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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, 276, and 278

[Amendment No. 310]

Food Stamp Program; Provisions on Income and Resource Eligibility and Verification Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule and technical amendments.

SUMMARY: This action places into final form an interim rule published on July 17, 1987 which amended Food Stamp Program regulations to implement five Food Stamp Program (FSP) provisions contained in the Food Security Act of 1985 (Pub. L. 99–198). These provisions include: (1) State agency option to exclude from income for FSP purposes the first $50 of Title IV–D child support payments which are collected by the State on behalf of recipients of Aid to Families with Dependent Children (AFDC) benefits; (2) verification of household size; (3) exclusion as a resource of the value of real or personal property directly related to the maintenance and use of a vehicle used to produce income or necessary to transport disabled household members; (4) treatment of the cash value of a resource which has a lien placed against it as an inaccessible resource; and (5) counting as income the earnings of certain individuals participating in on-the-job training programs under the Job Training Partnership Act (JTPA).

This action includes technical amendments to correct errors in the Code of Federal Regulations that occurred as a result of previous rulemaking. These technical amendments affect the program areas of work registration, approval of retail food stores and wholesale food concerns, and treatment of drug/alcoholic rehabilitation centers.

This action contains a technical amendment relative to waiving office inteviews for elderly food stamp applicants to conform the provision to the Food Stamp Act's definition of elderly.

Lastly, this action also corrects an error in referencing which appeared in a final rulemaking published February 15, 1989 entitled, *Food Stamp Program: Food Stamp Issuance and Issuance Liability.*

EFFECTIVE DATES: The provisions of this final action which adopt, as final, interim provisions published July 17, 1987 and those which redesignate or otherwise slightly modify the July 17 interim provisions for clarity are effective retroactively to April 1, 1987. The provision of this final action to amend 7 CFR 273.9(b)(1)(v) is also effective retroactively to April 1, 1987 to be implemented no later than June 1, 1989. The conforming amendment to 7 CFR 273.11(e)(7) of this action is effective retroactively to February 25, 1986. The remaining technical amendments to 7 CFR 273.2(e)(2), 7 CFR 273.7(b)(1)(vii), 7 CFR 273.9(b)(1)(iii), 7 CFR 276.2(d) and 7 CFR 278.1 (e) are effective April 24, 1989.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Judith M. Seymour, Supervisor, Eligibility and Certification Rulemaking Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, Room 711, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 756–3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1519–1. The Department has classified this action as nonmajor. The annual effect of this action on the economy will be less than $100 million. This action will have no effect on costs or prices. Competition, employment, investment, productivity and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR Part 3015, Subpart V (48 FR 28115, June 24, 1983), this Program is exempt from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping burdens subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

Regulatory Flexibility Act

This final action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies are affected to the extent that they administer the Food Stamp Program and must implement the provisions of this action for new Program applicants and current participants.

Background

On July 17, 1987, the Department published an interim rule at 52 FR 26937 implementing eligibility provisions on child support payments, JTPA program earnings, resources, and verification requirements contained in the Food Security Act of 1985, enacted on December 23, 1985. The Department accepted comments on this rulemaking through September 15, 1987. Twelve letters were received which addressed the provisions of the interim rule. Commenters included nine State agencies, one local agency, and two public interest groups. The major concerns raised by the commenters are discussed below. Comments on non-discretionary provisions mandated by legislation, minor technical issues not directly related to the rule, and those that were unclear are not discussed. An explanation of the rationale of the rule is contained in the preamble of the interim rule. The reader should refer to the preamble of that rule for a full understanding of the provisions of this final rule.

Child Support Payments—Sections 273.9(c)(12), 276.2 (a) and (e)

In accordance with section 5 of the Food Stamp Act of 1977 (7 U.S.C. 2012(f)) as amended by section 1510(1) and (2) of Pub. L. 99–198, the interim rule permitted States the option to exclude up to the first $50 per month of Title IV–D child support payments collected by the State on behalf of an AFDC family when computing FSP eligibility and benefit levels. States that implement this option will increase the food stamp benefit of some households. In addition, some previously ineligible households may become eligible for program benefits due to exclusion of these child support payments as income. Pub. L. 99–198 further provides that the State agency must reimburse the Federal Government for any additional food stamp benefit costs resulting from such an income exclusion. Five commenters addressed these provisions, with four commenters objecting to the required reimbursement. Pub. L. 99–198 gave the Department no discretion to waive reimbursements, therefore, no change can be made to this requirement.

The legislative history accompanying Pub. L. 99–198 provides that the amount and method of collecting such reimbursement is left to the discretion of the Department. (*See* Senate Report No. 99–145; pages 237, 441.) The interim rule required State agencies to reimburse FNS either the actual or average cost amount of increased household benefits resulting from the income exclusion. In the interim rule, the Department provided State agencies with a choice between two reimbursement methods: (1) The actual amount of increased household benefits resulting from granting the income exclusion or (2) an average cost increase amount. Thus, under this rule, State agencies can implement only one of the two reimbursement methods offered by the Department and must apply that method to all affected cases in determining the reimbursement amount. The Department, however, believes that State agencies should be allowed to evaluate the feasibility of the method implemented and be provided with an opportunity to use the other available method. Consequently, the interim rule allowed State agencies to switch from one reimbursement method to the other on an annual basis.

The Department received several comments recommending that State agencies use only one reimbursement method and not be allowed to switch methods. One commenter felt that State agencies should use only the average method to compute reimbursements as this method seems preferable to FNS. In addition, this commenter considered the average method less time-consuming for State agencies than the actual method. A related comment suggested that FNS require State agencies to evaluate both reimbursement methods for one to two years and choose one method for permanent use. The Department considers both reimbursement methods to be equally appropriate for compliance with the statutory mandate to reimburse the Federal Government for increased costs associated with the provision. Therefore, the Department believes that State agencies should be provided the flexibility to use the method most feasible for their particular needs. Consequently, the interim reimbursement provisions at 7 CFR 273.9(c)(12) and 276.2(a) and (e) are adopted final without change.

Current rules at 7 CFR 276.2 provide that if a State agency fails to pay a bill for a Program loss, FNS may offset the amount of loss from the State agency's Letter of Credit. The interim rule contained an amendment to 7 CFR 276.2 to clarify, by regulatory reference, that the losses covered by this provision are those specified in 7 CFR 276.2(b), (c) and the new Title IV–D reimbursement provisions added by the interim rule as 7 CFR 276.2(e). However, through an oversight, a regulatory reference to 7 CFR 276.2(e) was omitted from the interim rule amendment. This final action contains a technical amendment to 7 CFR 276.2(d) to correct this oversight.

Job Training Partnership Act (JTPA) Programs—Section 273.9(b)(1)(v)

Section 1509(c)(1) of Pub. L. 99–198 amended section 5 of the Food Stamp Act (7 U.S.C. 2014) to require that, with one exception, earnings of individuals participating in on-the-job training programs under the Job Training Partnership Act be counted as earned income for Food Stamp Program purposes. The exception is that such earnings of dependents less than 19 years of age are to be totally excluded.

In the interim rule, the Department interpreted "dependent" to mean "under the parental control of another household member." The Department believes that guidelines for applying this interpretation should be consistent with those used in applying "under parental control" as it is used in 7 CFR 273.1(a)(2)(i)(B) and 7 CFR 273.9(c)(7).

Several commenters questioned or objected to the Department's interpretation of the term "dependent." One commenter noted that State laws commonly provide that a minor becomes an adult at age 18 and is therefore not under parental control. The Department considers "under parental control" to be the term most helpful in interpreting the "dependent" provision of Pub. L. 99–198. Policy Memo 79–185, dated November 24, 1978, applies the term "parental control" to minors who are dependents—financial or otherwise—of the household as opposed to independent units. The term "under parental control" makes the provision consistent to the extent possible with current policy at 7 CFR 273.9(c)(7) related to the earnings of children under age 18. Expansion of the term's application to individuals who are under age 19 reflects Congressional intent to "make income generated from a JTPA Program by older children living at home exempt from consideration." (*See* H. Rept. No. 99–127, 99th Cong., 1st Session, Pg. 456, reprinted at 1985 U.S. Code Cong. and Ad. News 1559–1560.) It is the Department's position that application of the term "under the parental control of another household member" is not limited to individuals under age 18 and would excompass the dependent less than 19 years old. Thus, this final action retains the phrase as it appears in the interim provision at 7 CFR 273.9(b)(1)(v).

Two commenters requested that the Department clarify whether income exclusions apply to allowances and reimbursements. One commenter questioned whether the earnings exclusion for individuals under age 19 applies to their actual wages, or to their stipends for meals and transportation while they look for a job, or to both. Another commenter questioned the scope of JTPA income inclusions for individuals age 19 or older; i.e., whether reimbursements for transportation to and from the job-training site are defined as income for food stamp purposes.

The JTPA (Pub. L. 97–300, 96 State. 22, October 13, 1982) excludes from consideration as income allowances, earnings, and payments to individuals participating in job training programs under the JTPA. Pub. L. 99–198 supercedes this income exclusion provision with regard to on-the-job training programs under section 204(5), Title II, of the JTPA. Section 1509(c)(1) of Pub. L. 99–198 defines as income only earnings to individuals over age 19 participating in JTPA on-the-job programs. Thus, the income exclusion provision of the JTPA of 1982 remains in effect for all other JTPA training program allowances or program payments (including allowances, reimbursements or stipends for meals, transportation or other costs).

