

Rules and Regulations

Federal Register

Vol. 46, No. 157

Friday, August 14, 1981

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.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 540

Pay Under the General Schedule; Merit Pay System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is amending the within-grade increase, quality step increase, and Merit Pay System regulations in order to clarify the definitions of "acceptable level of competence", "employee", and "equivalent increase" and the provisions concerning creditable service, and to make certain editorial changes. In addition, a reference contained in the Merit Pay System regulations is being corrected due to the issuance of the new within-grade increase regulations.

EFFECTIVE DATE: September 14, 1981.

FOR FURTHER INFORMATION CONTACT: Jan B. Karicher 202-632-4684.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published revised regulations on within-grade and quality step increases on January 9, 1981 (46 FR 6, 2317-2323), effective February 9, 1981. A correction is necessary to clarify the definitions of "acceptable level of competence", "employee", and "equivalent increase" and the provisions concerning creditable service, and to make certain editorial changes. In addition, the issuance of the final regulations has made it necessary to revise a reference to the within-grade increase regulations contained in the Merit Pay System regulations.

The Director of OPM finds good cause that the notice of proposed rulemaking usually required by 5 U.S.C. 553 is

unnecessary because these are nonsubstantive amendments that conform with the intent of existing regulations.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Director, Office of Personnel Management, certifies that this regulation will not have a significant economic impact on a substantial number of small entities including small business, small organizational units and small governmental jurisdictions.

Office of Personnel Management.

Beverly McCain Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is amending 5 CFR Parts 531 and 540 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The table of contents of subpart D has been revised to read as follows:

Subpart D—Within-Grade Increases

531.411 Continuing evaluation after withholding a within-grade increase.

2. In § 531.403, the definitions of "acceptable level of competence", "employee", and "equivalent increase" have been revised to read as follows:

§ 531.403 Definitions.

"Acceptable level of competence" means a level of performance identified by an employing agency at which the performance by an employee of the duties and responsibilities of his or her assigned position is fully acceptable (or equivalent terms such as fully

satisfactory or fully successful used in the agency's performance appraisal plan) and, in addition to the requirement of § 531.404 of this subpart, warrants advancement of the employee's rate of basic pay to the next higher step of the grade of his or her position. An employee whose current performance with respect to any critical element is unacceptable, as defined in § 430.101(a)(3) of this chapter, is not performing at an acceptable level of competence. Further, absent unusual circumstances, an employee whose overall performance during the waiting period is at the minimum level required for retention in the position but below a fully acceptable level is not performing at an acceptable level of competence.

"Employee" means an employee of an agency.

"Equivalent increase" means an increase or increases in an employee's rate of basic pay equal to or greater than the difference between the rate of pay for the General Schedule grade and step occupied by the employee and the rate of pay for the next higher step of that grade.

3. In § 531.406, paragraphs (a), (b)(1), and (c)(1) are revised to read as follows:

§ 531.406 Creditable Service.

(a) *General.* Civil law employment in any branch of the Federal Government (executive, legislative, or judicial) or with a Government corporation as defined in section 103 of title 5, United States Code, is creditable service in the computation of a waiting period. Service credit is given during this employment for periods of annual, sick, and other leave with pay; advanced annual and sick leave; and service under a temporary or term appointment. Depending on the specific provision of law or regulation, service may be creditable for the completion of one waiting period or for the completion of successive waiting periods. Paragraph (b) of this section identifies service which is creditable in the computation of a single waiting period. Paragraph (c) identifies service which is creditable in the computation of successive waiting periods.

(b) *Service creditable for one within-grade increase.* (1) Military service as

defined in section 8331(13) of title 5, United States Code, is creditable service in the computation of a waiting period when an employee is reemployed with the Federal Government not later than 52 calendar weeks after separation from such service or hospitalization continuing thereafter for a period of not more than one year.

(c) Service creditable for successive within-grade increases.

(1) A leave of absence from a position in which an employee is covered by this subpart, whether the employee is on leave without pay or is considered to be on furlough, is creditable service in the computation of waiting periods for successive within-grade increases when:

(i) The employee is absent for the purpose of engaging in military service as defined in section 8331(13) of title 5, United States Code, and returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation;

(ii) The employee is receiving injury compensation under subchapter I of chapter 81 of title 5, United States Code;

(iii) The employee is performing service that is creditable under section 8332(b) (5) or (7) of title 5, United States Code;

(iv) The employee is temporarily employed by another agency in a position covered by this subpart; or

(v) The employee is assigned to a State or local government or institution of higher education under sections 3371-3376 of title 5, United States Code.

