21°C (70°F.) or above.

(d) Bell pepper, eggplant, tomato, and zucchini squash:

Heat the article by saturated water vapor at 44.44°C (112°F.) until approximate center of article reaches 44.44°C (112°F.), and maintain at 44.44°C (112°F.) for 8½ hours, then immediately cool.

Note.—Commodities should be tested by the shipper at the 44.44°C (112°F.) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures

the shipper believes necessary. It is common to perform pretreatment conditioning. For example, it is the practice to condition eggplant at 43.3°C (110°F.) at 40 percent relative humidity for 6 to 8 hours.

(e) Apple, apricot, cherry, grape, peach, pear, and plum:

Fumigation with 32 g/m³ methyl bromide at 21°C (70°F.) or above (chamber load not to exceed 80 percent of volume), and at normal atmospheric pressure, followed by refrigeration, as set forth below.

Fumigation exposure time	Refrigeration
2 hours	4 days at 0.55°-2.7°C (33°-37°F.); or 11 days at 3.33°-5.2°C (38°-47°F.); or 4 days at 1.11°-4.44°C (38°-40°F.); or 6 days at 5.0°-8.33°C (41°-47°F.); or 10 days at 8.88°-13.33°C (48°-56°F.); or 3 days at 6.11°-8.33°C (43°-47°F.); or 8 days at 0.88°-13.33°C (48°-56°F.).
2½ hours	
3 hours	

Minimum concentrations for above fumigations.

(25 g minimum gas concentration at first ¼ hour.)

(18 g minimum gas concentration at 2 or 2½ hrs.)

(17 g minimum gas concentration at 3 hrs.)

Aerate all fruit at least 2 hours following fumigation. Time lapse between fumigation and start of cooling not to exceed 24 hours.

Note.—Some varieties of fruit may be injured by the 3-hour exposure. Shippers should test treat before making commercial shipments.

(f) Cucumber:

Fumigation with ethylene dibromide (EDB) at normal atmospheric pressure with 8 g/m³ for 2 hours at 21°C (70°F.) or above.

(g) Apple, apricot, Calamondin orange, cherry, citrus citron, grape, grapefruit, mandarin orange, nectarine, peach, pear, plum, prune, sour orange and sweet orange:

Cold treat the article according to one of the following:

10 days at 0°C (32°F.) or below
11 days at 0.55°C (33°F.) or below
12 days at 1.11°C (34°F.) or below
14 days at 1.66°C (35°F.) or below
16 days at 2.22°C (36°F.) or below

Done at Washington, D.C., this 25th day of July 1980.

Jerry Hill,

Deputy Assistant Secretary for Marketing Services.

(FR Doc. 80-32792 Filed 7-28-80; 8:45 am)

BILLING CODE 3410-34-44

Agricultural Marketing Service

7 CFR Part 928

Papayas Grown in Hawaii

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action would permit a producer to handle 100 pounds of papayas he or she produces direct to consumers during any one day for home use and not for resale exempt from certain requirements of the order regulating the handling of papayas grown in Hawaii.

EFFECTIVE DATE: August 28, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. The Final Impact Statement relative to this final rule is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12944, and has been classified "not significant." On June 30, 1980, notice was published in the Federal Register (45 FR 43789) inviting written comments on a proposed amendment to the rules and regulations (Subpart—Rules and Regulations; 7 CFR 928.100-928.160) currently effective pursuant to the applicable provisions of the marketing agreement and Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. None were received. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The amendment of said rules and regulations was recommended by the Papaya Administrative Committee, established under the order as the agency to administer its terms and provisions.

Section 928.56 of the order provides that the committee, with the approval of the Secretary, may establish a rule regarding special purpose and minimum quantity exemption of papayas. Such section also provides that the committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to assure compliance.

The amendment would allow any producer to apply to the committee to handle papayas he or she produces direct to consumers exempt from the provisions of § 928.41 (assessments), § 928.52 (issuance of regulations),

Rules and Regulations

Federal Register

Vol. 45, No. 153

Tuesday, August 5, 1980

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 410

Training

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This document changes the implementing regulations of the Government Employees Training Act which prohibits the use of appropriated funds for training in non-Government facilities that advocate the overthrow of the Government by violence or force and through individuals about whom there exists a reasonable doubt of their loyalty to the United States.

EFFECTIVE DATE: September 4, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Constance Guitian, Training Policy Division, [202] 653-6171.

SUPPLEMENTARY INFORMATION: On April 11, 1980, the Office of Personnel Management published proposed regulations [45 FR 24899] to eliminate an obsolete reference to checking the Attorney General's list for organizations, and the need to request clearances from the Office of Personnel Management and to administer an affidavit of loyalty for individuals. Comments were invited from the public, but none were received.

The Office of Personnel Management has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management,

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management revises § 410.504 of Title 5, Code of Federal Regulations, to read as follows:

§ 410.504 Prohibition of training through non-Government facilities advocating overthrow of the Government by force or violence.

