

U.S. DEPARTMENT OF AGRICULTURE
ANIMAL & PLANT HEALTH INSPECTION SERVICE

PUBLIC HEARING
IMPORTATION OF SPANISH CLEMENTINES

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, AUGUST 20, 2002

9:00 A.M.

OXNARD, CALIFORNIA

REPORTED BY:

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ANIMAL AND PLANT HEALTH INSPECTION SERVICE

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OXNARD, CALIFORNIA
TUESDAY, AUGUST 20, 2002
9:00 A.M.
PROCEEDINGS

MR. RHOADS: Good morning. And
welcome to the Animal and Plant Health Inspection
Services Public Hearing on its proposed rule
regarding the importation of clementines from
Spain.

Under the proposed rule we would
allow the importation of clementines from Spain to
resume under conditions designed to mitigate the
risks proposed by the Mediterranean fruit fly.

My name is Matt Rhoads and I'm a
regulatory analyst for APHIS's Policy and Program
Development staff. I will be your hearing officer
today.

The hearing today in Oxnard is the
first of two public hearings that are being held
on this proposed rule. The second will be held in
Lake Alfred, Florida on Thursday this week, August
the 22nd.

Notice of the public hearings was

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included in the proposed rule which was published
in the Federal Register on July 11th. Copies of
the proposed rule are available at the signup
desk. Electronic copies of the proposed rule and
the documents that support the proposed rule can
be downloaded from APHIS's website at
www.aphis.usda.gov. Click on the link right on
that page for clementines.

The purpose of today's hearing is to
give interested persons the opportunity for the
oral presentation of data, views and arguments on
the July 11th proposed rule.

Those persons that are testifying
today will have the opportunity to ask questions
about the proposed rule. APHIS personnel will
respond only to clarify the provisions of the
proposed rule. We view this hearing as an
opportunity to receive public comments and answer
clarifying questions and not as a forum to debate
the merits of the rule's provisions.

At this hearing any interested party
may appear and be heard in person Or through an
attorney or other representative. Persons who
have registered either by e-mail or phone in
advance will be given first opportunity to speak.

1 Other persons who have not registered in advance
2 will be heard after those pre-registered persons.

3 Today's hearing is scheduled to
4 conclude at 4:30 P.M. I don't suspect that we're
5 going to go over that today. But if it appears at
6 any point that -- we would like to keep
7 presentations somewhere around 20 minutes at the
8 max, I think, just in order to make sure that
9 everyone is heard.

10 All comments made here today are
11 being recorded and will be transcribed. The court
12 reporter for today's hearing is Sharon Best of
13 Hartley & Associates.

14 A copy of the transcript will be made
15 available hopefully on the web within about two
16 weeks of today.

17 A copy will also be made available
18 for public inspection at APHIS's reading room in
19 Room 1141 of the USDA South Building in
20 Washington, D.C. The room is open from 8:00 to
21 4:30.

22 I'd like to introduce several other
23 persons who are seated beside me.

24 The first person I'll introduce is
25 Dr. Paul Gadh, import specialist for APHIS's Plant

1 Protection and Quarantine, Phytosanitary Issues
2 Management Staff. Dr. Gadh will provide an
3 overview of the provisions of the rule and will be
4 available to answer questions you might have.

5 Adjacent to Dr. Gadh is Dr. Ron
6 Sequeira, National Sciences Program Leader for
7 Risk and Packway Analysis at APHIS's Center for
8 Plant Health and Science and Technology.
9 Dr. Sequeira will provide an overview of the risk
10 management analysis that supports the proposed
11 rule.

12 Adjacent to Dr. Sequeira is Dr. Ed
13 Miller, entomologist for APHIS Risk Analysis
14 Systems Staff, who, along with the others, will be
15 available to answer any questions you have.

16 At this time I'm going to turn the
17 mic over to Dr. Gadh who will give a presentation
18 on the proposed rule.

19 DR. GADH: I'll turn off the lights.

20 Good morning, everyone. Those of you
21 who just came in, my name, as Matt mentioned, is
22 Paul Gadh. Or sometimes people call me Inder Paul
23 Gadh. I'm with the Phytosanitary Issue Management
24 Team with USDA APHIS Anti-infestation Quarantine.
25 I work at Riverdale and my contact number is (301)

1 734-6799 in case somebody has to call me there.

2 Spanish clementines -- it's only
3 recently that I was involved with this project on
4 Spanish clementines, but I've been exposed to the
5 issues for quite some time. I was in California
6 in 1993 to work on domestic program on the
7 eradication of fruit fly and also have been to
8 South Africa to work on some of their citrus
9 export programs. So I've been involved with the
10 issues, but Spanish clementines has been only
11 recent.

12 The clementine importation from
13 Spain -- if this is working -- before suspensions
14 there were only two requirements. There was the
15 fruit must be cold treated, Schedule 2107-A.
16 Which means that the fruit needs to be kept at
17 cold conditions, 32 degrees Fahrenheit to 36 for
18 ten to 16 days.

19 And the other requirement at that
20 point was port of entry inspections upon arrival
21 in USA. And that would be to verify the cold
22 treatment documents, to take pulp temperatures,
23 and also to do some spot checking for other pest
24 other than the fruit fly.

25 The program worked very well since

1 its inception in 1985 other than very sporadic
2 incidents of some shipments not making cold
3 treatment or some suspicious looking fruit flies
4 being reported as live but turned out to be dead
5 when checked. Other than those minor incidents,
6 there was no major incidents to thwart or to raise
7 alarms. So until November 20 and 27, up to that
8 point we had no Medfly incident.

9 But on November 20 and 27, 2001 there
10 was an interception of live Medfly larvae in North
11 Carolina and Maryland from fruit imported from
12 Spain and imported into those two states. And
13 APHIS, after examination was made that they were
14 Medfly larvae, decided to suspend shipment of
15 clementines from Spain until the cause was
16 determined for the infestation.

17 Spain was notified on November 30 to
18 suspend shipments.

19 An investigation was done by APHIS
20 and it was found out that those two interceptions
21 in North Carolina and Maryland were actually test
22 back to the same vessel, Green Mallory, that had
23 come to Philadelphia on November 10. And
24 considering that as an isolated case, APHIS
25 decided to allow importation of Spanish

1 clementines. And Spain was notified on December
2 4, 2001 to start resumption of the trade as of the
3 next day.

4 But before this could happen, within
5 a few hours there was additional, another live
6 interception of fruit fly larvae from a market in
7 Louisiana. And this time, this was not related to
8 the same vessel.

9 So this was an indication that there
10 is a problem much larger than originally thought.
11 And APHIS then decided to suspend indefinitely
12 shipments from Spain until the source of the
13 problem was identified and properly addressed.

14 There were additional reports of
15 interception of Medfly larvae by California
16 Department of Food and Agriculture and PPQ. And
17 that supported our decision to suspend. And at
18 the same time we also halted further distribution
19 of the fruit that had already been offloaded into
20 the markets.

21 The decision was not taken well by
22 Spain and also some importers here in the USA who
23 decided to take the matter to the court. But
24 APHIS had to take that action. There was no
25 choice. And we did what we had to do to safeguard

1 our resources and also protect markets at the
2 time.

3 It was a daunting task for the agency
4 or the Department of Agriculture from political,
5 legal or operational standpoint. But we also, at
6 that time, understood the importance of the
7 program and seriousness of the immigration law.
8 And took no time in chopping out the further
9 course of action.

10 The actions included a working group
11 was formed to review the entire program and
12 strengthen communication among the stakeholders,
13 state laboratory officials and our trading
14 partners such as Spain.

15 A panel of explorers was formed to
16 evaluate the efficacy of the cold treatment
17 itself. There were statements was providing the
18 needed security and not.

19 Also, another group of scientists
20 were found to evaluate risks and risk mitigation
21 and published a separate document. Dr. Ron
22 Sequeira will be talking about this document. So
23 I will not go into detail at this time.

24 A team of specialists were sent to
25 visit Spain and evaluate field and export

1 conditions. And they visited the orchards and
2 groves in Spain. Looked at the -- also visited
3 packing houses, looked at their operations, and
4 also looked at the pre-shipment inspections going
5 on there.

6 The team, although could not
7 determine exactly the cause of the problem, but
8 identified some key factors that they believed
9 contributed to the problem. And those factors
10 were -- this was based on the information that
11 they provided from their activities. There was
12 above average fruit fly larvae population which
13 were believed to have resulted from higher than
14 normal warm weathers in the early season.

15 The varieties that were being grown
16 were highly susceptible -- there was a highly
17 susceptible variety grown in the field that
18 provided for the -- to the high populations of
19 fruit flies.

20 Perhaps they had enough or adequate
21 trapping activity going on, but they were not
22 using that information to trigger mechanical
23 controls and this way reduce the fruit fly
24 population, assuming that the cold treatment would
25 take care of that.

1 The inspections were being carried
2 out on pest other than fruit flies. They would
3 not focus on the fruit fly for some reason. There
4 was no fruit cutting involved during the
5 inspections.

6 The panel on the cold treatment
7 looked at research information and other
8 information available here and internationally to
9 see if the treatment, cold treatment that was
10 being applied was adequate or not. And they found
11 out that for certain unknown flaws in the system
12 that perhaps treatment was not adequate. And
13 recommended extending the treatment by two days.

14 And similar recommendation also came
15 from a group in New Zealand that did some work.

16 And they also suggested that further
17 research needs to be done to get enough data to
18 provide us Probit 9 security.

19 All of this research was done prior
20 to 1970 which is the bulk of research for this
21 treatment or for the cooling treatment. And
22 although was extensive enough, but didn't have all
23 the data or information to come to Probit 9
24 conclusion.

25 In other words, either they would not

1 have all the pages of the insect studies or the
2 numbers were not good enough for information for
3 this. And so that's what the panel suggested that
4 research needs to be done to get the data for
5 Probit 9 conclusion.

6 APHIS then evaluated all the
7 findings. The findings of the team that went to
8 Spain and also the findings of risk mitigating
9 measures that were published in the document that
10 was made available to the public for their reviews
11 and comments. And decided to propose the
12 additional conditions under which Spanish
13 clementines could be imported.

14 And those conditions under which the
15 Spanish clementines may be imported are that
16 Spanish government will have to institute a Medfly
17 management program which is aimed to reduce the
18 fruit fly infestation to less than 1.5 percent of
19 the fruits.

20 Spain will impose greater oversight,
21 have growers register with them, perform
22 inspections and include fruit cutting using
23 scientific sampling information.

24 Traps will be placed six weeks before
25 the harvest. And trapping data will be used to

1 trigger chemical sprays to bring down the
2 populations of fruit fly larvae. USDA will
3 monitor and approve the trapping, bait
4 applications and record keeping before any
5 shipment is approved.

6 There will be a full fledged
7 pre-clearance program set up in Spain,
8 administered by Spain, that will insure proper
9 sampling is done for inspection and fruit cutting
10 is included.

11 Boxes will be labeled to insure
12 traceability. Spanish phytosanitary certificate
13 is required to accompany each shipment.

14 The cold treatment, as I mentioned
15 before, will be extended by two days at each
16 temperature.

17 And port of entry inspections will be
18 strengthened and will include fruit cutting.

19 With this I conclude my presentation.
20 I have nothing in the conclusion here simply
21 because we are here to listen to your comments and
22 also have comments from other parties before
23 September 9 and then come up with conclusions.

24 But initially I can say that we feel
25 that with all these additional measures and

1 extended cold treatment, the system approach
2 should give us the needed security.

3 Usually I ask audience to ask me
4 questions in between. But if you have questions
5 now, and Matt would allow, then I will answer
6 questions now. Thank you.