4. In § 531.411 the section is revised to read as follows:

§ 531.411 Continuing evaluation after withholding a within-grade increase.

After a within-grade increase has been withheld, an agency may grant the within-grade increase at any time after it determines that the employee has demonstrated sustained performance at an acceptable level of competence. After withholding a within-grade increase, the agency, at a minimum, shall determine whether the employee's performance is at an acceptance level of competence after each 52 calendar weeks following the original due date for the within-grade increase.

5. In § 531.412, paragraph (a) is revised to read as follows:

§ 531.412 Effective date of a within-grade increase.

(a) Except as provided in paragraph

(b) of this section, a within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period and in compliance with the conditions of eligibility.

(5 U.S.C. 5335 and 5338; E.O. 11721, as amended, section 402)

Subpart E—Quality Step Increases

6. In § 531.502 the definition of "employee" is revised to read as follows:

§ 531.502 Definitions.

In this subpart:

"Employee" means an employee of an agency.

7. In § 531.509, paragraph (a) is revised to read as follows:

§ 531.509 Reports and evaluation of quality step increase authority.

(a) *Reports.* The Office of Personnel Management shall require agencies to maintain records and report, in accordance with established procedures, on the use of the authority to grant quality step increases.

(5 U.S.C. 5338 and 5338; E.O. 11721, as amended, section 403)

PART 540—MERIT PAY SYSTEM

8. In § 540.106, paragraph (b) is revised to read as follows:

§ 540.106 Special provisions for merit pay increases.

(b) An employee for whom the requirement for a merit pay determination is waived under § 540.104(h)(3) of this part because of

absences that extended for a period during which more than one merit pay increase occurred and that would be creditable service in the computation of waiting periods for successive within-grade increases under § 531.406(c) of this chapter, or because more than one merit pay increase occurred during a period for which the employee received credit under the back pay provisions of 5 U.S.C. 5596 and Subpart H of Part 550 of this chapter, shall be paid the sum of—

(1) The employee's rate of basic pay immediately before the interruption of his or her duty status;

(2) The adjustments that would have been required by 5 U.S.C. 5402 (c)(1) and (c)(3) if the employee's duty status had not been interrupted; and

(3) The average adjustments under 5 U.S.C. 5402(b) received by comparably situated employees while the employee's duty status was interrupted, as determined by the employing agency.

(5 U.S.C. 5401-5405; Pub. L. 95-454, section 504)

[PR Doc. 81-23662 Filed 8-14-81; 8:45 am]

BILLING CODE 8325-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

Grades and Grade Requirements for Dockage-Free Dry Peas

CFR Correction

In the 1981 volume of 7 CFR Parts 53 to 209, on pages 116 and 117, § 68.406 is corrected to read as follows:

§ 68.406 Grades and grade requirements for dockage-free dry peas.

(See also § 68.314.)

	Maximum limits of									Minimum requirements for color
	Defective Peas									
	Weevil-damaged peas	Heat-damaged peas	Damaged peas ¹	Other classes ²	Bleached peas ³	Spilt peas	Shrivelled peas	Peas with cracked seed-coats	Foreign materials	
	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	
U.S. No. 1 ⁴	0.3	0.2	1.0	0.3	1.5	0.5	2.0	3.5	0.1	Good.
U.S. No. 2 ⁴	0.8	0.5	1.5	0.8	3.0	1.0	4.0	5.5	0.2	Good.
U.S. No. 3 ⁴	1.5	1.0	2.0	1.5	5.0	1.5	6.0	7.5	0.5	Poor.

U.S. Sample grade shall be dry peas which:

(a) Do not meet the requirements for the grades U.S. Nos. 1, 2, or 3; or

(b) Contain metal fragments, broken glass, or a commercially objectionable odor; or

(c) Contain more than 15.0 percent moisture; or

(d) Are materially weathered, heating, or distinctly low quality; or

(e) Are infested with live weevils or other live insects.⁵

⁵ Uniformity of Size requirements—Dry peas of any of the numerical grades shall be of such size that not more than 3.0 percent shall pass through the appropriate oblong-hole or slotted-hole sieve as follows:

Peas
Winter Dry Peas
Special grade "Small" peas
All other peas

Appropriate sieve
No. 4 X 1/4
1/8 X 1/4
1/16 X 1/4

* Damaged peas do not include weevil-damaged or heat-damaged peas.