The Department is also taking this opportunity to make a technical amendment to the interim JTPA provisions codified at 7 CFR 273.9(b)(1)(v). This provision as currently written applies to all on-the-job training programs under the JTPA. The language of Pub. L. 99-198 clarifies that the provision is relevant only to on-the-job training programs which are under section 204(5), Title II, of the JTPA. It has come to the Department's attention that there are on-the-job training programs which are not under section 204(5), Title II, of the JTPA and the provision at 7 CFR 273.9(b)(1)(v) could be misapplied to include these programs. To ensure proper application of the provision, this final action amends 7 CFR 273.9(b)(1)(v) to conform the provision to the language of the statute by adding a reference to section 204(5), Title II, of the JTPA.

The JTPA of 1982 replaced the Comprehensive Employment and Training Act (CETA). With regard to training allowances, provisions of the JTPA of 1982 differ significantly from those of the expired CETA for food stamp purposes. Whereas training allowances from programs authorized by CETA were included in the definition of earned income, "to the extent they are not a reimbursement" (7 CFR 273.9(b)(1)(iii)), JTPA provisions exclude as income such allowances. To update regulations which address training allowances, a technical amendment is made to 7 CFR 273.9(b)(1)(iii) to eliminate the section's reference to the expired CETA and specifies the treatment of JTPA training allowances, which are excluded as income.

Four commenters were concerned about the application of school enrollment requirements to dependent household members under age 19 who receive earnings from JTPA on-the-job training programs. One commenter wanted the Department to specify whether the school attendance provision in 7 CFR 273.9(c)(7), which applies to earnings of children under age 18, also applies to JTPA earnings of individuals under age 19. Another commenter objected to the Department's assumption that the student provision has been dropped as a condition for the disregard of JTPA earnings. Two commenters felt that the JTPA income exclusions should be applied only to individuals under age 18 who are at least half-time students.

The provisions of Pub. L. 99-198 do not require that dependents under age 19 be enrolled in school. In addition, the legislative history contains no discussion of school enrollment regarding JTPA participants. Therefore, the Department cannot mandate that participants in JTPA on-the-job training programs who are dependents under age 19 be students in order for households to qualify for the JTPA income exclusion. This final action amends 7 CFR 273.9(b)(1)(v) to clarify that school attendance and/or enrollment is not a factor in applying income exclusions to the JTPA earnings of dependent household members less than 19 years of age.

Resources—Sections 273.8(e)(15), 273.8(h)(1)(vi)

Resource provisions in section 1514(2)(A) of Pub. L. 99-198 provided the Department with the discretion to expand the definition of excluded resources. Reflecting Congressional intent, the interim rule excluded as "inaccessible," non-liquid resources which have a lien against them and which the household is prohibited by the security or lien holder (creditor) from selling. The Department received no comments with significant issues to resolve, therefore the interim provision at 7 CFR 273.8(e)(15) is finalized without change.

In addition, reflecting section 1514(2)(B) of Pub. L. 99-198, the interim rule provided that property, real or personal, is excludable to the extent that it is directly related to the "maintenance or use" vehicles which annually produce income or are necessary to transport a physically disabled household member. The interim rule explained that it is not the intent of Congress to exclude as a resource the full value of a one-acre lot if only one-quarter of that acre is used for parking and maintenance purposes. The exclusion is intended to give households a monetary credit based on the use of a portion of the property only. Consequently, a household cannot claim entitlement to an exclusion for the full value of a one-acre lot because State and local laws prohibit subdividing of property, or the household is somehow prohibited from converting the property to a cash resource. Therefore, only the one-quarter acre actually used for parking and maintenance purposes would be excluded under this resource provision.

Two commenters recommended changes concerning determination of an allowable portion of property to be excluded. One commenter felt that FNS should establish guidelines for such determinations. The interim rule was explicit in conveying the Department's position that no regulatory formula is being established for determining the exact portion of related property to be applied under this provision. This position is based on the Department's belief that State agencies should have the flexibility to make such determinations on a case-by-case basis. A second commenter suggested that the regulatory language clearly say that the portion of property to be excluded is determined by the State. Current regulations at 7 CFR 273.8(c) make clear that it is the responsibility of State agencies to determine the resources of a household. The interim provision at 7 CFR 273.8(h)(1)(vi) is consistent with other resource provisions in providing State agencies with sufficient direction to determine the resource eligibility of food stamp households. The interim provision did not decrease the State agency's responsibility for determining resource eligibility, therefore, it is adopted final without change.

Accordingly, the text of the interim provision at 7 CFR 273.8(h)(1)(vi) is adopted final. However, commenters noted two corrections that should be made relative to the interim provision at 7 CFR 273.8(h)(1)(vi). First, the regulatory reference to paragraph "(h)(1)(vi)" contained in the interim provision should read "(h)(1)(v)." Secondly, the interim provision is a resource exclusion provision and more appropriately belongs in 7 CFR 273.8(e), *Exclusions from resources*. Technical amendments are hereby made to 7 CFR 273.8(e) and (h) to reflect these necessary corrections.

Verification—Section 273.2(f)

Prior to implementation of the interim rule, 7 CFR 273.9(f)(2) contained a requirement to verify household size based on the Department's discretionary authority to mandate verification of eligibility criteria. Additionally, 7 CFR 273.2(f) provided that State agencies could elect to verify any nonmandatory factor which affects household eligibility and benefit levels as long as the requirement to verify these factors was based on error-prone household profiles. In accordance with section 1517 of Pub. L. 99-198, the interim rule amended 7 CFR 273.2(f) to make clear that verification of questionable household size is required by statute. Statutory mandates for verification appear at 7 CFR 273.2(f)(1). Therefore, the interim rule continued prior verification provisions at 7 CFR 273.2(f)(2)(i), but moved them from *Verification of* *questionable information* to 7 CFR 273.2(f)(1), *Mandatory verification*. Also, in accordance with section 1517 of Pub. L. 99–198, the interim rule provided greater authority for State agencies to elect verification of factors which affect household eligibility or benefit level by removing references to the requirement that such verification must be based on error-prone profiles. State agencies can still use error-prone profile indicators in exercising their option to verify factors, but are no longer required to do so.

Several commenters addressed the provisions on verification of household size. One commenter requested that FNS provide guidelines defining acceptable verification of household size. The Department is not adopting this comment because it believes that State agencies are in the best position to determine what types of third-party information or documentation constitute acceptable verification. Another commenter recommended that the provision mandating verification of household size when questionable be modified to allow State agencies to periodically reverify household size. The Department is not adopting this comment. The Department believes that existing regulatory provisions already afford State agencies sufficient opportunity to reverify household size periodically, at recertification (7 CFR 273.2(f)(8)(c)), when changes are reported (7 CFR 273.2(f)(8)(c)(ii)), or during the monthly reporting cycle (7 CFR 273.21(i)(3)). These three opportunities for recertification vary in frequency of occurrence, and State agencies have the flexibility to determine when such recertification should occur.

Accordingly, the interim verification provisions at 7 CFR 273.9(f)(1)(ix) and (f)(3) are adopted as final without change. However, a technical amendment is being made to correct an error in regulatory references. A previous rule added a new paragraph (f)(l)(ix) to 7 CFR 273.2. Consequently, the amendment to redesignate 7 CFR 273.2(f)(2)(i) as 7 CFR 273.2(f)(1)(ix) contained in the interim rule resulted in two provisions having the same regulatory designation. This action corrects this oversight by redesignating the household size verification provision at 7 CFR 273.2(f)(1)(ix) as 7 CFR 273.2(f)(1)(x).

Implementation—Section 272.1(g)

The implementation section of the interim rule (7 CFR 272.1(g)(90)) required State agencies to implement the provisions of the rule retroactively to April 1, 1987 as required by Pub. L. 99–198, except for the provisions governing the treatment of Title IV–D income at 7 CFR 273.9(c)(12) and 7 CFR 276.2, which is a State agency option. Retroactive implementation of the interim provisions at 7 CFR 273.9(b)(1)(v) involving JTPA on-the-job training program earnings led to a number of comments about quality control (QC) and overissuance claims.

The interim rule provided that QC shall not identify variances resulting solely from implementation or nonimplementation of the interim rule in cases with review dates between April 1, 1987 and August 31, 1987. The Department received several comments regarding the QC policy of the interim rule. Commenters recommended that what they lable as the hold harmless (grace period) provision be amended to protect States from QC errors on actions completed before September 1, 1987. Another commenter requested that FNS exclude implementation errors from the QC error rate for six months following interim rule publication (July 17, 1987) rather than between April 1, 1987 and August 31, 1987.

This final action amends 7 CFR 272.1(g)(90) to clarify the circumstances under which QC would end the grace period and begin to code variances in individual cases. To code a variance, four conditions had to be met: (1) The review date occurred after August 31, 1987; (2) the State agency certified or recertified the case (or was required to recertify the case) after August 31, 1987; (3) the certification or recertification was effective for the review date (or the required recertification should have been effective for the review date); and (4) in a retrospective budget system, the household's budget month was September 1987 or later or in a prospective budget system, the issuance month was September 1987 or later.

This means that if any active or negative case's review date fell on or before August 31, 1987, QC must exclude any implementation variance (which includes failure to implement). This provision also means that if the State agency certified or recertified the case on or before August 31, 1987 effective for the review date and its next recertification was not required until after the review date, QC must exclude any implementation variance.