7 MR. RHOADS: If there aren't any
8 specific questions for Dr. Gadh. At this point we
9 had intended to have Ron Sequeira give a quick
10 presentation on his risk management analysis.

11 We do have a couple of gentlemen here
12 who we would like to get up to the mic as quickly
13 as possible.

14 So at this point I'm going to ask
15 Congressman Gallegly to please come and give his
16 testimony.

17 CONGRESSMAN GALLEGLY: Thank you very
18 much. Thank you for giving me the courtesy of
19 being here this morning.

20 If you would indulge me just for a
21 second. I couldn't help but in listening to our
22 previous speaker's outline, and some of the
23 remedies that they have, if the gentleman would
24 allow me just to ask one question before I make my
25 brief presentation.

1 We're talking about all of the
2 mitigation measures and so on and so forth. We
3 are very concerned, of course, by the potential
4 devastation of our crops. And with all the
5 mitigation measures in the world, I'm not always
6 sure that we're going to have every safeguard.

7 Has there ever been any consideration
8 of perhaps putting up a performance bond to ensure
9 -- say, like a billion dollar bond to ensure
10 against the devastation of not only our crops but
11 potentially industries?

12 DR. GADH: Not to my knowledge. With
13 any consultation on that or not. We are bound by
14 international rules and agreements. And if we
15 start that rule, then eventually it will come back
16 to us. And as of now we don't require any other
17 country, and we have to be consistent if we go
18 that way.

19 CONGRESSMAN GALLEGLY: Consistency is
20 important, and industry is more important to us.

21 In any event, thank you very much for
22 allowing me to be here this morning. As many of
23 you know, I'm running on a half a cylinder this
24 morning. I just returned from Europe and a trip
25 to the Baltics and to Russia, Moscow and

1 St. Petersburg, and didn't get in until very late
2 last night. So I've had about three hours sleep
3 in the last three days. So if I'm not as coherent
4 as I should be, I hope you will understand.

5 But this issue is far too important
6 not to be here personally to express a couple of
7 my thoughts on the issue and make sure that we're
8 officially on record.

9 As I said, I appreciate the
10 opportunity to testify at this very important
11 hearing this morning, addressing the issue of the
12 Spanish clementines and the potential infestation
13 of the Mediterranean fruit fly.

14 As most of you know, for the past 16
15 years I've had the honor of representing most of
16 Ventura County in the U.S. House of
17 Representatives. As a result, I'm well aware of
18 the extremely high level of concern regarding the
19 Department of Agriculture's proposal to permit the
20 resumption of imports of clementines from Spain.

21 The imports were suspended in
22 December of last year after Medfly larvae was
23 found in Spanish clementines in stores in six
24 separate states, Michigan, North Carolina,
25 Maryland, Florida, California and Arizona.

1 The potential problem of the Medfly
2 infestation and corresponding concern with the
3 proposed rule cannot be underestimated in any way,
4 shape or form. The Medfly is the world's most
5 destructive agricultural pest. It attacks and
6 destroys more than 250 species of fruits,
7 vegetables and nuts, including crops such as
8 lemons, avocados, oranges and grapes, that are the
9 backbone, these are the products that are the
10 backbone of the agricultural economy of Ventura
11 County and nearby Santa Barbara County and, of
12 course, throughout California.

13 Let's be clear on the stakes involved
14 in this matter from the very beginning. If the
15 Medfly becomes established in California, it could
16 seriously imperil the State's 27 billion dollar a
17 year agricultural industry.

18 In Ventura County agriculture is
19 still the number one industry, generating more
20 than a billion dollars in agriculture revenue
21 every year. In addition, two-thirds of the
22 irrigated crops grown in Ventura County are
23 potential hosts to the Medfly.

24 In 1993 the Department of Agriculture
25 estimated if the Medfly gains a permanent presence

1 in the continental United States, it could cost
2 our country approximately one and a half billion
3 dollars each year. Today these costs, in the form
4 of quarantines, lost markets, extra crop
5 treatments and lower yields, could make that
6 number even much greater.

7 I would like to focus on the
8 devastating impact that a Medfly infestation would
9 have on our farmers' ability to export their
10 products.

11 Medfly-free countries as well as
12 Medfly-free regions in the U.S. will either
13 completely block the importation of our fruits and
14 vegetables or will accept them only if they
15 undergo expensive treatments.

16 For example, growers in Ventura
17 County currently sell half of their lemon crop to
18 Japan. A Medfly-free region when we talk about
19 Japan. In the past Japan has stated it will not
20 accept any fruit from any area which experiences a
21 widespread Medfly infestation.

22 And I can testify firsthand, having
23 been down on the docks with members from Japan
24 looking at the quality of our fruit.

25 One of the greatest things that we

1 have in Ventura County and this nation is a
2 quality product that few nations around the world
3 can compete with. That's the number one issue
4 that Japan buys our product is the quality of our
5 product. And if it's compromised by the fruit
6 fly, they're just going to just plain look
7 somewhere else even though this may not be the
8 same quality, color, shape, so on, so forth, that
9 they would like to have.

10 The results would be devastating to
11 the economy of Ventura County. Approximately
12 11,000 people are directly employed in the
13 production of crops that host the Medfly, and more
14 than 15,000 or more people are employed in related
15 jobs. Together this accounts for over seven and a
16 half percent of Ventura County's total employment
17 base.

18 Regarding the rule as drafted, I will
19 let others discuss the technical aspects of the
20 systems and controls that have been proposed by
21 APHIS. However, I would like to make three basic
22 points.

23 First, our federal government should
24 not be apologetic -- I can't over-emphasize that.
25 Our government should be not apologetic in

1 protecting our agricultural industry and taking
2 the strongest possible action to prevent a Medfly
3 infestation.

4 As the Chairman of the Subcommittee
5 on Europe of the House International Relations
6 Committee, I am sensitive to the need to maintain
7 and support a strong trade relationship with
8 Spain, as I am with other nations around the
9 world. The Spanish are our allies and we enjoy a
10 close cooperation on a broad range of economic,
11 political and cultural issues.

12 However, I do not believe that
13 America's farmers, farm workers or consumers
14 should be made to suffer because of hastily
15 drafted regulations. Although I have a strong
16 record on free trade, I cannot support a rule that
17 endangers the health of the agricultural industry.

18 Second, the controls and enforcement
19 required by the Spanish clementine growers to
20 prevent a Medfly infestation should be, at the
21 very least, as stringent as those required of our
22 own U.S. farmers. It is simply inconceivable why
23 overseas producers who ship into the United States
24 are not required to meet the same standards, in
25 terms of controls, treatments and enforcement, as

1 our domestic agricultural industry.

2 All too often we confuse free trade
3 and fair trade.

4 Finally, I want to make the point
5 that the Department of Agriculture needs to get
6 this right the first time. There are no second
7 chances when it comes to the Medfly. Once the
8 Medfly becomes established in an area, as it did
9 in Spain and Hawaii in the early 1900's, it
10 becomes close to impossible to eradicate.

11 This would have severe economic
12 consequences on much of California, the nation's
13 agricultural industry, and the impact would go far
14 beyond citrus. It could potentially damage over
15 200 commodities, from the expanding avocado
16 industry to the California wines, which produce
17 approximately 145,000 jobs right here in
18 California alone.

19 An infestation would also lead to
20 higher consumer prices and significantly affect
21 the availability of food products.

22 For these reasons, I appeal to the
23 Department of Agriculture to take the necessary
24 additional time to craft a regulation that
25 reflects these concerns. It is imperative that

1 the USDA ensure that all necessary safeguards are
2 in place in the future to prevent future shipments
3 of Spanish clementines containing the Medfly into
4 the U.S.

5 Although this could result in delays,
6 the USDA must not forget that it's the livelihood
7 of the American agricultural industry that's at
8 stake here. Agriculture is a big issue in the
9 United States. It's a big issue in California.
10 It's a big issue here in Ventura County.

11 I thank you for hearing from me this
12 morning. I make this appeal to you on behalf of
13 not only the people that I serve in Ventura
14 County, Santa Barbara County, the State of
15 California, but our entire nation. Thank you.

16 MR. RHOADS: Thank you, Congressman.

17 I'm going to ask that we also have
18 two more presentations before Dr. Sequeira's
19 presentation on our risk document.

20 The second -- the next speaker I
21 would like to have is Secretary Bill Lyons from
22 the State of California.

23 MR. LYONS: Thank you for providing
24 this opportunity to present California's
25 perspective regarding USDA's proposed rule to

1 allow the importation of clementines from Spain.

2 California is the number one
3 agricultural state in the nation. Our 29 billion
4 dollar agriculture district produces over 350
5 different crops including 58 percent of the fruits
6 and nuts and 52 percent of the vegetables and
7 melons consumed in the United States.

8 My family has been in production
9 agriculture in the Central Valley of California
10 for almost 75 years. As the Secretary of
11 California Department of Food and Ag, and as a
12 farmer, I am keenly aware of the serious economic
13 and social impacts a newly introduced invasive
14 plant pest can have to California's agricultural
15 economy.

16 The California Department of Food and
17 Ag has reviewed the regulatory strategies
18 suggested by the USDA and has consulted with our
19 industry stakeholders. Based on this review and
20 input, CDFA would submit the following comments
21 for consideration.

22 CDFA recommends and strongly supports
23 sound science and risk-based plant quarantines
24 that provide agriculture with a level playing
25 field.

1 CDFA is under a mandate to protect
2 California from an entry and establishment of
3 invasive plant pests. Last year's experience of
4 intercepting live Medfly larvae in cold treated
5 and USDA certified clementine fruits from Spain
6 presented a clear and present danger of
7 introducing this pest into the mainland of the
8 United States and ultimately to California's
9 agriculture heartland.

10 We appreciate USDA's rapid response
11 in closing the door to Spanish clementines this
12 fall and the agency's consideration of my request
13 to strengthen the Spanish clementine import
14 program in a letter sent to Secretary Ann Veneman
15 last December 7, 2001.

16 Medfly is an insect with the
17 remarkable ability to successfully invade and
18 adapt to a wide range of diverse environmental
19 conditions. Underestimation of this capability
20 has resulted in a successful invasion in many
21 areas, including its invasion but subsequent
22 eradication of Northern California in the late
23 1970's. This is an event we do not care to
24 relive.

25 A critical flaw in USDA's proposed

1 rule is limiting the risk associated with
2 importation of Spanish clementines to citrus.
3 Although citrus is a very important crop, limiting
4 your risk analysis to citrus is a gross
5 underestimation of the potential economic and
6 social impact of Medfly introduced in both
7 agricultural communities and residential
8 communities.

9 The importance of including other
10 fruit and vegetables in the risk analysis is clear
11 when you consider that approximately 50 commercial
12 species of Medfly hosts are regulated by the
13 United States and California from countries where
14 Medfly is known to occur. This includes nursery
15 stock host material. Other countries quarantine
16 all of the approximate 250 Medfly host groups.
17 This is not a citrus pest problem, but a
18 broadbased American agricultural pest problem.

19 The University of California has
20 estimated that total annual continued coping costs
21 of the established Medfly population in California
22 would range from a low of 1.3 billion to a high of
23 1.8 billion.

24 The economic and social impacts are
25 not to growers alone. USDA must consider the

1 social and economic impacts to farm workers and
2 their families, packing houses and their
3 employees, canneries and their employees, the
4 trucking industry and their employees, ports of
5 entry and their workers, and the local rural
6 economies.