The head of the agency shall make the determination that payments for training by, in, or through a non-Government facility are not in violation of section 4107(a) (1) and (2) of Title 5, United States Code.

(5 U.S.C. 4101 *et seq.*)

[FR Doc. 80-23541 Filed 8-4-80; 8:45 am]

BILLING CODE 5225-01-48

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

Mediterranean Fruit Fly

Correction

In FR Doc. 80-22792 appearing on page 50318 in the issue for Tuesday, July 29, 1980, on page 50321, second column, footnote 2 was omitted, please insert the following under footnote 1:

*Regulations concerning the movement of live Mediterranean fruit flies in interstate or foreign commerce are contained in Part 530 of this chapter.

BILLING CODE 1605-01-48

Agricultural Stabilization and Conservation Service

7 CFR Part 722

[Amend. 7]

Marketing Quota Regulations and Recordkeeping Requirements for the 1972 and Succeeding Crops of Extra- Long Staple Cotton

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Final rule.

SUMMARY: This rule announces the rate of penalty for exceeding the farm marketing quota applicable to the 1980 crop of extra long staple cotton as prescribed by the Agricultural Adjustment Act of 1938, as amended.

EFFECTIVE DATE: August 5, 1980.

FOR FURTHER INFORMATION CONTACT: Charles J. Riley, Production Adjustment Division, ASCS, USDA, 3644 South Building, P.O. Box 2415, Washington,

D.C. 20013 [202] 447-7633. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: The program title and number from the "Catalog of Federal Domestic Assistance" is Cotton Production Stabilization, 10.052. This action will not have a significant impact specifically on area and community development.

Therefore, review as established by OMB Circular A-85 was not used to assure that units of local government are informed of this action. This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant".

Ray V. Fitzgerald, Administrator, ASCS, has determined that a situation exists which warrants publication without opportunity for a public comment period on this final action because the computation of the penalty rate is prescribed by law and no variation is permitted. Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this final action effective less than 30 days after publication of this document in the Federal Register.

Section 347(c) of the Agricultural Adjustment Act of 1938, as amended, specifies that the rate of penalty for exceeding the farm marketing quota with respect to each crop of extra long staple cotton shall be the higher of 50 percent of the parity price as of June 15 of the calendar year in which the crop is produced or 50 percent of the support price for extra long staple cotton. The parity price effective for June 15 as determined by the Crop Reporting Board of the Economics, Statistics, and Cooperatives Service of USDA and published in "Agricultural Prices" dated May 30, 1980, was 172.0 cents per pound and the extra long staple cotton loan rate applicable for the 1980 crop is 93.5 cents per pound.

through 319.37-14) published in the Federal Register on May 13, 1980 (45 FR 31572-31597), contain prohibitions and restrictions on the importation of certain classes of nursery stock, and certain other classes of plants, roots, bulbs, seeds, and other plant products. These regulations became effective June 15, 1980.

These regulations, among other things, provide in § 319.37-2(e) that seeds of *Cocos nucifera* (coconut) are prohibited from being imported into the United States from all foreign countries and localities unless imported without husks or without milk in accordance with specified provisions or unless imported from Jamaica under conditions set forth in § 319.37-5(g) of the regulations. Prior to the effective date of this document these regulations prohibited the importation from Jamaica into the United States of seeds of *Cocos nucifera* of the Maypan variety (= F₁ hybrid, Malaysian Dwarf x Panama Tall) solely because of the occurrence of lethal yellowing disease in Jamaica. Lethal yellowing disease could destroy coconut palms and other palms if introduced into areas of the United States where it does not occur.

Section 319.37-5(g) of the regulations provides a mechanism for allowing the importation of seeds of *Cocos nucifera* of the Malaysian dwarf variety based on the finding that such seeds are resistant to lethal yellowing disease. Prior to its amendment by this document the provisions in § 319.37-5(g) of the regulations provided that: "Any seed of *Cocos nucifera* (coconut) at the time of importation or offer for importation into the United States shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such seed was found by the plant protection service of Jamaica to be of Malaysian dwarf variety (which is resistant to lethal yellowing disease) based on visual examination of the parent stock." Jamaica is the only country or locality known to provide such certification for seeds of *Cocos nucifera*.

The Department of Agriculture and Consumer Services of the State of Florida requested that the provisions in § 319.37-5(g) of the regulations be amended to allow the importation of seeds of *Cocos nucifera* of the Maypan variety (= F₁ hybrid, Malaysian Dwarf x Panama Tall) under conditions similar to those allowed for the Malaysian dwarf variety. This request was based on the assertion that such seeds are resistant to lethal yellowing disease.