* These limits do not apply to the class Mixed Dry Peas.

* These limits do not apply to winter field peas and wrinkled peas.

* As applied to dockage-free whole dry peas, the meaning of the term "infested" is set forth in chapter 3 of Inspection Handbook HB-1.²

[39 FR 18834, May 29, 1974, as amended at 40 FR 21467, May 16, 1975]

BILLING CODE 1505-02-M

Animal and Plant Health Inspection Service

7 CFR Part 331

Mediterranean Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Emergency Rule and Notice of Public Hearing.

SUMMARY: Pursuant to the Federal Plant Pest Act this document establishes regulations for the purpose of restricting the interstate movement of certain articles from an area in Hillsborough County in Florida because 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. The effect of this document is to impose restrictions on the interstate movement of regulated articles from such area in Hillsborough County. A public hearing is scheduled under the Plant Quarantine Act, and a final rule quarantining Florida and establishing regulations to restrict the interstate movement of regulated articles from such area in Hillsborough County will be promulgated after the public hearing if found to be necessary to prevent the spread of the Mediterranean fruit fly.

DATES: Effective date: August 12, 1981. Written comments concerning the proposed quarantine and regulations must be received on or before October 13, 1981. A public hearing concerning the proposed quarantine and final regulations to be promulgated under the Plant Quarantine Act and the Federal Plant Pest Act will be held on September 15, 1981.

ADDRESSES: Written comments should be submitted to Thomas Lanier, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 635 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 635 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Hearing location: A public hearing

concerning the proposed quarantine and final regulations to be promulgated under the Plant Quarantine Act and the Federal Plant Pest Act will be held at the Curtis Hixon Convention Hall, Ybor Room, 600 Ashley Drive, Tampa, Florida.

FOR FURTHER INFORMATION CONTACT: Shannon Wilson, Emergency Programs Coordinator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 610 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This emergency rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been determined to be not a "major rule." Based on information compiled by the Department it has been determined that this emergency rule will have an estimated annual effect on the economy of less than \$5500; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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 emergency rule 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 rule are impracticable and contrary to the public interest; and good cause is found for making this emergency rule effective less than 30 days after publication of this document in the Federal Register.

In addition, because of the need for immediate action, it is impracticable for the Department to follow the procedures established by Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Dr. H. C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. The provisions in the rule restrict the interstate movement of specified articles from an area in Hillsborough County in Florida. There are thousands of small entities that move such articles interstate from Florida and many more thousands of small entities that move such articles interstate from other States. However, based on information compiled by the U.S. Department of Agriculture and the Florida Department of Agriculture and Consumer Services, it has been determined that fewer than 15 small entities move such articles interstate from such area in Hillsborough County. Further, the overall economic impact from this action is estimated to be less than \$5500.

Public Hearing

As noted above, a public hearing will be held to consider a quarantine and regulations to be published under the Plant Quarantine Act and the Federal Plant Pest Act.

A representative of the Animal and Plant Health Inspection Service will preside at the hearing. Also, at the hearing, a representative of the Animal and Plant Health Inspection Service will present a statement explaining the purpose and basis of the rule. Any interested person may appear and be heard in person, by attorney, or other representative. Also, any interested person, his attorney, or other representative will be afforded an opportunity to ask relevant questions.

The hearing will commence at 10 a.m. and end at 5 p.m., local time, unless the presiding officer otherwise specifies during the course of the hearing. Persons who wish to be heard are requested to register with the presiding officer prior to the hearing. The prehearing registration will be conducted at the location of the hearing from 9 a.m. to 10 a.m. Those registered persons will be heard in the order of their registration. However, any other person who wishes to be heard or ask questions at the hearing will be afforded such opportunity, after the registered persons have presented their views. It is requested that duplicate copies of any

written statements that are presented be provided to the presiding officer at the hearing.

If the number of preregistered persons and other participants in attendance at the hearing warrants it, the presiding officer may, if it becomes necessary, limit the time for each presentation in order to allow anyone wishing to present a statement the opportunity to be heard.