7 Indeed, all consumers will feel a
8 tremendous impact. The University of California
9 has estimated the impact to consumers in
10 California alone would be a hundred million
11 dollars in higher food prices due to a Medfly
12 infestation.

13 During these times of concern over
14 homeland security, it must be remembered that
15 efforts to facilitate imports must not, and I want
16 to repeat that, must not put our export markets at
17 risk. The economic impact of the loss of export
18 markets in Japan, Hong Kong, Korea and Taiwan, for
19 just a few Medfly host commodities was estimated
20 in 1992 to be 564 million dollars to the ag
21 industry. Plus an additional 1.2 billion impact
22 in lost income to local economies, the loss of
23 14,000 jobs, and a serious economic impact to the
24 balance of the state.

25 We are disappointed and concerned

1 that this new rule that has been published within
2 USDA hasn't identified where the previous program
3 failed. The proposed change to the cold treatment
4 protocol for Medfly is based only on a review of
5 scientific literature, not on how the cold
6 treatment failed in this instance or that failure
7 of pre-clearance protocols.

8 It is a longstanding belief at CDFA
9 that allowing the importation to certain
10 destinations without sound science and effective
11 pre-clearance protocol is not good regulatory
12 policy. It places the regulatory burden and risk
13 exactly where it shouldn't be, on state
14 departments of agriculture and U.S. growers.

15 In this case we strongly urge that
16 until USDA can identify where the program failed
17 and solve the problem, it limits the entry of
18 Spanish clementines to areas absolutely unsuitable
19 for the establishment of a Medfly population. And
20 has a regulatory process in place to protect the
21 rest of the country.

22 Although I'm not here today to speak
23 representing NFACT, NFACT is a coalition of the
24 Departments of Agriculture from New Mexico,
25 Florida, Arizona, California and Texas. The

1 coalition was formed in 1999 to give the
2 agricultural communities of NFACT states greater
3 recognition at the national level. The coalition
4 has worked diligently to address issues of
5 importance to especially crops, livestock poultry
6 and agriculture.

7 The coalition represents almost 26
8 percent of the national gross receipts and
9 agricultural receipts. The coalition also
10 represents and accounts for 25 percent of the
11 nation's congressional representatives.

12 I can assure you that the prevention
13 of the entry of harmful and invasive pests such as
14 Medfly is a very high priority to these five
15 states.

16 I expect and I will strongly
17 recommend that the NFACT coalition will provide
18 written comments to the proposed rule and will
19 work with our agricultural industry leaders to
20 voice our concerns and suggestions to our
21 congressional representatives.

22 I want to thank you for the
23 opportunity to speak on behalf of California
24 agriculture. We will be submitting some
25 additional documents after the hearing.

1 This is a critical issue not only to
2 California agriculture, but to USDA Agriculture.

3 Thank you very much for this
4 opportunity to speak.

5 MR. RHOADS: Thank you, Mr. Lyons.

6 The next speaker, could we call
7 Mr. Sheldon Jones, Director of the Arizona
8 Department of Agriculture.

9 MR. JONES: Thank you very much.

10 It's a pleasure to be here this morning. And as
11 my good friend and partner Bill leaves, I'm going
12 to say thank you for those remarks.

13 MR. LYONS: I'm going to stay for
14 yours.

15 MR. JONES: Oh. Now I'm in trouble.

16 Bill and I have in the last three and
17 a half years or so developed a great relationship
18 and it has given Arizona a forum.

19 Bill mentioned NFACT. I stand here
20 as a proud member of the NFACT coalition.

21 And also, while not speaking on
22 behalf of NASDA, the National Association of State
23 Departments of Agriculture, I do chair their
24 international trade committee and also am
25 president elect of that association and can echo

1 what Bill said, Secretary Lyons has said about the
2 importance of invasive species introduction into
3 the United States is critically important to both
4 NFACT and NASDA. And we will pursue NFACT
5 comments as well as pursuing NASDA comments
6 relative to this rule.

7 The Department of Agriculture from
8 Arizona does appreciate the opportunity,
9 Mr. Rhoads, and your staff, and members of USDA,
10 the opportunity to present comments today on the
11 proposed rule outlining the resumption of the
12 pre-clearance program allowing the importation of
13 Spanish clementines to the United States.

14 With the failure of this
15 pre-clearance program, Arizona and other citrus
16 producing states, and let us not forget fruits and
17 vegetables of some 200 species of host material to
18 this pest, was placed at significant risk for
19 introduction of Mediterranean fruit fly. And as
20 such, we call upon APHIS to ensure the adequate
21 oversight of the proposed regulations and
22 enforcement of those that Spain is responsible to
23 execute.

24 The work plan Spain is to abide by
25 must assuage the deficiencies that resulted in the

1 failure of the program and establish confidence in
2 the integrity of this phytosanitary process.

3 As noted in APHIS reviews of the
4 pre-clearance program, trapping and treatment
5 programs were insufficient. No determination of
6 infestation levels was made before fruit entered
7 export channels, and the cold treatment process
8 failed as a last safety net in a process
9 prescribed to provide an export opportunity for
10 Spain while mitigating the risk of Medfly
11 introduction into the United States.

12 As a citrus producing state with a
13 significant agricultural and horticultural
14 industry base, Arizona is concerned in general
15 with the rapid pace at which APHIS is pursuing the
16 normalization of trade with Spain given the
17 significant events associated with the failure of
18 this pre-clearance program in November of 2001.

19 Specifically, the Arizona Department
20 of Agriculture is concerned that, one, the risk
21 assessment document was published using an
22 iteration of HACCP process which had not
23 previously been applied to resolve phytosanitary
24 issues.

25 Second, the cold treatment process

1 for mitigation of Mediterranean fruit fly larvae
2 has not been thoroughly researched, and
3 subsequently an additional two days has been added
4 to the treatment schedule as an attempt to improve
5 the efficacy of and confidence in cold storage
6 treatment in the interim.

7 Third, that the proposed rule allows
8 for reduced APHIS oversight after successful
9 completion of the first season of the program.
10 And that's if it's successful.

11 Fourth, and the handling of
12 potentially infested cargo at ports of entry is
13 subjective and criteria for suspension of the
14 program is ambiguous.

15 Given these concerns, the Arizona
16 Department of Agriculture encourages APHIS to do
17 the following:

18 One, maintain sufficient field
19 presence in Spain to oversee compliance with
20 Medfly mitigation programs, including national,
21 state and grower programs.

22 Second, review documentation of the
23 execution of Medfly trapping and population
24 reduction sprays before fruit is moved into export
25 channels.

1 Third, accelerate efforts to resolve
2 the issue of the efficacy of cold storage
3 treatment as a Probit-9 level quarantine treatment
4 for Medfly.

5 Fourth, not allow any fruit suspected
6 of being infested or with questionable integrity
7 for any reason into U.S. distribution until
8 thorough APHIS investigation establishes the
9 reliability of that commodity.

10 Fifth, during the first season of
11 revised pre-clearance program, not allow Spanish
12 clementines into citrus producing states or those
13 states neighboring those production areas.

14 While the proposed rule addresses
15 risk of Medfly introduction through importation of
16 clementines on technical and statistical merits,
17 the challenge facing APHIS is assuring Spain's
18 national, state and grower Medfly mitigation
19 programs are executed and the efficacy validated
20 before fruit is allowed into the export stream.

21 The Arizona Department of Agriculture
22 strongly recommends APHIS oversight, as outlined
23 in the first year of the revised program, to be
24 maintained and improved where needed throughout
25 the duration of the program as a risk to the U.S.

1 producers is significant.

2 I would just like to highlight that
3 the issue of concern here is, and should only
4 be, the only issue of trade barrier. And that
5 being that issue of science. There should be no
6 restriction if there is no concern for science,
7 given politics and the other parameters out there
8 that are pressures. But this truly is a science
9 based question and we just ask that it be biology,
10 not political.

11 And at a time when this country and
12 this world, when we are concerned not only about
13 the incidental introduction of a pest or disease,
14 we should be more concerned, I believe, with the
15 intentional introduction of a form of animal or
16 plant disease or pest.

17 To that end I believe we should
18 manage to every extent possible those issues of
19 introduction that we possibly can. Therefore, we
20 support that this rule needs to be re-visited and
21 address the issues and concerns that you'll be
22 hearing of today.

23 So once again, I thank you for the
24 opportunity to comment and wish you well and the
25 best in your comments today. Thank you.

1 MR. RHOADS: Thank you, Director
2 Jones.

3 Next we're going to have Ron Sequeira
4 gave a short presentation on the risk management
5 analysis that supports the proposed rule.

6 DR. SEQUEIRA: Thank you very much,
7 the previous speakers, for very insightful
8 comments. I understand this is a very difficult
9 and controversial issue. We have tried to address
10 it with as much care and deliberate effort as we
11 can.

12 I'm just going to briefly tell you --
13 I think several of you have seen elements of this
14 presentation before. So I want to try to just get
15 to the quick overview to capture the key elements.
16 The full document, of course, has been distributed
17 previously.

18 We are talking about the risk
19 analysis process, and it's a very normative
20 standardized approach that actually provides us a
21 framework to collect, to gather scientific
22 evidence, to analyze it, and then to present it to
23 the decision makers in order to enable them to
24 make decision processes.

25 And in fact, this risk analysis is a

1 multi-stage process. We start with an initiation
2 proper. And this is usually initiated by a
3 commodity import request from another country. In
4 some cases we do a risk analysis when a pest is
5 already present.

6 Then the next step is the risk
7 assessment process proper. And here we look at
8 trying to establish what is the probability or
9 likelihood that this problem will occur and what's
10 the likely impact.

11 Next we evaluate risk management
12 alternatives. And the risk management
13 alternatives give the purpose is to minimize the
14 likelihood of an introduction.

15 Finally, risk communication. This is
16 a process that takes place all throughout the
17 process, and these hearings are an example of that
18 component.

19 Risk assessments we spend a lot of
20 time. And formally the risk assessment, the
21 standard approach is to separately look at the
22 probability or likelihood of establishment,
23 introduce and enter an introduction of a pest and
24 separately look at the consequences.

25 We look at the probability of

1 establishment by breaking down the system into all
2 those elements that help us explain or understand
3 the likelihood of establishment. And we look at
4 the consequences as was alerted before in terms of
5 economic terms, environmental terms, social
6 impacts, policy issues, et cetera.

7 We have, again, a very normative
8 process to do a risk assessment. When I say
9 normative, I mean we always do it. It's very
10 standardized. Every time we look at a risk
11 assessment issue we follow these steps.

12 So normally we document why are we
13 doing this, which country has generated this
14 import request, et cetera.

15 Then we assess if the commodity
16 itself can potentially become a weed. In some
17 cases these are trivial assessments, but again, we
18 always visit them.

19 We identify previous work in the
20 area, related countries. Related commodities. We
21 categorize all pests that are associated with that
22 commodity even though they are not of quarantine
23 interest. Then we identify those that are of
24 quarantine interest for additional study.

25 We assess the likelihood of

1 introduction, the consequences of introduction,
2 and we evaluate risk management options.

3 Now, in the case of Spanish
4 clementines, this was not a new import request.
5 It was not an analysis triggered by a new
6 commodity. Rather, we had something that had been
7 in the stream for about approximately 20 years.
8 So we emphasized in our analysis the latter
9 portion, the risk management.

10 Now, we do not have very detailed
11 guidelines established for risk management. So we
12 tried to expand. Although this is, as was said
13 before, a new approach, it is indeed consistent
14 with our existing guidelines.

15 And in terms of testing of this
16 particular, quote, HACCP process, it's a
17 wellknown, well-referenced in the literature. So
18 we found that this would provide the industry
19 advantages and transparency in itself, advantages
20 in trying to explain and monitor the system.