Pursuant to this request Plant Protection and Quarantine conducted a

search of the scientific literature and contacted the Government of Jamaica concerning this matter. Based on a report in the scientific literature, *The Farmer*, Vol. 79, No. 3, pp. 57-60 (1974), and information supplied by the Government of Jamaica it has been determined that the Maypan variety (= F₁ hybrid, Malaysian Dwarf x Panama Tall) is also resistant to lethal yellowing disease. Further, there are no reasons to prohibit the importation of seeds of such Maypan variety if imported pursuant to similar procedures allowed for seeds of the Malaysian dwarf variety. As with the seeds of the Malaysian dwarf variety a determination as to whether seeds are of such Maypan variety cannot be made upon inspection at the time of importation. However, as with the case of the Malaysian dwarf variety a determination as to whether seeds are of such Maypan variety can be made based on visual examination of parent stock because of the physical characteristics of the parent stock.

We have been advised by the Government of Jamaica that Jamaica will provide a certification program for seeds of *Cocos nucifera* of the Maypan variety (= F₁ hybrid, Malaysian Dwarf x Panama Tall) similar to the current certification program for seeds of the Malaysian dwarf variety. Therefore, the provisions in § 319.37-5(g) of the regulations are amended by this document to allow the importation of seeds of *Cocos nucifera* of such Maypan variety if at the time of importation they are accompanied by a phytosanitary certificate of inspection containing an accurate declaration that the seeds were found by the plant protection service of Jamaica to be of such Maypan variety based on visual examination of the parent stock. It should also be noted that the seeds of such Maypan variety for importation from Jamaica are subject to additional general requirements, in the regulations, i.e., requirements concerning permits, inspection, phytosanitary certificates of inspection, growing media, approved packing material, marking and identity, arrival notification, prohibited articles accompanying restricted articles, treatment and costs and charges for inspection and treatment, and ports of entry (see 7 CFR 319.37 through 319.37-14).

For informational purposes it should further be noted that plants, other than seeds, of *Cocos nucifera* of the Malaysian dwarf variety and the Maypan variety (= F₁ hybrid, Malaysian Dwarf x Panama Tall) are not allowed to be imported from Jamaica under the specified conditions because plants of these

varieties could be carriers of lethal yellowing disease even though they are resistant to lethal yellowing disease. Seeds are not carriers of this disease.

§ 319.37-5 [Amended]

Accordingly, § 319.37-5(g) of the regulations in "Subpart-Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," Chapter III, Title 7 of the Code of Federal Regulations (7 CFR 319.37-5(g)) is amended by adding "or Maypan variety (= F₁ hybrid, Malaysian Dwarf x Panama Tall)" immediately after the words "Malaysian dwarf variety" and by inserting the word "is" in lieu of the word "are."

[Section 100; 71 Stat. 33 (7 U.S.C. 150ee); sections 5, 7, and 8; 37 Stat. 318, 317, and 318 (7 U.S.C. 159, 160, 162); 37 FR 28464, 28477, as amended; 38 FR 19141]

Done at Washington, D.C., this 8th day of August 1980.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 80-24138 Filed 8-11-80; 8:45 am]

BILLING CODE 5410-34-M

7 CFR Part 331

Mediterranean Fruit Fly

Correction

In FR Doc. 80-22792 appearing on page 50318 in the issue of Tuesday, July 29, 1980, make the following corrections:

(1) On page 50320, third column, in the first line of the first complete paragraph, "Sections 331.1-4(d) and 331-5(b) . . ." should have read "Sections 331.1-4(d) and 331.1-5(b) . . .".

(2) On page 50321, third column, in the fifth line of paragraph (i) of § 331.1-1, ". . . in accordance with § 331.1-1(b) of . . ." should have read ". . . in accordance with § 331.1-2(b) of . . .".

(3) On page 50323, third column, the bold face section heading designated "§ 331.1-7" should have been designated "§ 331.1-7".

BILLING CODE 1600-01-M

Agricultural Marketing Service

7 CFR Parts 916 and 917

Nectarines and Fresh Pears, Plums, and Peaches Grown in California; Expenses and Rates of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These actions authorize expenses and rates of assessment for

(c) Regardless of an employee's personal preference, an employee has no right to transfer with his or her function, unless the alternative in the competitive area losing the function is separation or demotion.

(5 U.S.C. 1302, 3505)
 (PR Doc. 80-38117 Filed 9-11-80 8:48 am)
 BILLING CODE 6325-01-60

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

Mediterranean Fruit Fly; Regulated Area, Expansion

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Plant Pest Act this document amends the Mediterranean fruit fly regulations by expanding the area listed as a regulated area in Santa Clara County in California. This action is necessary as an emergency measure for the purpose of preventing the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATE: Effective date of amendment September 12, 1980. Written comments concerning this final rule must be received on or before November 12, 1980.

ADDRESSES: Written comments should be submitted to H. V. Autry, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, Chief Staff Officer, Regulatory Support Staff, Plant Protection and Quarantine, APHIS, USDA, Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under procedures established in Secretary's Memorandum 1965 to Implement Executive Order 12044, and has been classified as "significant." The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement. A Final Impact Statement will be developed after public comments have been received.