If the State agency was required to recertify a case, but did not do so, QC shall consider the State agency to have failed to properly handle the cases; as such, QC would identify an implementation variance if one existed.

The interim rule provided State agencies with guidance in restoring benefits, but comments received by the Department indicate a need for clarification in handling overissuance claims. Four commenters suggested that FNS permit States to waive claims establishment and collection for retroactive overissuances resulting from JTPA earnings being included as income. Another commenter requested that FNS create a new category of overissuance for the retroactive period which is neither client nor agency error and provide instructions on how to handle cases affected by the interim rule.

The Department agrees with commenters that there is a need to clarify the issue of JTPA overissuance claims. As commenters pointed out, retroactive implementation of the provision to count certain JTPA earnings as income resulted in overissued benefits to households affected by the provision. It is the Department's view that the number of households affected by the provision is not significant. In light of this, the Department believes that the administrative burden associated with establishing and collecting these JTPA overissuance claims would outweigh the amount of benefits that could be recovered. Therefore, this final action clarifies this issue by amending 7 CFR 272.1(g)(90) to provide that State agencies not establish a claim for any household which received overissued benefits resulting solely from retroactive implementation of the JTPA income provision.

This action also clarifies that any affected household that applied for FSP benefits from April 1, 1987 until implementation of this rule and was denied benefits is entitled to restored benefits back to the date of application or April 1, 1987, whichever occurred later, if the household is otherwise entitled to benefits and requests a review of its case or the State agency otherwise becomes aware that a review is needed. This is true regardless of when such a situation is identified.

This action also clarifies that the provision at 7 CFR 273.17, limiting restored benefits to 12 months, does not apply to households entitled to restored benefits under the July 17, 1987, interim regulations. This clarification is made by adding a new sentence to 7 CFR 272.1(g)(90).

Additionally, this final action addresses implementation of the technical amendment to 7 CFR 273.9(b)(1)(v). As discussed earlier in this preamble, this final action restricts application of 7 CFR 273.9(b)(1)(v) to on-the-job training programs under section 204(5), Title II, of the JTPA. Therefore, this action amends 7 CFR 272.1(g) to add a new paragraph which requires State agencies to implement this provision for new applicant households no later than June 1, 1989.

The rule clarifies that affected households which newly applied for Program benefits during the period of April 1, 1987, and the date the State agency implements the provision in § 273.9(b)(1)(v) of this final action and were denied benefits shall be provided restored benefits back to April 1, 1987, or the date of the food stamp application, whichever occurs later, if the household is otherwise entitled to benefits and requests a review of its case or the State agency otherwise becomes aware that a review is needed. State agencies shall convert their current caseload to this JTPA provision at household request, recertification, or when the case is next reviewed, whichever occurs first. Restored benefits shall be provided to such households, if applicable, back to April 1, 1987, or the date of the food stamp application, whichever occurs later.

Again, this action clarifies that the provision at 7 CFR 273.17, limiting restored benefits to 12 months, does not apply to households entitled to restored benefits resulting from implementation of the provision in § 273.9(b)(1)(v) of this final action.

Quality control errors resulting from application of the provisions of this final action during the required implementation time frame, shall be handled in accordance with regulations published November 2, 1988, at 53 FR 44171.

Correction

The Department is taking this opportunity to correct an error which appeared in a final rule published on February 15, 1989, at 54 FR 6990.

On page 7003, in the third column, amendatory statement number 6.b under Part 273 is incorrect. The statement as currently worded provides that the current provisions at 7 CFR 273.1(f)(1)(i) (A) and (B), which restrict the use of authorized representatives for completing the food stamp application on behalf of applicant households, are being removed. It is the Department's intent to remove the provisions at 7 CFR 273.2(f)(1) (ii) and (iii) governing the use of authorized representatives to obtain and use coupons on the household's behalf because these provisions are being relocated to Part 274 by this same rule. This inadvertent error is hereby corrected by republishing amendatory statement number 6.b. as it should be read.

Additional Technical Amendments—Sections 273.11(e), 278.1(e), 273.7(b), 273.2(e)

On April 13, 1987, the Department published a final rulemaking (at 52 FR 11811) which contained three FSP provisions contained in the Food Security Act of 1985. One of these provisions allowed FSP participation by residents of publicly operated community mental health centers which conduct residential programs for drug addicts and/or alcoholics under Part 13 of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). The preamble to this rulemaking explained that on June 8, 1979, the Department published an interim rule which included an amendment to provide that alcoholic and drug addiction treatment and rehabilitation programs do not have to be authorized as retail food stores in order for their residents to be certified to participate in the FSP. The April 13, 1987, final action amended 7 CFR 273.1(e) and 273.11(e) to reflect this policy. However, through an oversight, a conforming amendment was not made to 7 CFR 273.11(e)(7) at that time. Consequently, this final action makes a technical amendment to 7 CFR 273.11(e)(7) to conform it to the earlier change. Consistent with the effective date in the April 13, 1987, rule, this technical amendment is effective on February 25, 1986. Since this is a technical correction to conform to a policy which has already been implemented, no further implementation action is necessary.

Additionally, the preamble to the April 13, 1987, final rule explained that amendments were being made to 7 CFR 278.11(e)(1) and 7 CFR 273.1(e) to conform the provisions to the language of the Food Stamp Act of 1977, as amended by section 1501 of the Food Security Act of 1985. The April 13 conforming amendments were intended to reflect the removal of the word "funded" from the two provisions. However, through an oversight, the April 13 amendment to the first sentence of 7 CFR 278.1(e) was incorrect and the conforming amendment was not made. Consequently, this action contains a technical amendment to the first sentence of 7 CFR 278.1(e) to conform the provision to intended policy by removing the word "funded."

On March 28, 1987, the Department published a final rulemaking (51 FR 10764) which contained a technical amendment to the last sentence of 7 CFR 273.7(b)(1)(vii) to reinstate language unintentionally removed from the Code of Federal regulations (CFR) by a previous rulemaking. However, a portion of the language intended to be reinstated was omitted from the March 28 amendment. Consequently, this action contains a technical amendment to the last sentence of 7 CFR 273.7(b)(1)(vii) to reinstate the missing language in the appropriate section of the CFR.

Lastly, current regulations at 7 CFR 273.2(e)(2) state that if a food stamp applicant household is unable to appoint an authorized representative and is unable to come to the food stamp office because its members are 65 years of age or older, the office interview will be waived if the household so requests (7 CFR 273.2(e)(2)). This section of the regulations implemented the provisions of section 11(e)(2) of the Food Stamp Act of 1977 which made the exception to the office interviews requirement available to the "elderly." Following the promulgation of 7 CFR 273.2(a)(2), Congress enacted the definition of "elderly or disabled member" codifed at 7 U.S.C 2012(r) which defines "elderly" as being age 60 or over. (Pub. L. 97-253, 145(a), 96 Stat. 763, 773 (1982).) This final action amends 7 CFR 273.2(e)(2) to bring the provision into conformity with the statutory definition of an "elderly" member.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs, Penalties.

7 CFR Part 278

Administrative practice and procedures, Banks, Banking, Claims, Food stamps, Groceries-retail, Groceries, General line-wholesaler, Penalties.

Therefore, 7 CFR Parts 272, 273, 276 and 278 are amended as follows:

1. The authority citation for Parts 272, 273, 276 and 278 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1. a. The amendment to § 272.1, as published at 52 FR 26937, July 17, 1987, to add a new paragraph (g)(90) is adopted as final. However, paragraph (g)(90) is amended, for clarity, by removing the third and fourth sentences and adding four new sentences to read as follows:

b. A new paragraph (g)(106) is added. The additions read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation. * * *

(90) *Amendment No. 294.* * * * State agencies shall provide restored benefits, if appropriate, back to the date of application or April 1, 1987, whichever occurred later. Any affected household that applied for Program benefits from April 1, 1987 until implementation of this rule and was denied benefits is entitled to restored benefits back to the date of application or April 1, 1987, whichever occurred later, if the household is otherwise entitled to benefits and requests a review of its case or the State agency otherwise becomes aware that a review is needed. The provision at 7 CFR 273.17, limiting restored benefits to 12 months, shall not apply to households entitled to resorted benefits under the provisions of *Amendment No. 294.* For QC purposes, implementation variances shall not be identified unless a case meets all four of the following conditions: the case's review date is after August 31, 1987; the State agency certified or recertified the case (or was required to recertify the case) after August 31, 1987; the certification or recertification was effective for the review date (or the required recertification should have been effective for the review date); and in a retrospective budget system, the household's budget month was September 1987 or later or in a prospective budget system, the household's issuance month was September 1987 or later. For the purpose of this amendment, State agencies shall not establish a claim against any household which received overissued benefits resulting solely from retroactive implementation of the JTPA income provision in § 273.9(b)(1)(v).

* * * * *

(106) *Amendment No. 310.* (i) The provisions of this amendment which adopt, as final, interim provisions published July 17, 1987 and those which redesignate or otherwise slightly modify the July 17 interim provisions for clarity only are effective retroactively to April 1, 1987. The conforming amendment at § 273.11(e)(7) is effective retroactively to February 25, 1986. The remaining technical amendments contained in this amendment at § 273.2(e)(2), § 273.7(b)(1)(vii), § 273.9(b)(1)(iii), § 276.2(d) and § 278.1(e) are effective April 24, 1989. These provisions do not alter or change current policy or procedures under which State agency are operating or do not require special implementation efforts by State agencies.