21 Now, what is HACCP? It's actually a
22 very simple system. It stands for Hazard Analysis
23 and Critical Control Point System. And if you
24 think about, those of you, most of us are familiar
25 with the food industry. And there they use HACCP.

1 That's the area that this was actually developed.
2 They use it regularly.

3 You've heard perhaps of keeping the
4 cold chain in order to avoid diseases like
5 Salmonella, E. Coli to be a problem with meat
6 products. So a HACCP process would identify which
7 elements of this food chain, from production to
8 delivery, are critical to maintaining safety. In
9 this case from food borne diseases.

10 We would perhaps identify cold chain,
11 maintaining that cold chain unbroken as one
12 critical control point. And another might be, for
13 example, cooking. Cooking it to at least X number
14 of degrees such that we assure this combination.

15 There's other -- of course, other
16 processes. You must wash your hands and keep
17 proper storage, et cetera. Packaging, serving.
18 But the critical control points are that cold
19 chain and that heating.

20 So Hazard Analysis and Critical
21 Control Point System help us identify those
22 critical points. And again, the definition is
23 that those points that if they were to be broken,
24 would endanger the safeguarding offered by the
25 entire system.

1 So they begin with conducting a
2 hazard analysis. Determining which are these
3 critical control points. Establishing critical
4 limits. Establishing monitoring procedures,
5 corrective actions and verification.

6 This, again, is consistent with the
7 way we do work plans, with the way we do our risk
8 management analysis. We believed at the time it
9 offered a more transparent and rigorous system,
10 and for that we proposed its adopting some of this
11 formality in addition and consistent with previous
12 guidelines.

13 Again, there's a direct relationship
14 between our existing guidelines and this, quote,
15 HACCP approach.

16 I am not going to go into a lot of
17 details because we've published, like we publish
18 all of our risk assessments on the web. And
19 website is on record.

20 So I'm going to jump a few slides to
21 tell you that this particular document, the risk
22 mitigation document represented evaluated the
23 importation system as it existed prior to 2002.
24 And then it compared that system before the
25 troubles to proposed additional mitigations.

1 Of course, the objective was to
2 present evidence to decision makers as to whether
3 these additional mitigations would alleviate the
4 problems encountered the last year.

5 And again, I don't think I need to
6 restate the issues that concern us all. It is
7 indeed, as has been mentioned before by industry,
8 the hoof and mouth, or foot and mouth disease of
9 the fresh food industry, probably of the entire
10 plant industry. This is indeed the worst of the
11 worst. It is an extremely plastic, dynamic,
12 adaptable pest worldwide, not just in the United
13 States, one of the key pests of fruit production.

14 In California we had problems in the
15 eighties. The nineties were less of a nightmare.
16 In Florida two outbreaks since the thirties to
17 underscore the issue. A multi-billion dollar
18 industry is what we need to protect.

19 And just want to underscore the
20 reason you're here is because the coasts pretty
21 much produce, in addition to Arizona and Texas,
22 most of the entire United States production,
23 providing more than half of the fruit, the fruit
24 nutritional components of our diets in this
25 country.

1 It is more than an economic issue.
2 It is a national security issue.
3 As has been said before, not just
4 citrus is susceptible. Other crops are at risk as
5 well. And we are very much aware not only of the
6 resources at risk, but its very widespread
7 distribution and where the potential impacts might
8 be.
9 We're also aware that the nature of
10 our climates is variable such that in California
11 and Florida, for example, we have fruiting periods
12 that encompass the entire year. Therefore,
13 introductions at any time of the year are of great
14 concern.
15 How did we end up here today? Well,
16 again, not to restate anything. We did have
17 numerous reports last year. The basis for
18 movement in the past 20 years has been a single
19 tactic. Use of cold treatment.
20 So what went wrong? We believe
21 either we had a very unusual year in 2000, 2001,
22 with extremely high populations of fruit flies
23 that overwhelmed this cold treatment, or the
24 treatment efficacy was lower in 2001 than it had
25 been in the previous two decades.

1 So identifying that as the most
2 likely suspects, we went after them in terms of
3 building up additional mitigations.
4 So what are we doing? We're beefing
5 up, strengthening and refining our cold treatment
6 with probably some of the most comprehensive
7 successive studies that APHIS has ever taken on in
8 terms of cleaning up our act, reascertaining,
9 reanalyzing, confirming, and sharpening up our
10 knowledge about the dynamics of cold treatment.
11 A lot has happened in two decades. A
12 lot has happened in the last 80 years since cold
13 treatments were first reported as useful. So I
14 think it is high time that we do this. And we
15 have engaged it immediately.
16 In terms of field controls, we
17 believe that -- like I said, addressing those two
18 issues, the treatment efficacy and the in-field
19 high densities were key. So we're going to
20 institute limitations on the maximum infestations
21 allowable in the field before the fruit ever leave
22 their ports of origin.
23 We're going to institute a number of
24 thresholds, not only thresholds of inspections at
25 the ports, but also groves where if a grove is

1 found to be repeatedly troublesome, we'll take the
2 entire grove out of the export program.

3 Again it's a framework of higher
4 alert. And this has very specific meaning. It
5 has specific meaning in terms of quality control
6 and of deploying additional resources, et cetera.

7 Already Dr. Gadh mentioned elements
8 of the work plan. It is detailed and we believe
9 addresses those two key issues that were
10 identified before. Again, I'm not going to repeat
11 them. But they do include other less tangible,
12 perhaps, and less quantifiable elements such as
13 periodic site visits, on-site monitoring, review,
14 continuous dynamic review of the kind of equipment
15 we use, the vessels, and verification of cold
16 treatment efficacy. That includes a lot of record
17 keeping so that we can verify.

18 And specific bait sprays, trapping
19 systems, again, the details were mentioned before,
20 so I will skip through most of those.

21 So the question is how do you know
22 that it's going to work? We have a system now
23 planned and proposed. How do we measure its
24 efficacy?

25 Well, one of the ways we proposed to

1 do it was by going back in the same way we
2 analyzed the situation in our country, better
3 understanding the dynamics at the port of origin.
4 In this case most of the correction in Spain is in
5 the Mediterranean region. They have a tangerine
6 and mandarin group, the final group of the
7 clementines is manderins and tangerines. That
8 encompasses a period from roughly September
9 through May in terms of production.

10 We, through a number of site visits,
11 evaluation of scientific literature, have a better
12 understanding now of all of the components of
13 their production system. And we have, I have said
14 before, not particular deference to this country
15 or Spain because of strategic importance or other
16 policy issues. PPQ always trusts only its own
17 on-site verification. And our policy is
18 safeguarding. And our safeguarding policy takes
19 precedence to all other issues.

20 So in order to evaluate this, to
21 evaluate the issues of variability, uncertainty,
22 we try to take a look at all of the components of
23 the system and then study them individually.
24 Starting from production in the field up on the
25 left side. And then moving to a likely problem.

1 And between the population in the field with a
2 potential infestation to a likely introduction,
3 there's a number of things that happen. And these
4 number of things that we need to understand in
5 order to express what is the risk associated with
6 the system and to understand these mitigation
7 practices.

8 So there are a number of processes,
9 like I said, between these that we call attrition.
10 These are controls or population management
11 processes.

12 The harvested fruit has an
13 infestation. There is an infestation in stored
14 fruit. Infestation in the packing house, in the
15 stored fruit after post-harvest treatment, after
16 shipment.

17 And all along there is a number of
18 mortality factors that are associated with or may
19 be potentially associated with it.

20 After looking at all of these
21 elements, we looked at what information we
22 actually have about components of the system. And
23 we were able to identify these components of the
24 system as relevant, as critical control points in
25 a couple of cases, and as supported by evidence we

1 felt was reliable and credible.

2 We understood the fruit designed for
3 export, how much infested fruit was in the field,
4 how many flies were likely to be in each
5 individual fruit that was infested, the flies
6 remaining after cold treatment, and then flies
7 that arrived in a suitable area, or flies that
8 were associated with individual shipment such as a
9 container. And then using that information to
10 determine the probability that it may be
11 associated with these shipments.

12 Again, it's not very complex. But
13 the issue is not its complexity, but evidence. Do
14 we have evidence to support each one of these
15 components.

16 We set about trying to associate each
17 one of these components with evidence. And the
18 evidence is in the documents provided to you.

19 The summary is this. We're going to
20 limit -- and it is bolded here because we believe
21 this is a critical control point. We're going to
22 limit the population to no more than one and a
23 half percent infested fruit.

24 We understand the number of larvae
25 that survive naturally in each one of those

1 infested fruit. As you know, insects, as with all
2 -- excuse me, Medflies, as is the case with all
3 insects, produce an overabundant number of eggs
4 relative to those that actually survive.

5 In the case of this particular pest
6 and based on experimentation, the numbers that
7 actually survive in a fruit varies anywhere from
8 zero to 15.

9 Then we have a treatment at
10 approximate Probit 9. And it is our understanding
11 that prior to 2001 it approximated Probit 9 as
12 opposed to achieving it.

13 And finally we have dilution, because
14 not all of the fruit, of course, ends up in
15 Ventura County. Some of it goes to North Dakota.
16 And the two folks that live out there are the
17 market, I guess.

18 At any rate, we combine these
19 elements of a model in order to come up with a
20 number, a number that in this case was how many
21 flies were associated with a shipment.

22 And we concluded the following:
23 There is going to be a guaranteed low prevalence
24 of fruit flies in the ports of origin. We
25 believe, and based on our evidence, that

1 post-harvest quarantine treatments are effective
2 mitigators. Such that fruit that should be
3 infested after cold treatment should vary anywhere
4 from nil to no more than one in a million.

5 And we're going to wrap that with
6 strong quality control measures such that this
7 will result in a minimization of the probability
8 that a mated pair arrives at a location where it
9 causes trouble. That is our objective, that is
10 our intent.

11 How do we stay out of trouble such as
12 we never expected in 2001? Well, we've made
13 profound changes in USDA APHIS. We've instituted
14 much more stringent and severe approaches with the
15 Spanish domestic quality control, better
16 documentation, verifiability, a more transparent
17 system.

18 I believe we are engaging in better
19 communication with this example and others. And
20 we have launched an unparalleled effort in
21 research and method development.

22 With that I will end there. And go
23 on to the next.

24 MR. RHOADS: At this point I will
25 begin calling the rest of the registered speakers.

1 Before I do, I'd like to ask that
2 each speaker please state and spell your last name
3 for the benefit of the court reporter. And also,
4 if you were reading from a written statement and
5 you have a copy to spare, please provide one to
6 the court reporter to make her job a little
7 easier.

8 I would also like to remind you that
9 the comment period for the proposed rule closes on
10 the 9th of September. Up until that date we will
11 be accepting written comments via postal mail and
12 via e-mail. Comments must be received by that
13 date, the 9th of September.

14 At this time I'll call the next
15 registered speaker, Johanna Williams, speaking for
16 Senator Barbara Boxer.

17 MS. WILLIAMS: Good morning.

18 I'll be reading to you a letter that
19 the Senator wrote to Secretary Veneman regarding
20 this issue and expressing her concerns about it.

21 "Protecting California agriculture
22 and its long term production of high quality
23 products that can safely be exported around the
24 world is essential if we are to be able to
25 maintain and expand our competitiveness in this

1 global economy.

2 "I am deeply concerned that the
3 proposed Animal Plant Health Inspection Service
4 rule to allow the renewed importation of Spanish
5 clementines could be disastrous to California's
6 longstanding efforts to exclude a long list of
7 destructive pests from its borders. This proposed
8 rule is deeply flawed and should be substantially
9 amended to recognize a real threat that the Medfly
10 poses to up to 250 crops.