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health

Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action because of the possibility that Mediterranean fruit fly could be spread artificially to noninfested areas of the United States. This situation requires immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the Federal Register. Comments have been solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the Federal Register as soon as possible.

Written Comments

Interested persons are invited to submit written comments concerning the final rule. Comments should bear a reference to the date and page numbers of this issue of the Federal Register. All written comments made pursuant to this document will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, MD 20782, during regular hours of business, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, in a manner convenient to the public business (7 CFR 1.27(b)).

Background

The Mediterranean fruit fly, *Ceratitis capitata* Wiedeman, is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. It can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. Its short life cycle permits the rapid development of serious outbreaks.

Because of infestations of the Mediterranean fruit fly found in California in areas in Los Angeles County and Santa Clara County, emergency Mediterranean fruit fly regulations were published in the Federal Register on July 29, 1980 (45 FR 50318-50324), and amendments to the regulations were published in the Federal Register on August 15, 1980 (45

FR 54302-54304). The regulations and the amendments thereof became effective on the dates of publication.

For the purpose of preventing the artificial spread of the Mediterranean fruit fly to noninfested areas in the United States, the regulations restrict the interstate movement from the regulated areas in Los Angeles County and Santa Clara County in California of articles designated as regulated articles.

Santa Clara County

Based on trapping surveys conducted by inspectors of the U.S. Department of Agriculture and State agencies of California, it has now been determined that the Mediterranean fruit fly has spread beyond the outer perimeter of the areas in Santa Clara County previously designated as regulated areas. Therefore, in order to prevent the further spread of the Mediterranean fruit fly it is necessary as an emergency measure pursuant to sections 105 and 106 of the Federal Plant Pest Act (7 U.S.C. 1505d, 1506e) to amend the regulations to expand the regulated areas in Santa Clara County to cover the areas in which the Mediterranean fruit fly now occurs.

Accordingly, in order to accomplish this objective, the description for the regulated areas in Santa Clara County in California in § 331.1-2(c) of the regulations (7 CFR 331.1-2(c)) is amended to read as follows:

§ 331.1-2 Regulated areas.

(c) * * * California.

Santa Clara County. That portion of Santa Clara County bounded by a line beginning at the junction of Metcalf Road and U.S. Highway 101, thence southeasterly along U.S. Highway 101 to its junction with Bailey Avenue, thence southwesterly along Bailey Avenue to its junction with McKean Road, thence northwesterly along McKean Road to its junction with Almaden Road, thence southerly along Almaden Road to its junction with Alimitos Road, thence southerly along an imaginary line to the northern terminus of Loma Prieta Road, thence southerly on Loma Prieta Road to its junction with the Santa Clara County line, thence northwesterly, northerly, and easterly on the Santa Clara County line to its junction with Mt. Day Road (direct road which is approximately 8 miles east of Interstate 680), thence along an imaginary line projected southeast from such junction to the crest of Black Mountain, thence southerly along an imaginary line projected from the crest of Black Mountain to the northernmost point of Joseph D. Grant

County Park, thence easterly and southerly along the boundaries of the Joseph D. Grant County Park to its junction with San Felipe Road No. 2, thence along San Felipe Road No. 2 to its junction with Metcalf Road, thence southerly and westerly along Metcalf Road to the point of beginning.

(Secs. 105 and 106, 71 Stat. 32 and 33; 7 U.S.C. 150dd, 150cc; 37 FR 29494, 29477, as amended; 38 FR 19141)

Done at Washington, D.C., this 9th day of September 1980.

Jerry C. Hill,

Deputy Assistant Secretary for Marketing and Transportation Services, U.S. Department of Agriculture.

(FR Doc. 80-26243 Filed 9-11-80; 8:45 am)

BILLING CODE 3410-24-01

Agricultural Marketing Service

7 CFR Part 910

(Lemon Regulation 266, Am. 1; Lemon Regulation 270)

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period September 14–20, 1980, and increases the quantity of such lemons that may be so shipped during the period September 7–13, 1980. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective September 14, 1980, and the amendment is effective for the period September 7–13, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McCaha, 202-447-5975.

SUPPLEMENTARY INFORMATION: Findings. This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A final impact analysis on the marketing policy is available from Malvin E. McCaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

The committee met again publicly on September 9, 1980, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is improving.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

1. Section 910.570 is added as follows:

§ 910.570 Lemon Regulation 270.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period September 14, 1980, through September 20, 1980, is established at 175,268 cartons.

(b) As used in this section, "handled" and "cartons" mean the same as defined in the marketing order.

2. Paragraph (a) of § 910.568 Lemon Regulation 266 [45 FR 58814] is amended to read as follows:

§ 910.568 Lemon Regulation 266.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period September 7, 1980, through September 14, 1980 is established at 175,000 cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: September 11, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

(FR Doc. 80-26244 Filed 9-11-80; 12:35 pm)

BILLING CODE 3410-24-01

7 CFR Part 910

(Lemon Regulation 269)

Lemons Grown in California and Arizona; Minimum Size Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation sets a minimum size requirement of 1.82 inches in diameter for shipments of lemons grown in California and Arizona. This requirement is needed to provide for orderly marketing in the interest of producers and consumers.