(ii) The provision in § 273.9(b)(1)(v) which limits application of the provision to on-the-job training programs under section 204(5), Title II, of the Job Training Partnership Act is effective retroactively to April 1, 1987 and shall be implemented as follows:

(A) State agencies shall implement the provision for all new applicant households no later than June 1, 1989. Affected applicant households which applied for Program benefits during the period April 1, 1987 and the date the State agency implemented this change and were denied benefits shall be provided restored benefits, if applicable, back to April 1, 1987 or the date of the food stamp application, whichever occurs later, if the household is otherwise entitled to benefits and requests a review of its case or the State agency otherwise becomes aware that a review is needed.

(B) All other households shall be converted to the provision at household request, at recertification, or when the case is next reviewed, whichever occurs first. Restored benefits shall be provided, if applicable, for such households back to April 1, 1987 or the date of the food stamp application, whichever occurs later.

(C) The provision at 7 CFR 273.17, limiting restored benefits to 12 months, does not apply for households entitled to restored benefits under *Amendment No. 310.*

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.1 [Correctly Amended]

3. Correction. In FR Document No. 89–3245, published, February 15, 1989 at 54 FR 6990, make the following correction:

On page 7003, in the third column, under Part 273, amendatory statement no. 6 b. should read: "The introductory text of paragraph (f)(1) and paragraphs (f)(1)(ii) and (f)(1)(iii) are removed and paragraphs (f)(1)(i), (f)(1)(i)(A) and (f)(1)(i)(B) are redesignated as paragraphs (f)(1), (f)(1)(i) and (f)(1)(ii), respectively."

§ 273.2 [Amended]

4. In § 273.2. a. The first sentence of paragraph (e)(2) is amended by removing the words "65 years of age or older, or are mentally or physically handicapped" and adding in their place the words "elderly or disabled (as defined in § 271.2)".

b. The amendment to § 273.2, published at FR 26937, July 17, 1987, which removed paragraph (f)(2)(i) and added it to a paragraph under (f)(1) is adopted final. However, that portion of the amendment which provided that paragraph (f)(2)(i) be designated as paragraph (f)(1)(ix) was incorrect. A previous rule also added to paragraph (f)(1)(ix). Thus, the July 17 amendment resulted in two provisions having the same regulatory designation. This oversight is hereby corrected by redesignating the second paragraph (f)(1)(ix) which begins with the words "*Household composition.* State agencies shall verify" as paragraph (f)(1)(x).

c. The amendments to § 273.2, as published at 52 FR 26937, July 17, 1987, to remove paragraph (f)(3)(iii), to redesignate paragraphs (f)(3)(i), (f)(3)(i)(A) and (f)(3)(i)(B) as introductory paragraph (f)(3) and paragraphs (f)(3)(i) and (f)(3)(ii), respectively, to revise the first sentence of newly designated introductory paragraph (f)(3), and to amend the third sentence of newly designated paragraph (f)(3)(i) are adopted final without change.

§ 273.8 [Amended]

5. In § 273.8. a. The amendment to § 273.8, as published at 52 FR 26397, July 17, 1987, to add a new paragraph (e)(15) is adopted final without change.

b. The amendment to § 273.8, as published at 52 FR 26397, July 17, 1987, to add a new paragraph (h)(1)(vi) is adopted final. However, for clarity and proper application of the provision, paragraph (h)(1)(vi) is redesignated as paragraph (e)(16) and is amended by removing the regulatory reference to paragraph "(h)(1)(vi)," which is incorrect, and adding, in its place, a reference to paragraph "(h)(1)(v)".

§ 273.9 [Amended]

6. In § 273.9. a. Paragraph (b)(1)(iii) is amended by removing the words "and programs authorized by the Comprehensive Employment and

Training Act" and adding the phrase ", except for allowances received through programs authorized by the Job Training Partnership Act" immediately before the period at the end of the paragraph.

b. Paragraph (b)(1)(v) is amended by adding the words "section 204(5), Title II, of" between the words "programs under" and the word "Job" appearing in the first sentence, and by adding the words ", regardless of school attendance and/or enrollment as discussed in paragraph (c)(7) of this section" before the period at the end of paragraph (b)(1)(v).

c. The amendment to § 273.9, as published at 52 FR 26937, July 17, 1987, to add a new paragraph (c)(12) (later redesignated as paragraph (c)(13) at 53 FR 22291, June 15, 1988) is adopted final without change.

§ 273.11 [Amended]

7. In § 276.11, the last two sentences of paragraph (e)(7) are removed to conform the provisions to other sections of the regulations.

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

§ 276.2 [Amended]

8. The amendments to § 276.2, as published at 52 FR 26937, July 17, 1987, to add two sentences to paragraph (a) is adopted final without change.

9. In § 276.2, paragraph (d) is amended by removing the reference to "paragraphs (b) and (c) of" and adding in its place a reference to "paragraphs (b), (c) and (e) of".

10. The amendment to § 276.2, as published at 52 FR 26937, July 17, 1987, to add a new paragraph (e) is adopted final without change.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

§ 278.1 [Amended]

11. In § 278.1, a technical amendment is made to paragraph (e) to conform the paragraph to intended policy by removing the word "funded" appearing in the first sentence.

Date: March 17, 1989.

G. Scott Dunn,

Acting Administrator.

[FR Doc. 89-6917 Filed 3-23-89; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-193]

Interstate Movement of Citrus Fruit and Calamondin and Kumquat Plants From Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the "Citrus Canker" regulation by:

(1) Establishing new survey requirements for groves producing regulated fruit for interstate movement with a certificate or limited permit.

(2) Relieving some restrictions on the interstate movement of regulated fruit produced in groves outside the area of Florida under special restriction because of citrus canker caused by the Asiatic strains.

(3) Changing the boundaries of the area of Florida under special restriction because of citrus canker caused by the Asiatic strains.

(4) Allowing calamondin and kumquat plants grown from seeds or rooted cuttings in nurseries or groves outside the area of Florida under special restriction because of citrus canker caused by the Asiatic strains to be moved interstate under less stringent conditions than at present and to all areas of the United States except commercial citrus-producing areas.

(5) Prohibiting the interstate movement from Florida of budded or grafted calamondin and kumquat plants, which may have been grown from rootstocks of plants susceptible to and capable of transmitting citrus canker.

(6) Adding the species *Clausena lansium* (Lour.) Skeels (common name, wampi) to the list of articles regulated because of citrus canker.

(7) Exempting certain nurseries in Florida from inspection; allowing interstate movement of fruit even if all other nurseries in the state are not inspected, provided the state prohibits the movement of regulated articles from those nurseries; and lengthening the interval between required nursery inspections.

These actions are necessary to improve our ability to prevent the interstate spread of citrus canker and to remove restrictions that are not warranted in achieving this goal.

EFFECTIVE DATE: March 24, 1989.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease caused by strains of the bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The disease is known to affect plants and plant parts, including fruit, of citrus and citrus relatives (Family Rutaceae). It can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It may also make the fruit of infected plants unmarketable by causing lesions on the fruit. Infected fruit may also drop from trees before reaching maturity. Aggressive strains of *Xanthomonas campestris* pv. *citri* can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

Citrus canker is found in the United States only in Florida. To prevent the interstate spread of this disease, we regulate the interstate movement of potential host material from Florida. The regulations are contained in 7 CFR 301.75 and are referred to below as "the regulations."

Since October 21, 1988, we have published in the **Federal Register** three documents that changed, or proposed to change, the regulations. This final rule affirms or adopts provisions in all three documents, with modifications based on comments we received. The specific documents, all modifications, and the comments upon which our final actions are based are discussed below.

Federal Register Documents That Form the Basis of This Final Rule

On October 21, 1988, we published in the **Federal Register** [53 FR 41538-41549, Docket 88-105] a proposal to make various changes to the regulations. (An error in the proposed fruit treatment requirements was corrected by a document published in the **Federal Register** on November 9, 1988 [53 FR 45274, Docket 88-174].)

We propose to:

(1) Relieve some restrictions on the interstate movement of regulated fruit produced in groves outside the area of Florida under special restriction because of citrus canker caused by the Asiatic strains;

(2) Allow calamondin and kumquat plants grown from seeds or rooted cuttings in nurseries or groves outside the area of Florida under special restriction because of citrus canker caused by the Asiatic strains to be

moved interstate under less stringent conditions than at present and to all areas of the United States except commercial citrus-producing areas;

(3) Prohibit the interstate movement from Florida of budded or grafted calamondin and kumquat plants, which may have been grown from rootstocks of plants susceptible to and capable of transmitting citrus canker;

(4) Add the species *Clausena lansium* (Lour.) Skeels (common name, wampi) to the list of articles regulated because of citrus canker; and

(5) Reduce the area of Florida that is under special restriction because of citrus canker caused by the Asiatic strains.

We invited public comment on the proposed rule. The initial comment period was for 30 days following publication of the proposed rule, with comments to be postmarked or received on or before November 21, 1988. This comment period was reopened and extended by a document published in the **Federal Register** on December 12, 1988 [53 FR 49885, Docket 88–197] to allow consideration of additional comments if they were postmarked or received on or before December 27, 1988.

We received 32 comments from individual growers, nursery owners, grower and packing associations, other representatives of the citrus industry, and state government officials in Arizona, California, Florida, Louisiana, and Texas. Twenty-two supported the proposed rule; 10 were opposed.