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), 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.

As a result of trapping surveys by inspectors of the U.S. Department of Agriculture, Mediterranean fruit flies were found in Hillsborough County in Florida on August 4 and August 9, 1981. Based on these finds it appears that an area in Hillsborough County is infested with the Mediterranean fruit fly at this time. This area is specifically described in § 331.1-3(c) and is designated as a regulated area. Otherwise the Mediterranean fruit fly is not known to occur in the United States except for infestations in California and Hawaii.

Officials of the U.S. Department of Agriculture and State agencies of Florida have begun an intensive Mediterranean fruit fly eradication program in the regulated area in Florida. Also, as further explained below, Florida has taken action to impose restrictions on the intrastate movement of certain articles from the regulated area in order to prevent the artificial spread of the Mediterranean fruit fly within Florida. However, it is also necessary to impose restrictions on the interstate movement of certain articles from the regulated area 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 on an emergency basis pending action under the Plant Quarantine Act. 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 when there is reason to believe it is infested or infected by or contains a plant pest. Pursuant to these authorities in the Federal Plant Pest Act, this document establishes an emergency rule for the purpose of preventing the artificial spread of the Mediterranean fruit fly from the regulated area in Florida into any noninfested area in any other State, Territory, or District of the United States.

A final rule quarantining Florida and establishing regulations to restrict the interstate movement of regulated articles from the regulated area in Hillsborough County will be established under the Plant Quarantine Act after the public hearing if found to be necessary to prevent the spread of the Mediterranean fruit fly.

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 category (a) which have been canned, or frozen below -17.8° C. (0° F.), are designated in § 331.1-2 (a), (b), and (c) as regulated articles:

- (a) Akee (*Blighia sapida*)
- Almond with husk (*Prunus dulcis* [*P. amygdalus*])
- Apple (*Malus sylvestris*)
- Apricot (*Prunus armeniaca*)
- Argan tree (*Argania sideroxylon* = *A. spinosa*)
- Avocado (*Persea americana*)
- Barbados cherry, W. I. cherry (*Malpighia glabra*, & *punicifolia*)
- Bourbon orange (*Ochrosia elliptica*)
- Calamondin orange (*Citrus mitis*)

- Canistel (*Pouteria campechiana*)
- Cattley guava (*Psidium cattleianum*)
- Ceylon-gooseberry (*Dovyalis hebecarpa*)
- Chanar (*Geoffroea decorticans*)
- Cherimoya (*Annona cherimola*)
- Cherries (sweet and sour) (*Prunus avium*, *Prunus cerasus*)
- Citrus citron (*Citrus medica*)
- Coffee (*Coffea arabica*)
- Custard apple (*Annona reticulata*)
- Date (*Phoenix dactylifera*)
- Dwarf papaya (*Carica quercifolia*)
- Fig (*Ficus carica*)
- Gourka (*Carcinia xanthochymus*)
- Grape (*Vitis vinifera*)
- Grapefruit (*Citrus paradisi*)
- Guava (*Psidium guajava*)
- Hawthorne (*Crataegus* spp.)
- Hog plum (*Spondias mombin*)
- Japanese persimmon (*Diospyros kaki*)
- Japanese plum (*Prunus salicina*)
- Jocote (*Spondias purpurea*)
- Kei apple (*Dovyalis caffra*)
- Kiwi (*Actinidia chinensis*)
- Kumquat (*Fortunella japonica*)
- Lemon (*Citrus limon*) except Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon)
- Lime (*Citrus aurantiifolia*)
- Litchi (Lychee) (*Litchi chinensis*)
- Longan (*Euphorbia longana*)
- Loquat (*Eriobotrya japonica*)
- Mandarin orange (tangerine) (*Citrus reticulata*)
- Mamme, sapote (*Calocarpum sapota*)
- Mango (*Mangifera indica*)
- Mock orange (*Murraya exotica*)
- Mombin (*Spondias* spp.)
- Mountain apple (*Syzygium malaccense* [*Eugenia malaccensis*])
- Natal plum (*Carissa macrocarpa* = *C. grandiflora* and *Terminalia chebula*)
- Nectarine (*Prunus persica*)
- Olive (*Olea europaea*)
- Opuntia cactus (*Opuntia* spp.)
- Papaya (*Carica papaya*)
- Passion fruit (*Passiflora edulis*)
- Peach (*Prunus persica*)
- Pear (*Pyrus communis*)
- Pepper (*Capsicum annuum* and *Capsicum frutescens*)
- Pineapple guava (*Feijoa sellowiana*)
- Plum (*Prunus americana*)
- Pomegranate (*Punica granatum*)
- Pomiform guajava (*Psidium guajava* "Pomiform")
- Pond apple (*Annona glabra*)
- Prune (*Prunus domestica*)
- Pummelo (shaddock) (*Citrus grandis*)
- Pyriform guajava (*Psidium guajava* "Pyriform")
- Quince (*Cydonia oblonga*)
- Rose apple (*Syzygium jambos* [*Eugenia jambos*])
- Sapodilla (*Manilkara zapota*)
- Sour orange (*Citrus aurantium*)
- Soursop (*Annona muricata*)
- Spanish cherry, Medlar (*Mimusops elengi*)
- Spanish cherry (Brazilian plum) (*Eugenia dombeyi* [*E. brasiliensis*])
- Spanish plum (*Spondias mombin*)
- Star-apple (*Chrysophyllum* spp.)
- Strawberry guava (*Psidium cattleianum*)
- Sugar apple (*Annona squamosa*)
- Sugarplum (*Arenga pinnata*)