EFFECTIVE DATES: September 21, 1980, through September 19, 1981.

FOR FURTHER INFORMATION CONTACT: Malvin E. McCaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. The Final Impact Statement relative to this final rule is available upon request from the above named individual.

SUPPLEMENTARY INFORMATION: Findings. This final action has been reviewed under USDA procedures in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant". On August 12, 1980, notice was published in the Federal Register (45 FR 53467) inviting written comments on the proposed minimum size requirement applicable to lemons grown in California and Arizona. No such material was submitted.

This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended, regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other available information.

Shipments of lemons from the production area are now in progress, and such shipments are regulated by size through September 20, 1980, under Lemon Regulation 217, as amended (44 FR 61578, 69918). This regulation, which would become effective September 21,

(c) An employee who is a retired member of a uniformed service is entitled to credit under this part for:

(1) The length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) The total length of time in active services in the armed forces if the employee meets one of the conditions included under § 351.501(h) of this title.

(d) Each agency shall adjust the service date for each employee to withhold credit for noncreditable time.

4. Section 351.501 is revised to read as follows:

§ 351.501 General.

(a) An agency may not release a competing employee from a competitive level while retaining in that level an employee with:

(1) A specifically limited temporary appointment;

(2) A specifically limited temporary promotion;

(3) A performance rating of less than "Satisfactory" in an agency that has not implemented a performance appraisal system meeting all the requirements of 5 U.S.C. 4302 and Subpart B or Part 430 of this title; or

(4) A written decision under § 432.204(a) of removal or demotion from the competitive level because of "Unacceptable Performance," as defined in § 432.202 of this title.

(b) An agency may not release a competing employee from a competitive level while retaining in that level an employee with lower retention standing, except:

(1) As required under § 351.506 when an employee is retained under a mandatory exception or under § 351.506 when an employee is entitled to a new written notice of reduction in force; or

(2) As permitted under § 351.507 when an employee is retained under a permissive continuing exception or under § 351.508 when an employee is retained under a permissive temporary exception.

[5 U.S.C. 1302, 3502]

[FR Doc. 80-34579 Filed 12-11-80; 8:48 am]

BILLING CODE 5325-01-80

5 CFR Part 890

Federal Employees Health Benefits Program; Benefits for Medically Underserved Areas

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management is amending its regulations on benefits under the Federal Employees Health Benefits (FEHB) Program for individuals in medically underserved areas. This amendment is necessary to comply with a recent amendment to the FEHB law which mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Lauretta Hall, Compensation Group, Office of Pay and Benefits Policy (202-632-4684.)

SUPPLEMENTARY INFORMATION: On July 18, 1980, the Office of Personnel Management published in the Federal Register (45 FR 49098) a new Subpart G "Benefits in Medically Underserved Areas" under 5 CFR, Part 890, as final regulations. Subpart G pertains to administration of 5 U.S.C. 8902(m)(2), as added to the Federal Employees Health Benefits (FEHB) law by Public Law 95-368, approved September 17, 1978, and amended by Public Law 96-179, approved January 2, 1980. The law provides that effective January 1, 1980, and continuing through December 31, 1984, FEHB plans (except comprehensive prepayment medical plans), whose contracts specify payment or reimbursement for care or treatment of a particular health condition, must also provide benefits up to the limits of their contracts in return for health services rendered by any medical practitioner who is properly licensed to render such service, when the health service is provided to a plan member "in a State where 25 percent or more of the population is located in primary medical care manpower shortage areas designated under section 332 of the Public Health Service Act."

By comparing State-by-State statistics furnished by the Department of Health and Human Services with U.S. census figures on State resident populations (Current Population Reports, Series P-25, No. 676, February 1980), OPM has determined that 5 U.S.C. 8902(m)(2), as amended by Public Law 95-368, is applicable in the following 12 States as of January 1, 1981: Alabama, Alaska, Indiana, Kentucky, Mississippi, Missouri, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota and West Virginia. The determination differs from OPM's 1980 determination in that four newly eligible states have been added—Kentucky, Indiana, North Carolina, and North Dakota while the states of Nevada and Wyoming have been deleted.

Each year while this provision of the FEHB law remains in effect, OPM will review current data on primary medical care manpower shortage areas and State populations. If OPM determines that the status of any State has changed for purposes of 5 U.S.C. 8902(m)(2), OPM will again publish an amendment to its regulations (5 CFR Part 890, Subpart G).

OPM has determined that this is a non-significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.

Beverly M. Jones,
Issuance System Manager.

Accordingly, in 5 CFR 890.701, the paragraph headed "Medically underserved area" is revised to read as follows:

§ 890.701 Definitions.