On November 8, 1988, during the comment period for Docket 88–105, we published in the **Federal Register** [53 FR 45071–45073, Docket 88–180] an interim rule that changed the requirements concerning nursery inspections.

Until that interim rule, certificates could be issued for the interstate movement of regulated fruit only if all nurseries in the state that contained regulated plants were inspected for citrus canker every 30 days. The interim rule allowed certificates to continue to be issued for the interstate movement of regulated fruit, even if all nurseries in Florida were not inspected, provided the State of Florida prohibited the movement of regulated articles from any nursery not inspected.

The interim rule was effective November 2, 1988. We solicited public comment on this action, with deadlines for comments the same as for Docket 88–105. We received 7 comments from state government officials in California, FLorida, Louisiana, and Texas, and from representatives of the citrus industry. Two were in favor; 5 opposed the rule.

On January 4, 1989, we published in the **Federal Register** [54 FR 97–98, Docket 88–212] an interim rule that required tree-by-tree inspection of certain groves producing fruit for interstate movement with a certificate. Groves affected were those that may have been exposed to the Asiatic strain of citrus canker by personnel, vehicles, or equipment that were previously in a grove infested with the Asiatic strain of citrus canker.

The interim rule was effective December 29, 1988. We invited public comment on this action for 30 days, with comments to be received on or before February 3, 1989. We received 5 comments from state government officials in California and Texas and from representatives of the citrus industry. All asserted the rule did not go for enough in providing protection to citrus-producing states.

Comments and Modifications

Grove Surveys

A number of commenters criticized the proposed grove inspection procedures as being inadequate to detect citrus canker. Comments on the interim rule, published January 4, 1989, that strengthened survey procedures for certain "exposed" groves also were critical: although commenters apparently felt that a tree-by-tree inspection of these groves was a step in the right direction, they stated that our survey procedures continued to provide insufficient protection against the spread of citrus canker to citrus-producing states. Specific suggestions for improving these procedures included conducting inspections on foot, with a systematic staggering of middles; inspecting all groves tree by tree; inspecting a heavier sampling of trees that may have been exposed to the Asiatic strains by "common harvesting"; and, for groves producing fruit for interstate movement to citrus-producing states, conducting the last inspection no more than 30 days before harvest. Some commenters also maintained that inspectors should be better trained and monitored. Several commenters, citing the detection of citrus canker caused by the Asiatic strains in a Manatee County grove (the Cemetery Block) in November, 1988, asked that all shipments of regulated fruit to citrus-producing states be halted until the full extent of any spread of the Asiatic strains from that grove has been determined and all groves producing fruit for certificate have been reinspected on a tree-by-tree basis.

Following the detection of citrus canker in the Cemetery Block in November, we took a number of steps to determine the extent of spread of the disease, if any, and to prevent the disease from being spread interstate. First, in the infested grove itself, more than 90 percent of the infested trees (those located in the area of the grove where the infestation was concentrated) were destroyed, and other infested trees, as well as surrounding trees, were defoliated. Within a mile-and-a-half of the infested grove, survey teams supplemented by personnel employed by the Animal and Plant Health Inspection Service (APHIS) conducted two inspections of all groves and residential properties, tree by tree and on foot. No fruit moved interstate from this area until the surveys were completed and all suspicious samples were confirmed negative for citrus canker. Beyond this area and up to 5 miles from the infested grove, the survey crews also inspected every residential property tree by tree, and inspected all groves by walking every fourth middle. No additional infestations were found.

We also identified all groves that may have been exposed to citrus canker by the movement of personnel, vehicles, and equipment from the infested grove during the 2 years prior to the detection. Survey crews supplemented by APHIS personnel inspected each of these groves, tree by tree. Again, no infestations were found.

In addition, scientists employed by the U.S. Department of Agriculture and the University of Florida looked at the potential for natural spread of the disease as a result of Tropical Storm Keith, which moved eastward over Florida from the Gulf Coast in late November, 1988. They determined, based upon these surveys and experience with the spread of the disease in other places, that viable bacteria from the infested grove could have spread only a short distance, and not beyond the area already under special restrictions because of the Asiatic strains (the A-strains area). Further, there is a sufficient buffer between the area where the bacteria could have spread and the boundaries of the A-strain area. Any bacteria that may have been spread by the storm are unlikely to infect any citrus plants on which they may have been deposited at least until spring weather produces a flush of new growth on the trees. Fruit on the trees when the storm hit was not at risk of becoming infested, since it was beyond the susceptible stage of development, and our regulations require that this fruit be treated to destroy surface bacteria.

Based on our surveys, and other information cited above, it does not appear that additional infestations are present at this time. Consequently, all fruit that has qualified for a certificate or limited permit based on grove surveys completed in accordance with regulations in effect before this final rule may be moved interstate without further grove surveys. However, we agree with commenters that survey procedures must be strengthened to ensure prompt detection should any grove become infested in the future. Therefore, this final rule establishes new grove survey procedures, effective immediately, for all groves where surveys to qualify fruit for interstate movement with a certificate or limited permit have not yet been completed. The new grove survey requirements are as follows:

In all groves producing regulated fruit for interstate movement with a certificate: No more than 30 days before the beginning of harvest, an inspector must walk through the grove and inspect every tree; and, in groves producing limes, an inspector must repeat the tree-by-tree walking survey at no more than 120-day intervals for as long as the harvest continues.

In all groves producing regulated fruit for interstate movement with a limited permit and located within the area of Florida under special restriction because of citrus canker caused by the Asiatic strains (the A-strain area): No more than 30 days before the beginning of harvest, an inspector must walk through the grove and inspect every tree; and, in groves producing limes, an inspector must repeat the tree-by-tree walking survey at no more than 120-day intervals for as long as the harvest continues.

In all groves of 10 or more trees producing regulated fruit for interstate movement with a limited permit and located outside the A-strain area: No more than 90 days before the beginning of harvest, an inspector must examine all trees on the perimeter of the grove while driving by at no more than 2 m.p.h.; examine, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated); and examine, while on foot, a minimum of four mature trees or eight young trees in one location in every 10 acres of the grove, or, for groves less than 10 acres, examine, while on foot, a minimum of four mature trees or eight young trees in one location. Also, in groves producing limes, as inspector must repeat this survey at no more than 120-day intervals for as long as the harvest continues.

In all groves of fewer than 10 trees producing regulated fruit for interstate movement with a limited permit and located outside the A-strain area: No more than 30 days before the beginning of harvest, an inspector must walk through the grove and inspect every tree; and, in groves producing limes, an inspector must repeat the tree-by-tree walking survey at no more than 120-day intervals for as long as the harvest continues.

Conducting surveys closer to harvest, on foot, and tree-by-tree in groves located within the A-strain area and in groves producing fruit for interstate movement with a certificate will significantly strengthen our detection program for citrus canker. The additional surveys required for lime groves that have extended harvests also will help ensure prompt detection of citrus canker should any lime grove become infested. Unlike other citrus trees, lime trees are susceptible to infection with citrus canker throughout the year because blooms and flushes occur on lime trees year-round.

Note: Because our final rule requires a tree-by-tree survey, on foot, of all groves producing fruit for interstate movement with a certificate, similar survey requirements established by the interim rule of January 4, 1989, for exposed groves only are not longer necessary. Therefore, we are not affirming the survey requirements and the related definition of "exposed" set forth in that interim rule.

Treatment of Personnel, Vehicles, and Equipment

In response to concerns about measures taken in Florida to control and eradicate citrus canker, this final rule also requires treatment of personnel, vehicles, and equipment upon leaving, as well as entering, any grove of 10 or more trees located within the A-strain area. This action will provide additional protection against the interstate spread of citrus canker.

A-Strain Area

We received a number of comments, both pro and con, concerning our proposed changes to the boundaries of the A-strain area. Some of these were mailed to us before citrus canker was found in the Cemetery Block in November; some were mailed later. Based on these comments, and on surveys that have been completed, we have determined that some modification of our proposal is necessary. This final rule retains the proposed changes for Pinellas and Sarasota counties but not for Manatee or Hillsborough counties. Before the effective date of this final rule, all of Manatee County, and Hillsborough County south of State Road 60 were included in the A-strain area. We proposed to remove Hillsborough County entirely and to remove the eastern portion of Manatee County. However, after reviewing the comments and considering all data relevant to Cemetery Block infestation, we have determined that these proposed changes in the A-strain area would bring the boundary of that area too close to the site of the recent infestation. Our final rule, therefore, keeps all of Manatee County in the A-strain area, as well as Hillsborough County south of State Highway 672 and west of State Highway 39. The boundaries for the A-strain area are based on the following considerations: The size and nature of citrus canker infestations; the distance the bacteria might naturally move from the sites of the infestations; and the proximity of citrus groves and contiguous, residential properties on which citrus is grown and through which citrus canker could be spread by people, vehicles, and equipment, including lawn services, moving from one property to another.