11 "California knows all too well what
12 can happen when a pest like Medfly establishes
13 itself. In the 1980's, and then again in the
14 early and mid-nineties we fought a long and
15 expensive battle to eradicate this pest from our
16 state. To this day millions of dollars are
17 expended to prevent a reinfestation.

18 "For a time California was subject to
19 quarantines that seriously hurt both farmers, the
20 communities dependent on agriculture, and the
21 State's economy.

22 "In more recent years, we have
23 struggled to control and eradicate the Mexican
24 fruit fly, Oriental fruit fly, the Glassy-winged
25 Sharpshooter, and now we face the threat of the

1 olive fly. We all know the consequences of a
2 Medfly reinfestation, and we cannot afford it.

3 "Once a pest like Medfly establishes
4 itself, new applications of pesticides may be
5 required to control the outbreak, a step that both
6 agriculture and urban communities wisely would
7 like to avoid.

8 "We know that in November 2001
9 several shipments of Spanish clementines to U.S.
10 contained live Medfly larvae. Before any
11 resumption of these imports is considered USDA and
12 APHIS needs to assure that threat of Medfly is
13 taken seriously and that concrete steps are taken
14 to assure that there is the lowest risk possible
15 of reintroduction of this pest. It is clear that
16 the proposed rule does not go far enough in
17 meeting that goal.

18 "And in the strongest terms I urge
19 you to work with representatives of California
20 State Department of Food and Agriculture, the
21 agricultural offices of New Mexico, Florida,
22 Arizona, California and Texas, as well as farm
23 groups such as the California Citrus Mutual and
24 the California Grape and Tree Fruit League, which
25 have offered constructive suggestions to resolve

1 problems with the phytosanitary protocols in the
2 proposed rule.

3 "This debate is not about restraining
4 international trade. I have long supported
5 efforts to enhance free and fair trade between the
6 United States and our trading partners. It is
7 about protecting plant health in the United
8 States. This is of paramount concern to my
9 constituents and is one of the most important
10 responsibilities of the USDA.

11 "In advance I thank you for your
12 consideration of these comments."

13 Thank you.

14 MR. RHOADS: Thank you.

15 Next speaker will be Shelly Abajian,
16 who will be speaking for Senator Feinstein.

17 MS. ABAJIAN: I thank you for an
18 opportunity to speak on behalf of Senator
19 Feinstein today. It's Shelly Abajian,
20 S-h-e-l-l-y. Abajian, A-b-a-j-i-a-n

21 And the Senator has sent a letter off
22 to Secretary Veneman, and it states as follows:

23 "Dear Secretary Veneman: It has been
24 brought to my attention that as of July 11, 2002,
25 the Animal and Plant Health Inspection Service

1 published in the Federal Register the proposed
2 rule allowing importation of the Spanish
3 clementines into the United States. The product
4 is a known carrier of the Mediterranean fruit fly.
5 And a number of shipments to the United States in
6 November and December of 2001 tested positive for
7 Medfly larvae; hence, further shipments were
8 prohibited.

9 "The California Citrus Industry, as
10 well as the other 200 plus commodity groups in
11 California, are concerned with the protocols which
12 are to be met allowing importation of clementines
13 to resume. I understand that these protocols are
14 not adequately defined and the definition of
15 negligible risk does not provide the level of
16 protection the industries are comfortable with.

17 "In addition, the cold treatment of
18 imported fruit while the vessel is enroute to the
19 U.S. has raised a question of sound science.
20 Treatment in Spain lasts for 12 to 14 days. A
21 vessel is on the water for ten days. This form of
22 treatment was used in the shipments which showed
23 presence of Medfly larvae in 2001.

24 "I would appreciate your reviewing
25 the rule once again to consider all the

1 commodities in California which are at risk if we
2 were to have a Medfly infestation."

3 Thank you.

4 MR. RHOADS: Thank you.

5 Next speaker will be Rebecca Hackler
6 speaking for Congressman George Radanovich?

7 MS. HACKLER: Good morning. Rebecca
8 Hacker. H-a-c-k-l-e-r is my last name.

9 I'll be reading a statement today
10 from Congressman George Radanovich.

11 "As a Congressman from the San
12 Joaquin Valley, I have the privilege of
13 representing the two largest agricultural
14 producing counties in the nation. The majority of
15 crops in this region are specialty crops, which
16 include citrus, grapes and stone fruit among the
17 250 commodities grown. Farmers in the San Joaquin
18 Valley are particularly vulnerable to the Medfly
19 infestation because many specialty crops are host
20 to the pest.

21 "A Medfly finding in the past, and
22 could again, cost millions of dollars.
23 Containment, control, quarantine, and loss of
24 export markets during the 1980's Medfly crisis had
25 enormous financial impact on the agriculture based

1 communities in the State of California.

2 "The reason we are here today is
3 because last year live Medfly larvae was found in
4 Spanish clementines that were sold in California
5 and other states. USDA has a proposed rule that
6 would govern how Spain mitigates this destructive
7 pest.

8 "I believe we should learn from our
9 nation's past experiences with the Medfly and
10 treat this matter with the utmost urgency.
11 Therefore, I implore the USDA to seriously
12 evaluate whether Spain, in just a mere nine
13 months, has taken the proper steps necessary to
14 ensure its fruit being shipped to the U.S. is free
15 from the Medfly.

16 "USDA is responsible for making
17 certain the systems and controls in the final rule
18 are effective and realistic to combat Spain's
19 Medfly problem. Science must govern whether Spain
20 is mitigating the pests properly and the USDA must
21 carefully monitor the progress. Therefore, there
22 must be dire consequences if Spain does not comply
23 with such standards.

24 "I am concerned about several aspects
25 and issues in the proposed rule by USDA. First,

1 there is no definition for negligible risk in the
2 proposed mitigation. The Argentine citrus court
3 ruling requires USDA to stipulate negligible risk.

4 "Second, buffer zones both in Spain
5 and the U.S. are either nonexistence or
6 inadequate. Buffer zones between Medfly infested
7 and non-infested groves in Spain are not created
8 in the proposed rule. In the U.S. the five states
9 exempt from receiving Spanish imports should, at
10 least initially, have buffer states around them to
11 ensure protection.

12 "Along those same lines, there are at
13 least 12 other states that produce crops
14 vulnerable to the Medfly that are not included in
15 this exemption. These states must not be
16 forgotten.

17 "The third issue is cold treatment and
18 whether the proposed rule is reflective of sound
19 science on this matter. The proposed rule would
20 extend cold treatment of fruit for two days which
21 would be a total of 12 days. The USDA's own
22 analysis did not indicate that 12 days is adequate
23 enough to eradicate Medfly larvae and has
24 suggested 14 to 16 days may be needed.

25 "Furthermore, there is evidence that

1 Spain was already applying about 12 to 14 days of
2 cold treatment in 2001 and, obviously, it did not
3 properly mitigate the pest.

4 Lastly, USDA would be remiss not to
5 include other factors in its economic impact
6 analysis in the rule. Specifically, it is
7 critical that USDA evaluates the numerous economic
8 impacts of a Medfly infestation in addition to
9 those impacts on the citrus industry and USDA as a
10 whole. The economic impact analysis should
11 address the fact that other crops are negatively
12 affected by the Medfly, and estimate state
13 eradicated costs, quarantine costs and loss of
14 domestic and foreign markets if the Medfly is
15 discovered on U.S. crops.

16 "In closing, USDA must establish a
17 final rule firmly grounded in science and
18 carefully monitor its application. Spain must do
19 everything in its power to meet the standards USDA
20 puts forth in its final rule.

21 USDA must take its role in this
22 matter very seriously and not give preferential
23 treatment to Spain or any other nation. The
24 consequences of doing so could jeopardize the very
25 stability of agriculture in the State of

1 California as well as other parts of the nation."

2 Thank you.

3 MR. RHOADS: Thank you.

4 The next speaker we'll call will be
5 Bill Pauli from the California Farm Bureau
6 Federation.

7 MR. PAULI: Good morning. My name is
8 Bill Pauli, P-a-u-l-i. And I believe you already
9 have a copy of the testimony.

10 Good morning, everyone. My name is
11 Bill Pauli. I'm a pear and grape grower from
12 Mendocino County and president of the California
13 Farm Bureau.

14 I appreciate the opportunity to
15 discuss USDA's proposed importation rule of
16 clementines from Spain. As a general farm
17 organization which includes about 80 percent of
18 the State farmers and ranchers, the California
19 Farm Bureau Federation is seriously concerned
20 about the threat Medfly poses to the U.S.
21 consumers, agriculture and our national economy.
22 An outbreak is simply unacceptable. I urge your
23 consideration of a revision of the proposed rule
24 prior to allowing the Spanish clementines into the
25 United States.

1 The impacts this pest poses are wide
2 sweeping. As you will hear several times today,
3 the Medfly attacks more than 250 commodities,
4 which include numerous fruits, vegetables and nut
5 crops. Crops that are grown commercially and in
6 California's home and backyards. The commodities
7 include avocados, nectarines, oranges, peaches,
8 plums, apples, cherries, and apricots to name just
9 a few.

10 One messages that should be very
11 clear today. This is not simply a citrus issue.
12 Nor is this simply an agricultural problem. The
13 long list of host commodities and projected
14 economic damage of an infestation lends serious
15 concerns to all Californians.

16 It is imperative that the import rule
17 provide our consumers and our agricultural
18 industry with confidence in the protocol and the
19 procedures established to protect them against the
20 introduction and the establishment of Medfly in
21 the United States. Farm Bureau believes the rule
22 does not go far enough to provide adequate defense
23 mechanism against the importation of Medfly.

24 To further elaborate, I would like to
25 focus attention on three specific areas. The

1 threat this pest poses to our consumers, to the
2 U.S. Agriculture and to the economy; to the
3 incomplete science behind this rule according to
4 the technical experts; and the precedent setting
5 nature of this rule.

6 Threats to consumers, agriculture and
7 the economy. Food supply and its costs. The
8 establishment of Medfly would dramatically affect
9 California consumers. Let us not forget the
10 consumers. Consumer prices would go up because
11 lower yields would decrease supply resulting in
12 less available product.

13 For instance, in Hawaii where the
14 pest is established, many crops can no longer be
15 grown commercially. Establishment of the pest in
16 California could adversely affect our ability to
17 produce and purchase many items.

18 The import rule must provide for
19 consumer confidence in food quality and food
20 security. Erosion of the food consumer confidence
21 could have potentially devastating effects on
22 produce sales both here and broad.

23 In addition to food supply and export
24 concerns, we would also expect to see the general
25 public increase their pesticide use to protect

1 home gardens.
2 An infestation would seriously damage
3 our ability to export. If embargoes were put in
4 place, it would cost California's economy 1.3 to
5 1.9 billion dollars annually and result in the
6 elimination of 14,000 job-related industries, such
7 as trucking, packing, food processing, retail and
8 shipping would also be affected. This would take
9 a distressing toll on the economy of all
10 Californians, including our 27 billion dollar
11 industry.

12 The 1980-82 Santa Clara Medfly
13 infestation cost 100 million dollars to eradicate,
14 and an additional 100 million dollars was lost due
15 to embargoes placed on commodities grown within
16 the quarantine zone. The most damaging embargo
17 was established by Japan, which required extensive
18 fumigation efforts before allowing fruit into that
19 country.

20 In order to prevent these actions
21 from taking place and limiting exports, the U.S.
22 must take every precautionary step that is
23 necessary to keep the Medfly out.