"Medically underserved area" includes any of the 50 States of the United States where the Office of Personnel Management determines that 25 percent or more of the residents are located in primary medical care manpower shortage areas designated pursuant to section 332 of the Public Health Service Act (42 U.S.C. 254c). The Office has determined that the following states are "medically underserved areas" for purposes of this subpart: Alabama, Alaska, Indiana, Kentucky, Mississippi, Missouri, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, and West Virginia.

(Public Law 90-179)

[FR Doc. 80-34601 Filed 12-11-80; 8:48 am]

BILLING CODE 5325-01-80

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

Mediterranean Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Plant Pest Act this document amends the Mediterranean fruit fly regulations by adding areas in Alameda County in California to the list of regulated areas; by deleting the listed area in Los Angeles County in California from the list of regulated areas; by providing a methyl bromide treatment for bell peppers; by deleting cantaloupe, choyote, cucumber, egg plant, melon, pumpkin, and watermelon from the list

of regulated articles; and by adding scientific names for the remaining articles listed as regulated articles. These actions are necessary as emergency measures for the purpose of preventing the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States; and for the purpose of lessening or deleting unnecessary restrictions on the movement of articles.

DATES: Effective date of amendments is December 12, 1980. Written comments concerning this final rule must be received on or before February 10, 1981.

ADDRESS: Written comments should be submitted to H. V. Autry, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, Chief Staff Officer, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "significant".

Emergency Action

The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement. A Final Impact Statement will be developed after public comments have been received.

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action. Due to the possibility that Mediterranean fruit fly could be spread artificially to noninfested areas of the United States, situations exist requiring immediate action to better control the spread of this pest. Also, due to the finding that unnecessary restrictions are imposed concerning the regulation of articles, a situation exists requiring immediate action to lessen or delete such unnecessary restrictions.

Further, pursuant to the administrative procedure provisions in 5

U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the Federal Register. Comments have been solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the Federal Register as soon as possible.

Written Comments

Interested persons are invited to submit written comments concerning the final rule. Comments should bear a reference to the date and page numbers of this issue of the Federal Register. All written comments made pursuant to this document will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, MD 20782, during regular hours of business, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, in a manner convenient to the public business (7 CFR 1.27(b)).

Background

The Mediterranean fruit fly, *Ceratitis capitata* Wiedeman, is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. It can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. Its short life cycle permits the rapid development of serious outbreaks.

Because of infestations of the Mediterranean fruit fly found in California in areas in Los Angeles County and Santa Clara County, emergency Mediterranean fruit fly regulations were published in the Federal Register on July 29, 1980 (45 FR 50318-50324), and amendments to the regulations were published in the Federal Register on August 15, 1980 (45 FR 54302-54304) and September 12, 1980 (45 FR 60402-60403). The regulations and amendments thereof became effective on the dates of publication and are set forth in 7 CFR 331.1 through 331.9. For the reasons explained below, it is necessary to amend these regulations on an emergency basis pursuant to sections 105 and 106 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee).

Alameda County and Los Angeles County

For the purpose of preventing the artificial spread of the Mediterranean fruit fly to noninfested areas in the United States, the regulations restrict the interstate movement from the regulated areas in California of articles designated as regulated articles. Prior to the effective date of this document areas in Los Angeles County and Santa Clara County were designated as regulated areas.

Based on trapping surveys conducted by inspectors of the U.S. Department of Agriculture and State agencies of California, it has now been determined that the Mediterranean fruit fly has spread into areas in Alameda County. Therefore, in order to prevent the further spread of the Mediterranean fruit fly it is necessary as an emergency measure to amend § 331.1-2(c) of the regulations (7 CFR 331.1-2(c)) to add to the list of regulated areas the following areas in Alameda County in which the Mediterranean fruit fly now occurs:

These areas of Alameda County within the city limits of Fremont and within the city limits of Newark; and that portion of Alameda County beginning at the junction of Palomares Road, State Highway 84, and the Fremont city limit line, then westerly along the Fremont city limit line to its junction with the Alameda County Flood Control Channel, then westerly along said Channel to its junction with Dry Creek, then northerly along Dry Creek to its junction with Whipple Road, then easterly on Whipple Road to its junction with State Highway 238, then easterly from said junction along an imaginary line to its junction with the northernmost point of the Fremont city limit line, then due east for three miles on an imaginary line, then due south along another imaginary line to its junction with State Highway 84, then westerly along State Highway 84 to the point of the beginning.

Also, it has now been determined based on trapping surveys conducted by inspectors of the U.S. Department of Agriculture and State agencies of California that the Mediterranean fruit fly no longer occurs in the area in Los Angeles County that has been designated as a regulated area.

Therefore, as an emergency measure, such area in Los Angeles County is deleted from the list of regulated areas in order to delete unnecessary restrictions on the interstate movement of regulated articles.