Fruit Treatment

We received one comment objecting to the proposed use of soap (or detergent) and water to treat fruit produced in groves of 10 or more trees located outside the A-strain area. These groves, first of all, are very unlikely to be infested with citrus canker. The survey(s) required by our regulations further ensure that fruit produced in these groves is not infested with citrus canker. Our requirement that the fruit be treated is yet another of the multiple safeguards contained in our regulations to prevent the interstate spread of citrus canker. The fruit treatment reduces the risk, already very low, that the fruit could spread citrus canker interstate by means of undetectable levels of bacteria on the surface of the fruit. As stated in the proposal, treatment with soap (or detergent) and water is effective in reducing the number of surface bacteria. Furthermore, fruit eligible for this treatment may not be moved interstate to areas where host material is available to support an infestation of citrus canker (commercial citrus-producing areas). Therefore, we have determined that eligible fruit treated with soap (or detergent) and water as prescribed would present a very remote risk of spreading citrus canker interstate, and we have made no change to the proposal based on this comment.

Relaxation of Requirements Related to Nursery Strain

Several commenters objected to our proposed relaxation of restrictions related to the Florida nursery strains.

They maintained that there has been insufficient time to verify the adequacy of safeguards and that additional research is necessary to support the contention that the Florida nursery strains are not a serious threat to mature trees and citrus fruit.

We agree that research into the Florida nursery strains should continue. However, as stated in previous rulemaking documents, there is still no evidence, more than four-and-a-half years after the Florida nursery strains were first detected in Florida, that these stains will infest and damage mature trees or fruit in commercial groves. Moreover, as research continues and additional data is obtained from field observations, there is a growing body of evidence indicating that this scenario is very unlikely to occur. We have, therefore, made no change to the proposed rule based on these comments.

Nursery Inspections

We received a number of comments asking us to reduce the frequency of nursery inspections. The commenters maintained that inspection of nurseries every 30 days was unnecessary, put servere strains on the resources of the state, which provides inspectors, and was a serious inconvenience to nursery owners. Another commenter maintained that some nurseries should not have to be inspected.

We have made two changes in response to these comments. This final rule requires nursery inspections approximately every 45 days, rather than every 30 days, and not all nurseries will have to be inspected. Nurseries where regulated plants are grown for use only in a grove maintained by the nursery owner will be exempt from the inspection requirements, provided that fruit produced in the grove is processed within the State of Florida into a product other than fresh fruit. This includes, among other things, fruit processed into juice, fruit salad, cattle feed, candied fruit, and concentrate. An infestation in these nurseries would not increase the risk of citrus canker being spread interstate. Inspection of nurseries every 45 days, rather than every 30 days, will still be frequent enough for inspectors to find citrus canker while innoculum levels are low if a nursery is infested.

Several commenters objected to our interim rule that allowed certificates to be issued for the interstate movement of fruit, even if all nurseries in Florida are not inspected, provided that the State of Florida prohibits the movement of all regulated articles from the uninspected nurseries. Commenters maintained that uninspected nurseries could become infested without our knowing it and that innoculum levels could reach levels high enough to present a threat of spreading citrus canker to adjacent properties. Commenters also expressed concern about plants that may have been moved previously from these uninspected, and possibly infested, nurseries, into groves.

Only one nursery in Florida has refused inspection and, subsequently, been placed under state quarantine as described above. We are monitoring this situation for any potential risk of spreading citrus canker interstate, and have determined that this risk is negligible. We will reevaluate our requirements concerning nursery inspections if we determine that the disease risk presented by this nursery has increased or if the number of nurseries refusing inspection increases the risk of citrus canker spreading interstate. In the present circumstances, however, we believe the provision allowing state quarantine of uninspected nurseries is adequate to prevent the interstate spread of citrus canker, and we have made no changes to the regulations based on these comments.

Dooryard Fruit

Several commenters were concerned about requirements pertaining to fruit produced in groves of fewer than 10 trees (dooryard fruit). One commenter complained that she could not sell fruit from her home. Our regulations relate only to the interstate movement of regulated fruit and do not prohibit intrastate sale or movement. Another commenter wanted to be able to ship fruit that had been inspected and found free of citrus canker to friends and relatives in noncitrus-producing states. Our regulations do allow this interstate movement, if the grove has not contained any infested plants or plant parts, within the past year, if all exposed plants at high risk for developing citrus canker have been destroyed, and if the grove is not within one-half mile of any property where there has been a primary infestation of citrus canker caused by the Asiatic strains within the past 2 years. Fruit grown in the A-strain area also must be treated. Other commenters objected to the cost and inconvenience of having their fruit treated. We recognize this problem, and our final rule eases this burden somewhat by eliminating the treatment requirement for dooryard fruit produced outside the A-strain area, and, in cases where treatment is required, allowing the fruit to be treated at any location if treatment is applied in the presence of an inspector.

Miscellaneous

One commenter maintained that we should prohibit interstate movement of regulated fruit into the Lower Rio Grande Valley in Texas, because grapefruit grown in this area is particularly susceptible to citrus canker. We believe that fruit moved interstate with a certificate in accordance with this rule will present an extremely small risk of carrying citrus canker bacteria, and that the risk of this fruit spreading citrus canker into the Lower Rio Grande Valley or other commercial citrus-producing areas is remote. Therefore, we have made no changes based on this comment.

In addition, we have made minor, editorial changes to clarify the regulations.

Effective Date

Pursuant to the provisions of 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register.** This rule establishes requirements necessary to prevent the interstate spread of citrus canker and removes restrictions that are not necessary for achieving this goal. Because the shipping season for Florida citrus is under way, immediate implementation of this rule is necessary to provide maximum protection against the interstate spread of citrus canker and to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register.**

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; 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 a significant adverse effect 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.

Regulated Fruit

More regulated fruit is eligible for interstate movement to commercial citrus-producing areas of the United States as a result of the following changes made by this rule: (1) Groves producing fruit for interstate movement with a certificate no longer have to be at least one-half mile from properties that contained, during the past 2 years, plants or plant parts infested with or exposed to the Florida nursery strains; (2) within one-half to 5 miles of these groves, the presence of plants infested with or at high risk of developing the form of citrus canker caused by the Florida nursery strains no longer disqualifies the fruit for interstate movement with a certificate; and (3) the area of Florida designated as being under special restriction because of citrus canker caused by the Asiatic strains (the A-strain area) has been reduced. As a result, we estimate that all but about 20,000 of Florida's 600,000 acres of fruit-bearing citrus trees will produce fruit eligible for interstate movement with a certificate, an increase of about 6 percent over the 1987-1988 shipping season. However, only a relatively small amount of the regulated fruit produced on these acres will be moved interstate to commercial citrus-producing areas. Most regulated fruit grown in Florida is used to make juice at processing plants in the state. Less than 20 percent is consumed as fresh fruit, and much of this is consumed in the state or is exported to foreign countries. Figures from the State of Florida Department of Citrus show that in 1983–1984, the last complete season before Florida was quarantined for citrus canker, the amount of fresh fruit shipped to commercial citrus-producing areas of the United States was 4.3 percent of the fresh citrus fruit shipped to all states combined, or about 3 million ⅘ bushel cartons. Furthermore, most of the regulated fruit eligible for interstate movement with a certificate under this rule was already eligible for interstate movement with a limited permit.

This rule also establishes several changes in survey requirements for groves. Only one survey will be required for most groves producing regulated fruit for interstate movement, but inspectors will have to conduct the surveys on foot and look at every tree. In addition, some grove surveys will have to be conducted closer to the time harvest begins. Also, groves and other properties within 5 miles of groves producing fruit for interstate movement with a certificate will no longer have to be surveyed. Although requiring tree-by-tree surveys close to the time of harvest will increase the manpower required for grove surveys at certain times of the year, the number of surveys required will be significantly reduced, resulting in an overall reduction in activities of state and federal offices responsible for conducting the surveys. The changes in survey requirements will have very little, if any, economic impact on persons involved in growing, handling, or shipping regulated fruit interstate, or on the amount of regulated fruit moved interstate.

Our rule requires nursery inspections approximately every 45 days, rather than every 30 days, and exempts certain nurseries from inspection. Nurseries where regulated plants are grown for use only in a grove maintained by the nursery owner will not have to be inspected if fruit produced in the grove is processed within the State of Florida into a product other than fresh fruit. These changes will reduce demands on the State of Florida, which provides inspectors, and will reduce, and in some cases eliminate, an inconvenience to nursery owners and operators. Since there is no charge to nursery owners for these inspections, however, these changes should have no economic impact on them.

Our rule removes the requirement that personnel, vehicles, and equipment be treated upon entering a grove producing fruit for interstate movement with a certificate. However, we have added a requirement that personnel, vehicles, and equipment be treated upon entering and leaving any grove of 10 or more regulated trees located within the A-strain area. These actions affect production expenses for those grove owners. However, the cost of disinfecting personnel, vehicles, and equipment is minor when compared to overall production expenses, and adding or removing this requirement should have little economic impact on persons producing fruit for interstate movement.

Our rule requires that groves of 10 or more regulated trees producing fruit for interstate movement with a limited permit obtain regulated plants during the year before the interstate movement only from nurseries inspected and found free of citrus canker. This change would have little economic impact on persons moving regulated fruit interstate with a limited permit since all citrus nurseries in the State of Florida are already being surveyed regularly for citrus canker, and Florida regulations restrict the intrastate movement of plants from infested nurseries.

We are prohibiting the interstate movement of regulated fruit from any grove that is within one-half mile of any property where a primary infestation caused by the Asiatic strains has occurred within the past 2 years. This provision currently applies only to groves adjacent to two commercial groves (both in Manatee County) and approximately 24,000 residential properties in this area. However, no fruit is being moved from these properties now because the State of Florida already prohibits the intrastate movement of fruit from these properties. Therefore, our proposal would have no economic impact on persons moving regulated fruit interstate.