24 If this exotic pest were to become
25 established, losses would come in the form of

1 export sanctions, lost markets, treatment costs,
2 reduced crop yields, deformities and premature
3 crop drop.

4 The science. The Exotic Fruit Fly
5 Coalition, of which the Farm Bureau is a member,
6 has enlisted the work of scientific experts in the
7 areas of risk assessments, cold treatment and
8 quarantine matters to review the USDA proposal.
9 These technical experts have identified
10 significant scientific flaws in the risk
11 assessment. This has stakeholders seriously
12 concerned over the ability to protect against the
13 threat of Medfly importation.

14 The experts claim that the risk
15 assessment's statistical calculations are
16 incomplete and fail to take into account more than
17 one container of one shipment, nor has
18 consideration been given to additional shipments.

19 Further, a pre-clearance protocol
20 work plan is absent from the rule. How can the
21 U.S. evaluate, much less approve a procedure that
22 fails to make clear pre-clearance protocol?

23 Experts also called into question the
24 proposed changes in cold storage treatment which
25 USDA is extending from ten to 12 days. The

1 Spaniards claim that they actually applied longer
2 cold treatment, 12 to 14 days, in shipments during
3 2001. If that is indeed the case, what more
4 defense will two additional days provide? And
5 what science exists to prove this differently?

6 Dr. Ludwig will discuss these and
7 other scientific concerns in comments later today.

8 Further, written comments will
9 include an indepth scientific review conducted by
10 Dr. Crouch, senior scientist of the Cambridge
11 Environmental Incorporated.

12 Precedent-Setting. Too many times
13 the U.S. agriculture industry has been traded away
14 in global agreements for the benefit of other
15 sectors and other agendas. Often these trade
16 concessions are made in our fruit and vegetable
17 sector. The horticulture industry is looking to
18 the Bush administer for equitable trade policies
19 that include science-based sanitary and
20 phytosanitary measures that facilitate trade
21 rather than restrict it, but also work to protect
22 the domestic industry from food safety and plant
23 and animal threats.

24 Given the Medfly's potential for
25 inflicting severe damage to our nation's produce

1 industry, this rule sets significant precedence.
2 We must send a strong message to our consumers,
3 the international community and to U.S. farmers
4 and ranchers that our nation will diligently
5 defend our country from the threat of imported
6 pests and diseases as well as food safety and
7 economic threats that such an incident would pose.
8 If we fail, we can expect our global neighbors to
9 take action that will result in lost markets for
10 U.S. products, increased regulatory protocol and
11 additional unfunded mandates placed on our
12 producers.

13 In conclusion, in the interest of
14 consumers, the economy and the agriculture
15 industry, the U.S. rule must stop nothing short of
16 preventing the importation and the establishment
17 of Medfly. Our history of fighting the Medfly in
18 California shows that the threats are real and the
19 costs can be tremendous.

20 We are serious about our resolve to
21 prevent further infestations. This is not about
22 blocking foreign products from entering the United
23 States. It is about guarantees that we're using
24 complete science and sound protocol, and it is
25 about ensuring that what happened last year won't

1 happen again.

2 The California Farm Bureau urges USDA
3 to finalize the import rule based on sound
4 science, taking into consideration the economic
5 impacts of the state eradication costs, producer
6 cultural impacts, costs associated with the
7 quarantine requirements and the loss of domestic
8 and export market opportunities. This requires
9 revisions to the proposed rule. And until that
10 time, we urge that the current suspension of the
11 clementine imports from Spain remains intact.

12 It's about science over politics.
13 It's about fair trade and free trade.

14 Thank you very much for the
15 opportunity.

16 And by the way, I'm from Missouri and
17 I need to be shown.

18 MR. RHOADS: Thank you.

19 Our next speaker will be Al Williams,
20 Sunkist Growers Incorporated.

21 MR. WILLIAMS: Al Williams,
22 W-i-l-l-i-a-m-s.

23 In the interest of brevity, I will
24 paraphrase my remarks. But I ask that the more
25 detailed written version of my testimony be

1 included in the record. And I believe it's
2 already over there.

3 As I indicated, my name is Al
4 Williams and I'm Chairman of the Board of
5 Directors of Sunkist Growers. I'm here today to
6 represent our 109 year old grower-owned marketing
7 cooperative and some concerns of over 6,000 citrus
8 growers in California and Arizona.

9 I'm also here as a concerned grower
10 of one of the over 250 commodities grown in the
11 U.S. which are vulnerable to the highly
12 destructive Mediterranean fruit fly.

13 Because of strong efforts over the
14 past two decades, efforts ongoing today, the U.S.
15 citrus industry has been spared a widespread
16 Medfly infestation such as the ones that
17 devastated the industry in the early 1980's.
18 Those infestations imposed tremendous and adverse
19 economic consequences not just on our industry,
20 but also on the State of California and on the
21 federal government. Hundreds of millions of
22 dollars were spent combatting them and millions
23 more were lost to growers and shippers unable to
24 market fruit from quarantined production areas.
25 Never, never again do we want to go through such a

1 event.

2 Late last year the potential economic
3 and environmental consequences of a Medfly
4 outbreak in the U.S. again became very, very real.
5 Infested Spanish clementines escaped detection at
6 East Coast ports of entry and were delivered to
7 markets throughout the U.S. This was one of the
8 largest legal import pest incidents in the history
9 of the U.S. Department of Agriculture.

10 Fortunately, quick action by USDA and
11 state departments of agriculture stopped the
12 shipments and protecting the nations phytosanitary
13 security.

14 Spain has documented and acknowledged
15 infestations of Medflies in their production
16 areas. Before they were allowed to ship into the
17 U.S., prescribed phytosanitary protections were
18 supposed to be in place. If they were, they
19 obviously failed.

20 USDA inspection team dispatched
21 immediately after the importation problems were
22 declared found a number of major deficiencies in
23 trapping and bait spray activities and in fruit
24 cutting and monitoring programs, as well as a lack
25 of data, documentation and oversight. And now,

1 just nine months later, our government is planning
2 an expedited resumption of clementine imports from
3 Spain.

4 The producers of the U.S. food supply
5 have reasonable concerns. We have understandable
6 questions. We ask, what has changed in Spain's
7 production area activities that provides
8 phytosanitary security for the U.S. today, but did
9 not provide that security only nine months ago?

10 The deficiencies found in the Spanish
11 production areas would never be tolerated by USDA
12 or by state departments of agriculture in the
13 production of U.S. citrus. They should never have
14 been tolerated for Spanish clementines destined
15 for the United States. And they can never again
16 be tolerated for Spain or for any other country
17 seeking to ship produce into the U.S. from
18 production areas of a documented pest or disease.

19 And yet, despite the fact that
20 phytosanitary security in Spanish clementine
21 production areas has been nonexistent, USDA has
22 not required of Spain a systems approach to risk
23 mitigation.

24 So we ask, can Spain truly address
25 such wide ranging deficiencies in only nine months

1 and now be operating a non-detectable pest level
2 of production for export?

3 We ask, what assurances are provided
4 for compliance enforcement?

5 We ask, how does USDA plan to
6 independently verify compliance?

7 And we ask, who does USDA plan to
8 rely upon to ensure enforcement? Does it plan to
9 rely on the local or provincial governments in
10 Spanish production areas who are, after all, the
11 same authorities whose alleged oversight allowed
12 the situation to spiral out of control and result
13 in live Medfly larvae being delivered to markets
14 all over the U.S.?

15 In considering this resumption of
16 imports, we ask USDA to ensure the systems and
17 controls governed by the final rule are effective
18 and practical for dealing with the endemic Medfly
19 infestation in the Spanish production areas.

20 We ask that the actions the Spanish
21 are required to undertake in preparing their
22 groves for production and their fruit for export
23 be comprehensive and verifiable by USDA.

24 We ask that the consequences for
25 failing to adhere to these rules be sufficient to

1 ensure that Spanish growers and shippers will take
2 very seriously their obligations for Medfly
3 management and eradication. American citrus
4 growers are held to those standards. Offshore
5 producers seeking the financial benefits of the
6 U.S. marketplace should be asked to adhere to the
7 same expectations.

8 Spain, as well as other foreign
9 producers, already receives preferential treatment
10 from USDA. Under current policy, should a
11 temporary Medfly infestation occur in a U.S.
12 production area, the citrus within the established
13 quarantine area cannot, under any circumstances,
14 move to market.

15 In contrast, USDA allows foreign
16 origin fruit from permanently infested production
17 areas to be brought into the United States with
18 only the provisos that the pest detections in the
19 export groves are relatively low and the fruit is
20 cold treated.

21 This incongruity in USDA's policy
22 must be re-examined.

23 So we ask, why are offshore producers
24 asked only to cold treat their fruit as a
25 mitigation measure, while American producers are

1 restricted to marketing their fruit from only pest
2 free production areas?

3 We ask, why does our government not
4 apply the same standard to American producers as
5 it does to foreign producers?

6 And we ask, why are the advantages
7 given by our government to foreign producers
8 denied to American producers?

9 Of additional concern to American
10 farmers is the fact that USDA has stated in the
11 proposed rule that it is considering a limited
12 distribution plan that would delay entry of
13 Spanish clementines into citrus producing areas in
14 the U.S. for up to one full shipping season.
15 According to USDA, over 250 different commodities
16 produced throughout the U.S. are Medfly
17 vulnerable, not just citrus.

18 So we ask, how does delaying entry of
19 potentially infested fruit into only five citrus
20 producing states protect the other 12 states which
21 have climatic conditions compatible to the Medfly
22 and which produce vulnerable commodities during
23 the clementine shipping season? Exclusion of all
24 vulnerable production states must be a component
25 of the final rule to assure a much needed measure

1 of security to these areas of the country.

2 In closing, please do not
3 underestimate the gravity of this situation. The
4 Medfly is to the fresh fruit industry, which has
5 been referred to before, what the hoof and mouth
6 disease is to the livestock industry. We all
7 recall the drastic steps taken to combat that
8 horrible disease. Steps demanded by USDA and its
9 counterparts all around the world.

10 As producers of Medfly vulnerable
11 fruit, we believe the same resolute action should
12 be understood by the Spanish and demanded by USDA.

13 The United States is not under any
14 obligation to facilitate the importation of
15 commodities that fail to meet scientifically
16 justified standards demanded of American growers.
17 That burden lies solely upon the Spanish to remedy
18 their endemic Medfly infestation and its inherent
19 problems and to demonstrate the effectiveness of
20 that remedy prior to receiving the privilege of
21 selling their fruit in the U.S. marketplace.

22 Last November the Spanish could not
23 meet that minimum requirement. Again, we must
24 ask, what dramatic changes have occurred in the
25 interim to ensure our phytosanitary security now?

1 Before the close of the comment
2 period Sunkist Growers will submit comprehensive
3 technical comments concerning various aspects of
4 the terms and conditions of importation described
5 in the proposed rule. Today I wanted to present
6 the understandable fears of American growers whose
7 livelihoods are threatened by this devastating
8 pest.

9 Thank you for this opportunity.

10 MR. RHOADS: Thank you, Mr. Williams.

11 The next speaker will be Richard
12 Matoian, president of the California Grape and
13 Tree Fruit League.

14 MR. MATOIAN: Good morning. My name
15 is Richard Matoian. I'm President of the
16 California Grape and Tree Fruit League. I'm also
17 Chairman of the Exotic Fruit Fly Coalition and the
18 newly elected Chairman of the Alliance for Food
19 and Farming. These latter two groups are two
20 groups that had to mop up the mess from the last
21 previous infestations of Medfly in California.