Treatment for Bell Peppers

It is also necessary, as an emergency measure to amend § 331.1-9 of the regulations (7 CFR 331.1-9) which sets forth treatments for certain regulated articles. Under the regulations a regulated article from a regulated area would be eligible for interstate movement pursuant to a certificate if, among other things, it had been treated in accordance with § 331.1-9 of the regulations, and would be eligible for interstate movement pursuant to a limited permit if it were moving under certain conditions contains to a specified destination for such treatment.

Based on research, it has been determined that there is a treatment for bell peppers that would be adequate to destroy the Mediterranean fruit fly. This treatment consists of fumigating bell peppers with methyl bromide at normal atmospheric pressure with 32 g/m³ for 2½ hours at 21°C. (70°F) or above. This treatment for bell peppers should be added to § 331.1-9 of the regulations on an emergency basis in order to relieve unnecessary restrictions by allowing the interstate movement of bell peppers from regulated areas in those instances where the risk of spreading the pest to noninfested areas can be eliminated. However, based on experience it appears that the methyl bromide treatment can reduce the shelf life of bell peppers to between 5 to 7 days because of pitting on the skin of the pepper, darkening of the seed and placental material, and internal decay resulting from killing of the stem and calyx. Accordingly, a note explaining the possible problems which could be caused by the methyl bromide treatment is added to § 331.1-9 of the regulations for informational purposes.

Deletions From the List of Regulated Articles

It is further necessary to amend § 331.1-1(k)(1) of the regulations (7 CFR 331.1-1(k)(1)) to delete certain articles from the list of regulated articles. Articles that were specified in § 331.1-1(k)(1) are those articles that were determined to be likely to cause the artificial spread of the Mediterranean fruit fly. However, based on a further review of scientific literature¹ regarding the articles listed as regulated articles, it has been determined that certain of those articles, i.e., cantaloupe, chayote, cucumber, eggplant, melon, pumpkin,

and watermelon, are not likely to cause the artificial spread of the Mediterranean fruit fly. Therefore, in order to relieve unnecessary restrictions on the interstate movement of the above named articles from regulated areas, it is necessary as an emergency measure to amend § 331.1-1(k)(1) of the regulations by deleting the above named articles from the list of regulated articles.

Also, treatments for the destruction of the Mediterranean fruit fly were provided for bitter melons, cucumbers and eggplants in § 331.1-9 of the regulations. Treatments are provided in the regulations for the purpose of providing a means to allow the interstate movements of regulated articles from regulated areas. However, since melons (including bitter melons), cucumbers, and eggplants are deleted from the list of regulated articles there is no longer reason to include treatments for bitter melons, cucumbers, or eggplants. Therefore, § 331.1-9 is amended to delete provisions relating to bitter melons, cucumbers, and eggplants.

Scientific Names for Regulated Articles

In addition, it is necessary as an emergency measure to amend § 331.1-1(k)(1) of the regulations to add scientific names for those articles remaining on the list of regulated articles. These articles have been listed solely by their common names. However, it appears that some common names can vary within different areas in the United States. Therefore, in order to help clarify what articles are intended to be included by the common names of regulated articles, the scientific names of such articles are added in parenthesis after the common names.

Amendments to Regulations

Accordingly, the Mediterranean fruit fly regulations, which, as noted above, became effective on July 29, 1980, and were amended on August 15, 1980, and September 12, 1980 (45 FR 50316-50324, 54302-54304, 80102-80403) are further amended as follows:

1. The list of regulated areas in California in § 331.1-2(c) of the regulations (7 CFR 331.1-2(c)) is amended by deleting the listing for Los Angeles County and by adding areas in Alameda County immediately before the listing for Santa Clara County as follows:

§ 331.1-2 Regulated areas.

(c) * * *
Alameda County. Those areas of Alameda County within the city limits of Fremont and within the city limits of

Newark; and that portion of Alameda County beginning at the junction of Pinalmar Road, State Highway 84, and Fremont city limit line; then westerly along the Fremont city limit line to its junction with the Alameda County Flood Control Channel; then westerly along said Channel to its junction with Dry Creek; then northerly along Dry Creek to its junction with Whipple Road; then easterly on Whipple Road to its junction with State Highway 238; then easterly from said junction along an imaginary line to its junction with the northernmost point of the Fremont city limits; then due east for three miles on an imaginary line; then due south along another imaginary line to its junction with State Highway 84; then westerly along State Highway 84 to the point of the beginning.

2. Section 331.1-9 of the regulations (7 CFR 331.1-9) is amended by deleting "Bitter melon," from paragraph (b), by deleting "eggplant," from paragraph (d), and by deleting paragraph (f) which related to cucumbers and by substituting in lieu thereof a new paragraph (f) relating to bell peppers to read as follows:

§ 331.1-9 Treatments.

(f) Bell peppers:
Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 2½ hours at 21°C. (70°F.) or above.

Note.—Bell peppers have been found marginally tolerant to methyl bromide fumigation. Shelf life after treatment is reduced to between 5 to 7 days. Injury may appear as pitting on the skin of the pepper, darkening of the seed and placental material, and internal decay resulting from killing of the stem and calyx.