We are allowing a soap (or detergent) and water treatment for fruit produced in groves of 10 or more regulated trees located outside the A-strain area if the fruit is to be moved interstate with a limited permit. Washing citrus fruit with soap (or detergent) and water is standard practice in packing houses. Eliminating the need for chemical treatment with chlorine or SOPP will reduce the cost of processing this fruit. However, expenses associated with fruit treatment are not a significant deterrent to the interstate movement of regulated fruit produced in commercial groves. Therefore, we do not anticipate that the change in this requirement will have any significant economic impact on persons moving regulated fruit interstate with a limited permit.

When fruit must be treated as a condition of interstate movement, we are requiring that treatments be applied either in the presence of an inspector or at a facility owned by a person operating under a compliance agreement. This action will not pose any additional economic burden on persons moving regulated fruit interstate since all fruit treatments now are applied at facilities operating under compliance agreements.

We are allowing certain regulated fruit to be moved interstate without treatment to parts of the United States that are not commercial citrus-producing areas. This provision applies only to regulated fruit produced in groves of fewer than 10 trees located outside the A-strain area. This action will reduce the cost to many individuals of moving regulated fruit interstate with a limited permit. We anticipate that more individuals will move regulated fruit interstate as gifts to friends or relatives if treatment is not required. Other individuals and businesses will not be affected, however, since regulated fruit from groves of fewer than 10 trees may be moved interstate only if it is sent directly to a household for consumption. Also, the amount of regulated fruit that may be shipped interstate in this manner will continue to be extremely small when compared to the amount of regulated fruit shipped interstate in commercial channels.

Our final rule allows the interstate movement of regulated seed only from nurseries or groves that have not contained plants or plant parts exposed to or infested with citrus canker for at least 2 years. This action will have very little economic impact on persons moving regulated seed interstate since an insignificant amount of this seed is produced in Florida for interstate movement. Furthermore, most of that is obtained from groves, which have, with few exceptions, been free of citrus canker.

Wampi

We are adding the species *Clausena lansium* (Lour.) Skeels (common name, wampi) to the list of regulated articles. This action will have little or no economic impact on persons who move regulated articles interstate since very little wampi is grown in Florida, and at this time, we are not aware of any wampi fruit or plants being moved interstate.

Calamondin and Kumquat Plants

We are reducing restrictions on the interstate movement of own-root-only calamondin and kumquat plants grown outside the A-strain area. Also, we are prohibiting the interstate movement of grafted or budded calamondin and kumquat plants and all calamondin and kumquat plants grown within the A-strain area.

We are not aware of any nurseries that grow calamondin and kumquat plants in the A-strain area.

Approximately six nurseries produce container-grown calamondin or kumquat plants, nearly all of which are own-root-only. These plants are seasonal, specialty commodities sold as decorative house plants and for use as indoor landscaping at shopping malls, office buildings, and other establishments. Although we expect sales of the container-grown plants to increase as a result of this final rule, we do not expect the increased sales to have a significant economic impact on nuseries or other businesses involved in the sale of these plants. This is because calamondin and kumquat plants account for only a small percentage of these businesses' activities.

Individually packaged calamondin plants are own-root-only plants. They are sold at many gift shops and roadside fruit stands as decorative indoor house plants. Primary purchasers are tourists buying souvenirs before returning home from the quarantined area. The overwhelming majority of gift shops and roadside stands selling individually packaged clamondin plants are small entities. Sales may increase as a result of this final rule, but the economic impact will be minor as calamondin plants are a very small part of the inventory of these small entities.

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

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local official. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plants (Agriculture), Plant diseases, Plant pests, Quarantine, Transportation

Accordingly, 7 CFR Part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.75–1 is amended by removing the definiton for "Container plant"; by revising the definitions of "Citrus canker", "Exposed", and "Nursery"; and by adding, in alphabetical order, definitions for "Own-root-only" and "United States", as follows:

§ 301.75–1 Definitions.

* * * * *

Citrus canker. A plant disease caused by any strain of the bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye, including any of the Asiatic strains and the Florida nursery strains.

* * * * *

Exposed. Suspected by an inspector of containing the bacterium that causes citrus canker because of proximity to an infestation.

* * * * *

Nursery. Any premises, including greenhouses, at which plants are grown or maintained for propagation or for replanting, but not including any grove on the premises.

Own-root-only. Plants grown entirely from seeds or cuttings; not grafted.

* * * * *

United States. All of the states of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

3. In § 301.75–2, paragraph (a) is revised to read as follows:

§ 301.75–2 Regulated articles.

(a) Plants or plant parts, including fruit and seeds, or any of the following: All species, clones, cultivars, strains, varieties, and hybrids of the genera *Citrus* and *Fortunella*, and all clones, cultivars, strains, varieties, and hybrids of the species *Clausena lansium* and *Poncirus trifoliata*. The most common of these are: lemon, pummelo, grapefruit, key lime, persian lime, tangerine, satsuma, tangor, citron, sweet orange, sour orange, mandarin, tangelo, ethrog, kumquat, limequat, calamondin, trifoliate orange, and wampi.

* * * * *

§ 301.75–2 [Amended]

4. In § 301.75–2, paragraph (b), "comveyance" is revised to read "conveyance".

§ 301.75–6 [Amended]

5. In § 301.75–6, paragraph (e) is amended by revising "§ 301.75–10 and either § 301.75–7(e) or § 301.75–7(f)" to read "§ 301.75–7 and § 301.75–10 of this subpart".

6. Section 301.75–7 is revised to read as follows:

§ 301.75–7 Certificates and limited permits.

(a) *Issuance and withdrawal.* (1) The issuance of certificates and limited permits for the interstate movement of regulated articles from Florida is contingent upon all of the following nurseries in the State of Florida being inspected for citrus canker approximately every 45 days: all nurseries containing regulated plants, except those where regulated plants are grown for use only in a grove maintained by the nursery owner, provided that fruit produced in the grove is processed within Florida into a product other than fresh fruit. An inspector must examine every regulated plant in the nursery on each inspection.

(2) Certificates and limited permits may be issued for the interstate movement of regulated articles only by an inspector or by persons operating under a compliance agreement.

(3) Any certificate or limited permit that has been issued may be withdrawn by an inspector if the inspector determines that any of the applicable requirements of this subpart are not being met. The decision of the inspector and the reasons for the withdrawal must be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit is withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Administrator must grant or deny the appeal, in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(b) *Restrictions on interstate movement of regulated articles produced in areas of Florida where a primary infestation caused by the Asiatic strains has occurred.* (1) Regulated fruit. Regulated fruit produced in any area of Florida where a primary infestation of citrus canker caused by the Asiatic strains occurs will not be eligible for interstate movement with a certificate until 2 years after the destruction in that area of the last plant infested with citrus canker caused by the Asiatic strains. Areas of Florida to which this restriction applies are listed in paragraph (b)(3) of this section.

(2) Calamondin and kumquat plants. Calamondin and kumquat plants grown in any area of Florida where a primary infestation of citrus canker caused by the Asiatic strains occurs will not be eligible for interstate movement with a limited permit until 2 years after the destruction in that area of the last plant infested with citrus canker caused by the Asiatic strains. Areas of Florida to which this restriction applies are listed in paragraph (b)(3) of this section.

(3) Areas of Florida under special restriction because of citrus canker caused by the Asiatic strains.

(i) *Hillsborough County:* The area south of State Highway 672 and west of State Highway 39;

(ii) *Pinellas County:* The area south of a lien formed by State Highway 694, from Redington Shores to the intersection of State Highway 694 and Interstate 92, then along Interstate 92 to the eastern shore of Old Tampa Bay;

(iii) *Manatee County:* The entire county; and

(iv) *Sarasota County:* The area south of the Manatee County line, west of Interstate 75, and north of State Highway 72, County Road 789, and an imaginary line extending due west to the Gulf of Mexico.

(c) *Certificates for interstate movement of seed.* A certificate will be issued for the interstate movement of regulated seed to any area of the United States, including commercial citrus-producing areas, only if all of the following conditions are met:

(1) In the grove or nursery producing the fruit from which the seed is extracted, there have been no plants or plant parts infested with or exposed to citrus canker (caused by any strain) for at least 2 years; and

(2) The seed has been treated in accordance with § 301.75–12(b) of this subpart.

(d) *Certificates for interstate movement of fruit.* A certificate will be issued for the interstate movement of regulated fruit to any area of the United States, including commercial citrus-producing areas, only if all of the following conditions are met:

(1) The grove producing the fruit is not located in any area listed in paragraph (b)(3) of this section and is at least one-half mile from any property that, within the past 2 years, has contained plants or plant parts infested with or exposed to citrus canker caused by the Asiatic strains.

(2) The grove producing the fruit contains 10 or more regulated trees;

(3) The grove producing the fruit has not, within the past 2 years, contained any plants or plant parts infested with or exposed to citrus canker (caused by any strain).

(4) The grove producing the fruit has been found free of citrus canker (caused by the strain) after being surveyed as follows:

(i) Not more than 30 days before the beginning of harvest, an inspector must examine every tree while walking through the grove; and

(ii) In groves producing limes, an inspector must repeat the tree-by-tree walking survey at no more than 120-day intervals for as long as the harvest continues.