Surinam cherry (*Eugenia uniflora*)
 Sweet orange (*Citrus sinensis*)
 Tomato (pink and red ripe) (*Lycopersicon
 esculentum*)
 Tree tomato (*Cyphomandra betacea*)
 Tropical almond (*Terminalia catappa*)
 Walnut with husk (*Juglans* spp.)
 White sapote (*Casimiroa edulis*)
 Yellow oleander (bestill) (*Thevetia
 peruviana*);

(b) soil within the drip area of plants which produce the fruits, nuts, vegetables, or berries listed in category (a); and (c) any other product, article, or means of conveyance, of any character whatsoever, not covered in § 331.1-2 (a) or (b), 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 § 331.1-2 (a) and (b) 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 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 § 331.1-2(c) on an emergency basis under the provisions of sections 105 and 106 of the Federal Plant Pest Act. If it appears that additional products, articles, or means of conveyance generally present such a risk, amendment of this rule to include such items in the list of regulated articles will be considered.

Section 331.1-3(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 331.1-3(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 rule; 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 area specifically described in § 331.1-3(c) is designated as a regulated area because of the Mediterranean fruit fly. Based on trapping surveys, it appears that the Mediterranean fruit fly occurs only in this area in Florida. Also, it appears that the State of Florida 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 this emergency rule and there does not appear to be any reason for designation of any areas in Florida as regulated areas other than the area referred to above.

Section 331.1-3(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 § 331.1-3(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 section 105 of the Federal Plant Pest Act, as discussed above.

Section 331.1-4 specifies conditions concerning the interstate movement of regulated articles from regulated areas.

Under § 331.1-4(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 §§ 331.1-5 and 331.1-8.

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 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 this emergency rule.

Section 331.1-5(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 § 331.1-10, 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 section 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 § 331.1-10 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 § 331.1-10 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 § 331.1-5(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 331.1-5(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 § 331.1-10 (such destination and other conditions to be specified on the limited permit), when, upon evaluation of all 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 section 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 § 331.1-5(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 had entered into a compliance agreement in accordance with § 331.1-6 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 § 331.1-10 and the inspector has made the determination that such article is otherwise eligible for a certificate in accordance with § 331.1-5(a); or if the inspector has made the determination that such article is eligible for a certificate in accordance with § 331.1-5(a) without such treatment. Also, any such person is authorized to execute and issue a limited permit for the 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 § 331.1-5(b). All of the determinations under § 331.1-5 (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 331.1-5(d) and 331.1-6(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 331.1-8(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 § 331.1-8(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 § 331.1-8(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 331.1-8(b) provides that the certificates 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 have been met.

Section 331.1-4 also provides that regulated articles are allowed to be moved interstate from regulated areas without certificates or limited permits under certain conditions.

Under § 331.1-4(b) a regulated article may be moved to Hawaii without a certificate or limited permit if not moved through any nonregulated area. 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 § 331.1-4(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 (moved without stopping except under normal traffic conditions, such as for traffic lights or stop signs) any regulated area in an enclosed vehicle or completely enclosed by a covering adequate to prevent the introduction of the Mediterranean fruit fly (such as canvas, plastic, or closely woven cloth); 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 331.1-7(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 331.1-7(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 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 331.1-9 states that the services of inspector 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.