22 The California Grape and Tree Fruit
23 League is an association of growers that grow
24 table grapes and deciduous tree fruit within
25 California. Our organization has many concerns

1 with this proposal, and we adamantly oppose the
2 importation of Spanish clementine until the
3 current proposal is drastically changed and
4 provides adequate protection for California ag
5 industry.

6 I fear that the department is either
7 retreating from its obligation to protect U.S.
8 producers from the invasion of foreign and exotic
9 pests or that USDA is uninformed and needs to be
10 educated further before ruling on an irrational
11 protocol that may truly destroy California's ag
12 economy.

13 USDA fully acknowledges and accepts
14 that an average of 1.5 percent Medfly infestation
15 rate in clementines that will be subject to cold
16 treatment prior to coming into the U.S. There is
17 no conclusive evidence that shows that a 1.5
18 percent benchmark established in this protocol is
19 an acceptable risk for the 2002 season and beyond.
20 In order to properly address the scientific
21 benchmark, additional studies must be conducted in
22 order to satisfy our industry's concerns.

23 Furthermore, the benchmark rises to
24 three percent infestation rate in years following.
25 There is no supporting data that indicates that

1 this will be an acceptable level.

2 To allow a quarantine pest of this
3 magnitude into the U.S. without any true
4 scientific basis is an unacceptable risk the
5 California ag industry is not willing to take.

6 This brings me to our industry's
7 second point of concern, the cold treatment
8 protocol. Under the proposed rule cold treatment
9 will apparently produce the necessary Probit 9
10 requirements. Unfortunately, the faulty logic is
11 based upon a plan that has already failed the
12 industry in keeping live larvae out of the U.S.
13 and out of California.

14 APHIS is proposing to extend cold
15 treatment by only two days for a total of 12 days,
16 if shipping temperature were maintained at 32
17 degrees Fahrenheit height or below.

18 According to a memo by USDA's Office
19 of Risk Assessment and Cost Benefit Analysis,
20 there is no scientific evidence to prove that the
21 new protocol for cold treatment will result in the
22 designated Probit 9 rate. In fact, the office of
23 risk assessment suggests that cold treatment at 32
24 degrees for 14 to 16 days may be necessary. Why
25 then only 12 days?

1 Furthermore, in August 8, 2002
2 comments by UC Davis biologists Jim Thompson and
3 Dave Slaughter, they state that, quote, a single
4 data point does not allow an estimate of the
5 variation in temperature that normally occurs.
6 And the protocol does not incorporate the
7 necessary treatment time adjustment associated
8 with this temperature variation.

9 They continue, stating that, quote,
10 there is very little published data on temperature
11 variation in marine shipment. So the actual level
12 of temperature variation in some shipments may be
13 high. This will be especially likely if the fruit
14 is shipped in older equipment, fruit is shipped in
15 boxes that do not allow for vertical air flow, or
16 the product is stowed incorrectly. A temperature
17 standard deviation of just .75 degrees Fahrenheit
18 results in greater levels of fruit not subject to
19 adequate cold treatment temperature, end quote.

20 Finally, based upon the University of
21 California document entitled "Host Harvest
22 Technology of Horticultural Crops," Publication
23 3311, pages 251 to 271, fruit subject to break
24 bulk shipment that's not pre-cooled will take 100
25 hours to reach desired temperatures.

1 That's over four days that it will
2 take fruit to reach the desired pulp temperature.
3 So if one is just monitoring the air temperature,
4 that may appear to be adequate. Yet the pulp
5 temperature has not reached its maximum cooling.

6 Remember, the Medfly are in the pulp,
7 not in the air.

8 Furthermore, when does the cold
9 treatment begin? At the packing shed? If so, is
10 the cold chain broken when fruit is brought to the
11 port for loading onto the ship? Is the cold chain
12 broken if fruit pulp temperatures rise? If so,
13 then ship cooling cannot bring the pulp
14 temperature down to acceptable levels until many,
15 many hours have passed.

16 We are also told that under break
17 bulk shipping, cooling fans are not normally
18 operated until 75 percent of the cargo hold is
19 loaded. This condition further exacerbates the
20 problem of breaking the cold chain.

21 Are enough pulp temperature probes
22 located within fruit boxes and within the entire
23 load to ensure adequate cooling?

24 These are questions for which we have
25 not received any further clarity from USDA.

1 In short, the cold treatment protocol
2 is insufficient and other means of treatment are
3 necessary.

4 A third point of concern is a
5 recommendation that Spanish clementines be
6 imported into nonbearing citrus states.

7 The notion of allowing any infested
8 fruit into the U.S. is troubling. Allow me to
9 present to you statistics and facts that show this
10 protection or buffer protocol will not protect
11 California agriculture from the Medfly.

12 As you know, the Medfly could attack
13 250 different crops. Several of the fruit hosts
14 that the Medfly enjoy include apples, grapes,
15 kiwi, nectarines, pomegranates, persimmons and
16 quince. The most preferred hosts are peaches,
17 pears, apricots and cherries. In short, all of
18 the California grape and tree fruit commodities
19 will be directly impacted.

20 Which brings me to my next point.
21 The industry I represent is offended when the
22 issue is represented as a citrus only issue. It
23 has been stated as a citrus only issue in two
24 separate briefings held previously by USDA. The
25 fact that this hearing is being held in a

1 predominant citrus area speaks volumes regarding
2 the USDA's concern over the impact over non-citrus
3 Medfly hosts.

4 This is not just a citrus issue, and
5 for the USDA to continue to ignore other
6 commodities' concerns shows lack of balance when
7 drafting a protocol on this issue. The impacts
8 for deciduous fruit and table grapes are huge.

9 The economic impact of Medfly in
10 California is staggering. You've heard statistics
11 about this in the past. Hundreds of millions of
12 dollars have been spent on it. The impact on the
13 California economy ranges between 1.3 and 1.9
14 billion dollars.

15 Dr. Jerome Siebert from the
16 University of California has stated, quote, it is
17 estimated that a short run effect, less than two
18 years, would be to significantly decrease the net
19 income probably to the point of operating at a
20 loss to growers, packers and shippers due to the
21 denial of lucrative export markets that have been
22 growing over the last five years, end quote.

23 The impact of Medfly is reinforced in
24 a Federal Register notice published Wednesday,
25 July 3rd, 2002, by USDA in claiming victory over

1 the Medfly in certain portions in L.A. County.

2 APHIS states that, quote, the
3 Mediterranean fruit fly or Medfly can cause
4 serious economic losses. Heavy infestations
5 causing complete loss of crops and losses of 25 to
6 50 percent are not uncommon. The short life cycle
7 of this pest permits the rapid development of
8 serious outbreaks, end quote.

9 Why is USDA so clear about the
10 threat, yet appears so naive regarding the Spanish
11 clementine threat?

12 Additional shipments of commodities
13 entering California from other states have been
14 found to contain live Medfly larvae. Our own
15 California Department of Food and Agriculture
16 routinely finds exotic pests in U.S. mail parcels,
17 Federal Express and United Parcel Service packages
18 at various locations in California. These past
19 examples show that fruits and vegetables from
20 other states that are shipped either without
21 proper inspection or not properly marked for
22 inspection may contain quarantined pests.

23 The new proposed USDA protocol shows
24 several flaws and provides a strong dose of
25 reality given a situation such as this and

1 reinforced by CDFA's history of exotic pest
2 interceptions.

3 We're not questioning hypotheticals
4 here. We know the fruit has Medflies. We know
5 what damage they can do to our crops and to our
6 market. A loaded gun is pointed to our heads and
7 USDA has its hands on the trigger.

8 I cannot stress the importance of
9 implementing a sound protocol when dealing with
10 the importation of Spanish clementines into the
11 U.S. Instead USDA is using only a slightly
12 modified protocol that failed the ag industry just
13 this last season.

14 The California Grape and Tree Fruit
15 League must strongly oppose this new protocol
16 until an acceptable level of protection through
17 either methyl bromide fumigation, field trapping,
18 spray programs, direct USDA oversight at the field
19 level and at the Spanish ports and/or a
20 combination of any number of additional measures
21 are in place.

22 In closing, I would like to thank the
23 Department for allowing us to address the proposed
24 shipment protocol. I would also like to leave you
25 with a quote from President John Adams when he

1 stated, quote, Facts are stubborn things. And
2 whatever may be your wishes or inclinations or the
3 dictates of our passions, they cannot alter the
4 stated facts and evidence.

5 Ladies and gentlemen, the facts
6 clearly show that we get live Medflies from
7 Spanish clementines. The facts clearly show that
8 the protocol is not currently satisfactory in
9 assuring the protection of California agriculture
10 from future Medfly infestations.

11 Thank you.

12 MR. RHOADS: Thank you.

13 Next registered speaker is Carole
14 Alfheim.

15 MS. ALFHEIM: Good morning.

16 My name is Carole Alfheim.
17 C-a-r-o-l-e. Alfheim, A-l-f-h-e-i-m. I am a
18 producer of oranges, plums, olives, mandarin
19 citrus varieties, lemons and minneolas, in Fresno
20 County. My family and I also are packers of
21 citrus with a facility in Orange Cove, California.
22 We farm 600 acres and pack approximately two
23 million cartons of fruit for us and growers who
24 entrust their fruit to us.

25 I read trade magazines and

1 newspapers. I understand the mindset in
2 Washington. I'm aware that politics dictates
3 policy and in some cases can override sound
4 science. I know I need exports to provide a
5 profitable income level for my family. I know
6 anytime anyone questions an import policy, that
7 individual is branded as a protectionist.

8 Let's discuss for a moment the
9 definition of a protectionist from a producer.

10 I want to protect my ability to farm
11 without invasion of voracious pests.

12 I also want to protect my ability to
13 use beneficial insects and integrated pest
14 management program that would be impacted by
15 Medfly invasion.

16 I also want to protect my ability to
17 use less harsh chemicals that are better for the
18 environment and my employees. This would be
19 impacted by a Medfly invasion.

20 I want to protect my bottom line from
21 excess costs these dynamics would create.

22 I want to protect my ability to
23 market fruit into states that produce other host
24 commodities.

25 I want to protect my ability to ship

1 and export our fruit to countries such as Japan,
2 Korea, Taiwan and others.

3 I want to protect my checking account
4 from having to incur expenses at the packing house
5 to satisfy quarantine requirements.

6 I want to protect my industry from
7 having eradication costs imposed upon producers by
8 a state government that is sorely strapped for
9 funds.

10 I want to protect my industry from
11 the environmental upheaval that will occur from
12 local government, the media and consumers should
13 an eradication program be implemented.

14 In summary, I want to protect my
15 ability to compete in a fair marketplace, around
16 the world and within the United States. If that
17 is protectionism, then I'm proud to be a
18 protectionist. No one at the USDA, the
19 administration, legislative bodies, and those
20 growers and commodities I compete with should
21 label me a protectionist unless they understand
22 our definition.

23 Bring on those Spanish clementines,
24 but do not bring in any, I repeat, no Medfly.
25 This proposed rule does not protect agriculture.

1 Thank you.

2 MR. RHOADS: Thank you.

3 The next registered speaker is Tom

4 Avinelis for California Citrus Mutual.

5 MR. AVINELIS: My name is Tom

6 Avinelis. My last name is spelled

7 A-v-i-n-e-l-i-s.

8 Good morning, and thank you for the

9 opportunity to address USDA for what I can see is

10 probably the most critical issue facing California

11 agriculture today.