(5) In the area between one-half and 5 miles from the grove producing the fruit, the following plants have been destroyed:

(i) All plants infested with citrus canker caused by the Asiatic strains; and

(ii) All exposed plants at high risk for developing the form of citrus canker caused by the Asiatic strains. Identification of exposed plants at high risk for developing the form of citrus canker caused by the Asiatic strains will be based on an evaluation of all of the circumstances related to their exposure, including, but not limited to, the following:

(A) The stage or maturity of the exposed plants at the time of exposure;

(B) The size and degree of infestation to which the plants were exposed;

(C) The proximity of the exposed plants to the infested plants at the time of exposure; and

(D) The length of time the plants were exposed to the infestation.

(6) During the past 2 years, all shipments of regulated plants received by the grove producing the fruit have come only from nurseries found free of citrus canker (caused by any strain) on three inspections conducted by an inspector appoximately 45 days apart, with the third inspection conducted no more than 45 days before each shipment. Every regulated plant in the nursery must be examined on each inspection.

(7) The identity of the fruit is maintained during picking, hauling to the packing house, and packing.

(8) The fruit is treated in accordance with § 301.75–12(a)(1) of this subpart and then waxed.

(9) The fruit is free of leaves, twigs, and other plant litter, excpet stems less than one-inch long that are attached to the fruit.

(10) The fruit is packed in containers marked with a United States Department of Agriculture stamp that says "Certified under all applicable Federal or State cooperative domestic plant quarantines."

(e) *Limited permits for interstate movement of fruit.* A limited permit will be issued for the interstate movement of regulated fruit to any area of the United States, except commercial citrus-producing areas, only if the following conditions are met:

(1) For all regulated fruit:

(i) The grove producing the fruit is at least one-half mile from any property where a primary infestation of citrus canker caused by the Asiatic strains has occurred within the past 2 years.

(ii) The grove producing the fruit has not, within the past 1 year, contained any plants or plant parts infested with citrus canker (caused by any strain).

(iii) In the grove producing the fruit, any exposed plants at high risk for developing citrus canker (caused by any strain) have been destroyed.

Identification of exposed plants at high risk for developing citrus canker will be based on an evaluation of all of the circumstances related to their exposure, including, but not limited to, the following:

(A) The stage of maturity of the exposed plants at the time of exposure;

(B) The size and degree of infestation to which the plants were exposed;

(C) The proximity of the exposed plants to the infested plants at the time of exposure;

(D) The length of time the plants were exposed to the infestation; and

(E) The strain of the bacterium to which the plants were exposed.

(iv) The fruit is free of leaves, twigs, and other plant litter, except stems less than one-inch long that are attached to the fruit.

(2) Additional conditions for fruit produced in groves of 10 or more regulated trees located outside the areas listed in paragraph (b)(3) of this section:

(i) The grove producing the fruit has been found free of citrus canker (caused by any strain) after being surveyed as follows:

(A) Not more than 90 days before the beginning of harvest, an inspector must examine all trees on the perimeter of the grove while driving by at no more than 2 m.p.h.; and examine, while on foot, at least 12 trees in high-risk areas of the grove (such as the grove entrance, the perimeter of the grove, and areas where the movement of people and equipment is concentrated) and a minimum of four mature trees or eight young trees in one location in every 10 acres of the grove, or, for groves less than 10 acres, a minimum of four mature trees or eight young trees in one location; and

(B) In groves producing limes, an inspector must repeat this survey at no more than 120-day intervals for as long as the harvest continues.

(ii) During the past 1 year, all shipments of regulated plants received by the grove producing the fruit have come only from nurseries found free of citrus canker (caused by any strain) on three inspections conducted by an inspector approximately 45 days apart, with the third inspection conducted no more than 45 days before each shipment. Every regulated plant in the nursery must be examined on each inspection.

(iii) The fruit is treated in accordance with § 301.75–12(a)(3) of this subpart.

(3) Additional conditions for fruit proudced in groves of 10 or more regulated trees located within an area of Florida listed in paragraph (b)(3) of this section:

(i) The grove producing the fruit has been found free of citrus canker (caused by any strain) after being surveyed as follows:

(A) Not more than 30 days before the beginning of harvest, an inspector must examine every tree while walking through the grove; and

(B) In groves producing limes, an inspector must repeat the tree-by-tree walking survey at no more than 120-day intervals for as long as the harvest continues.

(ii) During the past 1 year, all shipments of regulated plants received by the grove producing the fruit have come only from nurseries found free of citrus canker (caused by any strain) on three inspections conducted by an inspector approximately 45 days apart, with the third inspection conducted no more than 45 days before each shipment. Every regulated plant in the nursery must be examined on each inspection.

(iii) All personnel, vehicles, and equipment are treated in accordance with § 301.75–12 (c) and (d) of this subpart upon entering and leaving the grove producing the fruit.

(iv) The fruit is treated in accordance with § 301.75–12(a)(2) of this subpart.

(4) Additional conditions for fruit produced in groves of fewer than 10 regulated trees located outside the area of Florida listed in paragraph (b)(3) of this section:

(i) The grove producing the fruit has been found free of citrus canker (caused by any strain) after being surveyed as follows:

(A) Not more than 30 days before the beginning of harvest, an inspector must examine every tree while walking through the grove; and

(B) In groves producing limes, an inspector must repeat the tree-by-tree walking survey at no more than 120-day intervals for as long as the harvest continues.

(ii) The fruit is to be moved interstate directly to a household, with the intent that the fruit be consumed at, or by members of, that household.

(5) Additional conditions for fruit produced in groves of fewer than 10 regulated trees located within an area of Florida listed in paragraph (b)(3) of this section:

(i) The grove producing the fruit has been found free of citrus canker (caused by any strain) after being surveyed as follows:

(A) Not more than 30 days before the beginning of harvest, an inspector must examine every tree while walking through the grove; and

(B) In groves producing limes, an inspector must repeat the tree-by-tree walking survey at no moe than 120-day intervals for as long as the harvest continues.

(ii) The fruit is treated in accordance with § 301.75–12(a)(2) of this subpart.

(iii) The fruit is to be moved interstate directly to a household, with the intent that the fruit be consumed at, or by members of, that household.

(f) *Limited permits for interstate movement of own-root-only calamondin and kumquat plants.* A limited permit will be issued for the interstate movement of own-root-only calamondin and kumquat plants, with or without fruit attached, to any area of the United States except commercial citrus-producing areas, only if all of the following conditions are met:

(1) The plants have always been located on the premises from which they will be moved interstate.

(2) Cutting used to propagate the plants were taken only from plants located :

(i) On the same premises; or

(ii) On another premises under the same ownership; or

(iii) At a nursery owned by another person operating under a compliance agreement.

(3) The nursery where the plants were grown is not located in an area listed in paragraph (b)(3) of this section.

(4) The nursery where the plants were grown has not, within the past 2 years, contained any plants or plant parts infested with or exposed to citrus canker (caused by any strain).

(5) In the nursery where the plants were grown, all regulated plants were examined by an inspector and found free of citrus canker (caused by any strain) or three surveys conducted approximately 45 days apart, with the third inspection conducted within 45 days of each interstate movement.

(6) Except for plants hermetically sealed in plastic bags before leaving the nursery, the plants are compeletely enclosed in containers or in compartments of vehicles during movement through Florida.

(7) A statement that the plants are not for distribution within American Samoa, Arizona, California, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, or the Virgin Islands of the United States is displayed in waterproof, boldface type on the package of each plant hermetically sealed in plastic, or on durable, waterproof tags attached to all other plants, and on the outside of all

shipping containers used for these plants.

7. In § 301.75–12, paragraph (a) is revised to read as follows:

§ 301.75-12 Treatments.

(a) *Fruit.* Fruit for which treatment is required by this subpart must be treated in accordance with this paragraph in the presence of an inspector or at a facility whose owner operates under a compliance agreement.

(1) Fruit to be moved interstate with a certificate: Thorough wetting with a solution containing 200 parts per million sodium hypochlorite for at least 2 minutes; or thorough wetting with a solution containing sodium o-phenyl phenate (SOPP) at a concentration of 1.86 to 2 percent of the total solution for 45 seconds if the solution has sufficient soap or detergent to cause a visible foaming action or for 1 minute if the solution does not contain sufficient soap or detergent to cause a visible foaming action.

Note.—Sodium hypochlorite and SOPP must be applied in accordance with label directions.

(2) Fruit that is to be moved interstate with a limited permit and that was produced in groves located within an area of Florida listed in paragraph (b)(3) of this section: Treatment as prescribed in paragraph (a)(1) of this section.

(3) Fruit that is to be moved interstate with a limited permit and that was produced in groves of 10 or more regulated trees located outside the areas of Florida listed in paragraph (b)(3) of this section: Treatment as prescribed in paragraph (a)(1) of this section or thorough wetting and brush scrubbing for one minute with a solution of water and soap (or water and detergent) sufficient to cause a visible foaming action.

* * * * *

§ 301.75-12 [Amended]

8. In § 301.75–12, paragraph (b) is amended by revising "active chlorine" to read "sodium hypochlorite".

9. In § 301.75–12, paragraph (d)(1) is amended by revising "chlorine solution" to read "solution of sodium hypochlorite".

Done at Washington, DC, this 21st day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–7087 Filed 3–23–89; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 658]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 658 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 280,000 cartons during the period March 26, through April 1, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 658 (§ 910.958) is effective for the period March 26 through April 1, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small business will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

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

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on March 21, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by an 11–1 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons has decreased.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** 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, in order 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.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 6010–674.