If it is determined to be necessary to establish a final rule quarantining Florida and establishing regulations restricting the movement of regulated articles from areas in Florida, it is anticipated that the quarantine and regulations would contain the same provisions as are currently contained in the emergency rule, except that (1) language would be added to indicate the establishment of a quarantine under the Plant Quarantine Act, (2) the definition of the term "moved" which currently reflects the definition of that term in the Federal Plant Pest Act would be revised to reflect language in the Plant Quarantine Act concerning the movement of articles, and (3) footnote 1 would be changed to specify additional legal authority for certain inspections and related activities under the Plant Quarantine Act and the Federal Plant Pest Act. Additional changes could also be made based on comments.

Under the circumstances referred to above, 7 CFR Part 331 is amended by adding "Subpart—Mediterranean Fruit Fly" to read as follows:

PART 331—PLANT PEST REGULATIONS GOVERNING INTERSTATE MOVEMENTS OF CERTAIN PRODUCTS AND ARTICLES

Subpart—Mediterranean Fruit Fly

Emergency Regulations

Sec.

- 331.1 Notice of emergency regulations; Restrictions on interstate movement of specified articles.
- 331.1-1 Definitions.
- 331.1-2 Regulated articles.
- 331.1-3 Regulated areas.
- 331.1-4 Conditions governing the interstate movement of regulated articles from regulated areas.
- 331.1-5 Issuance and cancellation of certificates and limited permits.
- 331.1-6 Compliance agreement and cancellation thereof.
- 331.1-7 Assembly and inspection of regulated articles.
- 331.1-8 Attachment and disposition of certificates and limited permits.
- 331.1-9 Costs and charges.
- 331.1-10 Treatments.

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

Subpart—Mediterranean Fruit Fly

Emergency Regulations

§ 331.1 Notice of emergency regulations; Restrictions on interstate movement of specified articles.¹

(a) *Notice of emergency regulations.* Pursuant to the provisions of sections 05 and 106 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee), the Secretary of Agriculture hereby establishes emergency regulations governing the interstate movement of regulated articles specified in § 331.1-2 from regulated areas in Florida specified in § 331.1-3(c). In order to prevent the artificial spread of the Mediterranean fruit fly *Ceratitis capitata* (Wiedemann), 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.

¹ Any 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 106 of the Federal Plant Pest Act (7 U.S.C. 150dd).

² Regulations concerning the movement of live Mediterranean fruit flies in interstate or foreign commerce are contained in Part 330 of this chapter.

§ 331.1-1 Definition.

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 inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 331.1-5(a).

(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 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 § 331.1-5(b).

(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 § 331.1-3(c) or otherwise designated as a regulated area in accordance with § 331.1-3(b).

(k) *Regulated article.* Any article listed in § 331.1-2(a) or (b) or otherwise designated as a regulated article in accordance with § 331.1-2(c).

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

§ 331.1-2 Regulated articles.

(a) The following fruits, nuts, vegetables, and berries:

Akee (*Blighia sapida*)
Almond with husk (*Prunus dulcis* (*P. amygdalus*))
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Argan tree (*Argania sideroxylon* = *A. spinosa*)
Avocado (*Persea americana*)
Barbados cherry, W.I. cherry (*Malpighia glabra*, & *punicifolia*)
Bourbon orange (*Ochrosia elliptica*)
Calamondin orange (*Citrus mitis*)
Canistel (*Pouteria campechiana*)
Cattley guava (*Psidium cattleianum*)
Ceylon-gooseberry (*Dovyalis hebecarpa*)
Chanar (*Geoffroea decorticans*)
Chirimoya (*Annona cherimola*)
Cherries (sweet and sour) (*Prunus avium*, *Prunus cerasus*)
Citrus citron (*Citrus medica*)
Coffee (*Coffea arabica*)
Custard apple (*Annona reticulata*)
Date (*Phoenix dactylifera*)
Dwarf papaya (*Carica quercifolia*)
Fig (*Ficus carica*)
Gourka (*Garcinia xanthochymus*)
Grape (*Vitis vinifera*)
Grapefruit (*Citrus paradisi*)
Guava (*Psidium guajava*)
Hawthorne (*Crataegus* spp.)
Hog plum (*Spondias mombin*)
Japanese persimmon (*Diospyros kaki*)
Japanese plum (*Prunus salicina*)
Jocote (*Spondias purpurea*)
Kei apple (*Dovyalis caffra*)
Kiwi (*Actinidia chinensis*)
Kumquat (*Fortunella japonica*)
Lemon (*Citrus limon*) except Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon)
Lime (*Citrus aurantiifolia*)
Litchi (Lychee) (*Litchi chinensis*)
Longan (*Euphorbia longana*)
Loquat (*Eriobotrya japonica*)
Mandarin orange (tangerine) (*Citrus reticulata*)
Mammee, sapote (*Calocarpum sapota*)
Mango (*Mangifera indica*)
Mock orange (*Murraya exotica*)
Mombin (*Spondias* spp.)
Mountain apple (*Syzygium malaccense* (*Eugenia malaccensis*))
Natal plum (*Carissa macrocarpa* = *C. grandiflora* and *Terminalia chebula*)
Nectarine (*Prunus persica*)
Olive (*Olea europea*)
Opuntia cactus (*Opuntia* spp.)
Papaya (*Carica papaya*)

Passion fruit (*Passiflora edulis*)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Pepper (*Capsicum annuum* and *Capsicum frutescens*)
Pineapple (*Feijoa sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Pomiform guajava (*Psidium guajava* 'Pomiform')
Pond apple (*Annona glabra*)
Prune (*Prunus domestica*)
Pumelo (shaddock) (*Citrus grandis*)
Pyriform guajava (*Psidium guajava* 'Pyriform')
Quince (*Cydonia oblonga*)
Rose apple (*Syzygium jambos* (*Eugenia jambos*))
Sapodilla (*Manilkara zapota*)
Sour orange (*Citrus aurantium*)
Soursop (*Annona muricata*)
Spanish cherry, Medlar (*Mimusops elengi*)
Spanish cherry (Brazilian plum) (*Eugenia dombeyi* (*E. brasiliensis*))
Spanish plum (*Spondias mombin*)
Star-apple (*Chrysophyllum* spp.)
Strawberry guava (*Psidium cattleianum*)
Sugar apple (*Annona squamosa*)
Sugarplum (*Arenga pinnata*)
Surinam cherry (*Eugenia uniflora*)
Sweet orange (*Citrus sinensis*)
Tomato (pink and red ripe) (*Lycopersicon esculentum*)
Tree tomato (*Cyphomandra betacea*)
Tropical almond (*Terminalia catappa*)
Walnut with husk (*Juglans* spp.)
White sapote (*Casimiroa edulis*)
Yellow oleander (bestill) (*Thevetia peruviana*)

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

(b) Soil within the drip area of plants which produce the fruits, nuts, vegetables, or berries listed in paragraph (a) of this section; and

(c) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) or (b) of this section, 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 restriction of this section.

§ 331.1-3 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:

Florida

Hillsborough County, Township 29 South, Range 19 East, except Seddon Island and Davis Island; and the West 1/3 of Township 29 South, Range 20 East.

§ 331.1-4 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 §§ 331.1-5 and 331.1-8 of this subpart; or

(b) Without a certificate or limited permit, if

(1) Moved to Hawaii without moving through any nonregulated area or;

(2)(i) Moved directly through (moved without stopping except under normal traffic conditions, such as for traffic

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

lights or stop signs) any regulated area in an enclosed vehicle or completely enclosed by a covering adequate to prevent the introduction of the Mediterranean fruit fly (such as canvas, plastic, or closely woven cloth);

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

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

§ 331.1-5 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 inspector⁴ in accordance with § 331.1-10; or

(ii) Determines based on inspection of the premises of origin that it is free from the 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 Federal Plant Pest Act (7 U.S.C. 150dd);⁵ 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 § 331.1-10 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 § 331.1-10 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 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.

§ 331.1-6 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.⁶ The compliance agreement shall be a written agreement between a person engaged in such a business and 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, 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.

§ 331.1-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 331.1-5(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 inspector⁷ to take any necessary action under this

⁶ 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.)

⁷ Inspectors are assigned to local offices of 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.