3. Section 331.1-1(k)(1) of the regulations (7 CFR 331.1-1(k)(1)) is revised to read as follows:

§ 331.1-1 Definitions.

(k) * * *
(1) The following fruits, vegetables and berries:

Almond (*Prunus dulcis* (*P. amygdalus*))
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Avocado (*Persea americana*)
Calamondin orange (*Citrus mitis*)
Cherries (sweet and sour) (*Prunus avium*, *Prunus cerasus*)
Citrus citron (*Citrus medica*)
Date (*Phoenix dactylifera*)
Fig (*Ficus carica*)
Grape (*Vitis vinifera*)
Guajavafruit (*Citrus pardaifolia*)
Guava (*Psidium guajava*)

¹ A list of this literature can be obtained from Chief Staff Officer, Plant Importation and Technical Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, USDA, Federal Building, 5005 Delaware Road, Room 667, Hyattsville, MD 20782.

Japanese persimmon (*Diospyros kaki*)
 Kumquat (*Fortunella japonica*)
 Lemon (*Citrus limon*)
 Lime (*Citrus aurantifolia*)
 Loquat (*Eriobotrya japonica*)
 Mandarin orange (tangerine) (*Citrus reticulata*)
 Mock orange (*Murraya exoniata*)
 Mountain apple (*Syzygium malaccense*)
 (*Eugenia malaccensis*)
 Natal plum (*Carissa macrocarpa* and *Terminalia chebula*)
 Nectarine (*Prunus persica*)
 Olive (*Olea europaea*)
 Opuntia cactus (*Opuntia* spp.)
 Peach (*Prunus persica*)
 Pear (*Pyrus communis*)
 Pepper (*Capiscum annuum* and *Capiscum frutescens*)
 Pineapple guava (*Feijoa sellowiana*)
 Pummelo (shaddock) (*Citrus grandis*)
 Pomiform guajava (*Psidium guajava pomiferum*)
 Plum (*Prunus americana*)
 Prune (*Prunus domestica*)
 Pyriform guajava (*Psidium guajava pyriferum*)
 Quince (*Cydonia oblonga*)
 Rose apple (*Syzygium jambos* [*Eugenia jambos*])
 Sour orange (*Citrus aurantium*)
 Spanish cherry (Brazilian plum) (*Eugenia dombeyi* [*E. brasiliensis*])
 Strawberry guava (*Psidium cattleianum*)
 Surinam cherry (*Eugenia uniflora*)
 Sweet orange (*Citrus sinensis*)
 Tomato (pink and red ripe) (*Lycopersicon esculentum*)
 White sapote (*Casearia edulis*)
 Yellow pander (beetle) (*Thovetia peruviana*)

Except that the list does not include any fruits, vegetables, or berries which have been canned, or frozen below -17.8°C (0°F):

(Sections 105 and 106.71 Stat. 32 and 33; 7 U.S.C. 1561d, 1506e; 37 FR 24104, 28177, as amended; 38 FR 19141)

Done at Washington, D.C., this 9th day of December 1980.

Jerry C. Hill,

Deputy Assistant Secretary for Marketing and Transportation Services, U.S. Department of Agriculture.

(FR Doc. 80-2620 Filed 12-11-80; 9:45 am)

BILLING CODE 2110-26-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 283; Lemon Reg. 282, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period December 14-20, 1980, and increases the quantity of such lemons that may be so shipped during the period December 7-13. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective December 14, 1980, and the amendment is effective for the period December 7-13, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202-447-5875.

SUPPLEMENTARY INFORMATION: Findings. This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980-81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5875.

The committee met again publicly on December 9, 1980, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is good.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions must be taken to warrant a 60 day comment period as recommended in E.O. 12014, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), and the amendment relieves restrictions on the handling of

lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

1. Section 910.583 is added as follows:

§ 910.583 Lemon Regulation 283.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period December 14, 1980, through December 20, 1980, is established at 240,000 cartons.

(b) As used in this section, "handled" and "cartons" mean the same as defined in the marketing order.

2. Paragraph (a) of § 910.582 Lemon Regulation 282 (45 FR 80481) is amended to read as follows:

§ 910.582 Lemon Regulation 282.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period December 7, 1980, through December 13, 1980 is established at 250,000 cartons.

(Secs. 1-19, 45 Stat. 31, as amended; U.S.C. 601-674)

Dated: December 10, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

(FR Doc. 80-2621 Filed 12-11-80; 11:41 am)
 BILLING CODE 2410-02-M

7 CFR Part 928

Papayas Grown in Hawaii; Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action authorizes expenses and rate of assessment for the 1981 fiscal year, to be collected from handlers to support activities of the committee which locally administers the Federal marketing order covering Papayas grown in Hawaii.

DATES: Effective January 1, 1980, through December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5875. The Final Impact Statement relative to this final rule is available on request from Mr. McGaha.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1055 to implement Executive Order 12044, and has been classified "not significant".