⁴ Treatments shall be monitored by inspectors in order to assure compliance with requirements in this subpart.

⁵ 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 theretofore 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.

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.

§ 331.1-8 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 certificate, 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 consignee at the destination of the shipment.

§ 331.1-9 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 in this subpart, other than for the services of the inspector.

§ 331.1-10 Treatments.

Treatment for regulated articles shall be as follows:

(a) Avocado:

Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 2½ 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 pummelo:

Fumigation with ethylene dibromide (EDB) at normal atmospheric pressure.

Dosage as follows:

Fruit load in chamber	Dosage of EDB in grams per cubic meter for 2 hrs.	
	15.5°-20.5° C. (60°-69° F.)	21° C. or above (70° F. or above)
25% or less	10	8
More than 25% but less than 50%	12	10
50% or more	14	12

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 32g/m³ for 3½ hours at 21° C. (70° F.) or above.

(d) Bell pepper and tomato:

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.

(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 ½ hr.)

(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) Bell peppers: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ 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 the stem and calyx.

(g) Apple, apricot, Calamondin orange, cherry, citrus citron, grape, grapefruit, kiwi, 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) Almond with husk, grape, kiwi, opuntia cactus, and walnut with husk.

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

Minimum concentration for above fumigations:

- 26 g minimum gas concentration at first ½ hour
- 22 g minimum gas concentration at 2 or 2½ hours
- 21 g minimum gas concentration at 3½ hours.

(i) Grape:

Fumigation with methyl bromide at normal atmospheric pressure with 32g/m³ for 4 hours at 18° C. (65° F.) or above.

Minimum concentration for above fumigations:

- 26 g minimum gas concentration at first ½ hour
- 22 g minimum gas concentration at 2 or 2½ hours
- 19 g minimum gas concentration at 4 hours.

(j) Litchi:

Fumigation with ethylene dibromide (EDB) at normal atmospheric pressure with 8g/m³ for 2 hours at 21° C. (70° F.) or above. Required post-treatment aeration: Forced circulation in the fumigation chamber for ½ hour following treatment and then placed in a well ventilated area.

Done at Washington, D.C. this 12th day of August 1981.

William F. Helms,

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

[PR Doc. 81-33007 Filed 8-13-81; 12:29 pm]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 318]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period August 16-22, 1981. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: August 16, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202-447-5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation is 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 1981-82. The marketing policy was recommended by the committee following discussion at a public meeting on July 7, 1981. A regulatory impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

The committee met again publicly on August 11, 1981, 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 week. The committee reports the demand for lemons is easier.

It is further found 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), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. 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 time.

Information collection requirements (reporting or record keeping) under this part are subject to clearance by the Office of Management and Budget and are in the process of review. These information requirements shall not become effective until such time as clearance by the OMB has been obtained.

Section 910.618 is added as follows:

§ 910.618 Lemon regulation 318.

The quantity of lemons grown in California and Arizona which may be handled during the period August 16, 1981, through August 22, 1981, is established at 225,000 cartons.

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

Dated: August 12, 1981.

James B. Wendland,

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

[PR Doc. 81-33070 Filed 8-13-81; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1030

Milk in the Chicago Regional Marketing Area; Temporary Revision of Shipping Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily relaxes the shipping requirements for pool supply plants under the Chicago Regional milk order for the months of September, October and November 1981 to prevent uneconomic shipments of milk to the market and to maintain the pool status of producers who regularly

supply the market. The revisions are made in response to requests of cooperative associations of producers supplying the market.

EFFECTIVE DATE: September 1, 1981.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, United States Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed temporary revision of shipping percentages; issued July 13, 1981; published July 17, 1981 (46 FR 37055).

This action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified "not significant" and, therefore, not a major action.

Also, it has been determined that the need for adjusting certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the Federal Register. However, this would not permit the completion of the procedure in time to give interested parties timely notice that supply plant shipping requirements for September 1981 would be modified. The initial request for the action was received on June 26, 1981.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to assure that the market would be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1030.7(b)(5) of the Chicago Regional milk order.

Notice of proposed rulemaking was published in the Federal Register (46 FR 37055) concerning a proposed decrease in the shipping requirements for pool supply plants for the months of September, October, and November 1981. The public was afforded the opportunity to comment on the proposal by submitting written data, views and arguments. Three comments were received in favor of the proposed