12 As I said earlier, my name is Tom

13 Avinelis. I'm currently Vice-chairman of

14 California Citrus Mutual, CCM. We're a citrus

15 producers' trade association with statewide

16 membership of more than 800 growers farming well

17 over 125,000 acres and produce citrus with a farm

18 gate value of over half a billion dollars.

19 I'm presently serving as co-chair of

20 an ad hoc committee established by CCM strictly to

21 address this issue.

22 I make my living on farming. We

23 currently are farming about 8,000 acres of citrus,

24 table grapes, olives and tree fruit in Tulare and

25 Kern Counties.

1 Citrus Mutual has a long and positive

2 history working with our friends at USDA on

3 invasive pest related issues and we are extremely

4 active in both the state and local levels in all

5 aspects of the exotic pests and diseases. Simply

6 stated, CCM has been involved and we do know the

7 issues.

8 Allow me to state our appreciation

9 for the efforts that has been made by this current

10 administration at USDA to keep our industry

11 involved with this situation from the very

12 beginning. The opportunity to comment on the

13 draft risk assessment before the rule was issued

14 was a very refreshing change from what previous

15 practices have been. There has been constructive

16 dialogues in several sessions around the country

17 and we see this as very positive.

18 Nevertheless, we believe this is a

19 long way from resolving the issue. Regretably,

20 CCM believes strongly that APHIS's proposed rule

21 is not sufficient, and let me repeat that, is not

22 sufficient to protect U.S. agriculture and U.S.

23 citizens from potentially devastating Medfly

24 outbreaks. For this reason, CCM strongly opposes

25 the proposed rule in its current form and urges

1 APHIS to go back to the drawing board.
2 As virtually everyone in this room
3 knows except perhaps some of our guests from
4 Washington, this pest has been most disruptive and
5 the most dramatic pest issue in this state for the
6 past two decades. In the early 1980's the
7 mishandling of an eradication effort led to
8 tremendous controversy and actually helped to
9 defeat a sitting governor in his run for U.S.
10 Senate.
11 In the 1990's, infestation in
12 Riverside County got our Director of Agriculture
13 basically run out of town, and the media publicly
14 chastised government for their actions.
15 Later, an outbreak in Ventura County
16 led to a major eradication program creating
17 quarantines, job elimination and tremendous loss
18 of revenue for the Ventura agricultural area.
19 We know Medfly, the protective
20 measures necessary to prevent infestations, and
21 economic impacts from this infestation. And
22 believe me, the current proposal does not offer
23 levels of protection that's necessary for this
24 industry.
25 This truly is the mother of all pests

1 when we look at what it can do to the fresh fruit
2 industry, not just in California but throughout
3 all of the producing areas of this country. The
4 battle field is absolutely littered with both
5 emotional and economic losses for government,
6 citizens and the industry. Anything less than the
7 best science resulting in a carefully crafted
8 process is unacceptable.

9 So where is this rule weak and
10 unacceptable? I will outline our concerns here
11 and CCM's post-hearing written comments will
12 provide greater detail.

13 But first, there is an uncertainty
14 regarding the scope of the underlying problem. It
15 is clear that neither APHIS nor the Spanish
16 government have any firm idea what led to Medfly
17 outbreak in 2001. The Regulatory Impact Analysis
18 states, in it describing the efforts of the APHIS
19 team traveling to Spain last December, as the
20 following: "The examination indicated that the
21 failure might have been associated with a
22 warm season, which may have contributed to
23 high populations, and that variability in
24 field control activities might have
25 contributed to this failure."

1 From our point of view, the fact that
2 APHIS does not know what went wrong is very
3 troubling. Solving a problem without proper
4 foundation as to its cause is extremely difficult.
5 When it comes to Medflies, might have been's and
6 may have's are not acceptable.

7 We recognize that the lack of good
8 trapping, infestation and cold treatment data
9 hampers APHIS's ability to determine the scope of
10 the problem. Nevertheless, there needs to be a
11 sound scientific basis underlying the proposals
12 and to the solution of the problem. The standard
13 has not been met in this proposed rule. What
14 APHIS's proposal is is based upon what we do not
15 know. And that to me is very perplexing.

16 APHIS has arbitrarily determined that
17 an infestation level of 1.5 percent is a cutoff
18 level for shipments the first year. In our
19 written statement we will devote considerable
20 words to this arbitrary decision. And in a simple
21 line, and I don't mean, and there's no pun
22 intended by this, but that flat doesn't cut it.

23 Second, the recommendations
24 surrounding the use of cold treatment are without
25 foundation. APHIS has basically said, well, if

1 ten days at 32 degrees don't work, perhaps 12
2 will. This proposed two day extension is not
3 based on any information in the record. And we
4 don't see the proof of any trials or any data
5 supporting this contention. As the audience is
6 stating, and our buttons, if we're just chillin',
7 we're not killin'.

8 Furthermore, in an affidavit filed by
9 the Spanish industry in the Philadelphia Court
10 earlier this year, it stated that the fruit was
11 treated for 12 days. It didn't work then, but
12 USDA is telling us it's going to work now. This
13 is absolutely unacceptable. Particularly when we
14 read that the Office of Risk Assessment and Cost
15 Benefit Analysis states that the scientific work
16 done to date indicates that it may take 14 to 16
17 days at 32 degrees to kill all Medfly larvae. And
18 once again, may. We don't have the scientific
19 data or basis upon which to base this.

20 Three, the sampling rates proposed
21 are a mystery to us and, quite candidly, really
22 don't add up. We don't accept that the successful
23 one year effort should lead to a relaxation of
24 sampling rules. As we learned last year, Probit 9
25 is fine, but live flies are no surprise in our

1 industry.
2 We must remember that data and record
3 keeping was required previously, and a simple
4 standard was not adhered to in Spain. Now, after
5 one year we're supposed to assume all is well? I
6 don't think so.

7 We believe that there should also be
8 stiff penalties for entities not complying with
9 data record keeping requirements. Given the risk
10 associated with this problem when they occur, we
11 believe that these severe penalties should be set,
12 such as the inability to export for a season, are
13 reasonable.

14 The proposal for discussing
15 pre-clearance activities is also insufficient.
16 How will the Spanish authority prevent comingling
17 of fruit? The economics of packing house
18 operations will not allow requirements for this to
19 be met. Trace back words on paper are not
20 necessarily translated to efficient and effective
21 operations in the real world.

22 In conclusion, Citrus Mutual believes
23 there are several underlying issues which have to
24 be required and have caused a rush to judgment for
25 completing this rule making process and allowing

1 Spanish Medflies -- I'm sorry, not Spanish
2 Medflies, Spanish clementines I should say, I
3 guess, into the United States. Because of faulty
4 pre-clearance recommendations, an inaccurate risk
5 assessment and a lack of science related to cold
6 treatment recommendations, CCM believes this rule
7 is faulty and flawed as written.

8 To allow a product to be imported and
9 expose 100 percent of our nation's fruit and
10 vegetable industry to an unacceptable risk via the
11 mother of all invasive pests is inexcusable to us.

12 In this connection I would like to
13 quote a statement that was recently made by a
14 senior official in another federal agency, the
15 Federal Energy Regulatory Commission, better known
16 as FERC. In response to a question asking why
17 FERC had not yet determined the cause of the
18 California energy crisis, the commissioner
19 responded as follows: "What FERC is facing is
20 enormously complex and it is critically
21 important that we get it right. We can't
22 afford to go out with an analysis that was
23 in any way incorrect. That would suggest
24 that we have not learned the lessons we need
25 to learn. FERC will not bow to the pressure

1 to come to a quick decision. We will not
2 rush to some kind of conclusion before we
3 are absolutely certain that we've looked at
4 all that needs to be looked at."

5 I only wish this statement was made
6 by the APHIS officials in determining what went
7 wrong with Spanish clementines last year. This
8 perspective is essential to protect our industry
9 from a devastating Medfly outbreak.

10 I would also like to make a short
11 statement as a grower who currently is battling
12 two invasive pests. First, the olive fruit fly as
13 an olive grower. Six years ago they had the
14 original olive fruit fly discovery in California.
15 Today our industry is 100 percent infested. We
16 were an industry that seldom ever had to apply
17 pesticides. And we're making four to eight
18 applications now just to be able to deliver our
19 crop to market.

20 A recent finding was that the olive
21 industry was listed as one of the three most
22 likely industries not to survive the next five
23 years in California agriculture.

24 The second invasive pest that we're
25 battling currently is the Glassy-winged

1 Sharpshooter. I am a citrus and table grape
2 grower in the project area. I very much
3 appreciate the working relationship that we've
4 created with USDA. But I also realize the extreme
5 costs that we've gone to in trying to control and
6 manage a pest that continues to spread throughout
7 California.

8 The issue of Medfly and the magnitude
9 of this industry is tremendous. We have to
10 approach this from a sound science standpoint for
11 our survival.

12 Thank you.

13 MR. RHOADS: I'm going to call one
14 more speaker and then we'll take about a 10 or 15
15 minute break. After that I think we've got a
16 sufficient number of speakers that we probably
17 will be finished by about 1:00 or 2:00, so I don't
18 think we're going to break for lunch. We'll just
19 take a long break this morning.

20 The next speaker is Wally Ewart.

21 MR. EWART: Good morning. I'm Wally
22 Ewart, spelled E-w-a-r-t. I'm President of the
23 California Citrus Quality Council. And the
24 Council and I both appreciate the opportunity to
25 speak today. And to address this public hearing

1 on this very important issue.

2 CCQC's mission is to make sure that
3 California citrus meets the regulations and
4 standards of all the markets, both domestic and
5 export, wherever a member of California citrus is
6 shipped. The council is supported by grower funds
7 through the research board. And these assessments
8 are what supports our activities.

9 Council has always focused on pest
10 management issues in order to make sure that we
11 are meeting the standards. And we are really
12 concerned at this point about this proposal. I'm
13 going to discuss two areas today.

14 One of our concerns is centered on
15 the possible impacts to the Integrated Pest
16 Management system California citrus has developed
17 over the years using grower funds to fund
18 expensive research. And the Spanish clementine
19 issue does threaten that.

20 We are really concerned about
21 possibility that if a Medfly infestation should
22 occur, that there would be widespread treatment in
23 order to meet that emergency. And in the past
24 organophosphate pesticides were used in those
25 instances, and that would have an impact on the

1 IPM system.

2 In other words, to meet the
3 regulations of our export markets, the council
4 also does follow very closely the scientific
5 standards that are set in those export markets.
6 And many times the pesticides that we have
7 available here don't have tolerances in those
8 countries. Therefore, if we had a change in the
9 pest management needs that might come about
10 because of an infestation, then we would be very
11 concerned that some of those exports would be in
12 jeopardy due to the fact that they would have
13 residues that would not be allowed in the
14 importing country.

15 And, for example, one of the
16 materials that has been suggested for controlling
17 a Medfly outbreak would be spinosad, a very new
18 insecticide that's being used selectively by the
19 industry. But unfortunately, spinosad does not
20 have export tolerances in many of our markets,
21 including Taiwan, including the European Union,
22 and also South American markets.

23 In addition, it does not have a Codex
24 standard because it is a new material and Codex
25 process is very slow. And because of that there

1 is no standard right now set on the Codex. And,
2 therefore, many of the markets in the Southeast
3 Asia that refer to Codex would not be markets that
4 we could go to if this material were used to
5 control outbreaks and its use were widespread and
6 residues would occur. And in fact, we do know
7 that residues would be likely.

8 Because of this, these two factors,
9 the IPM and the use of materials that we think
10 could disrupt our ability to market fruit, we have
11 very deep concerns about the proposal.

12 Now, we do plan to make further
13 comments on other aspects of the proposal. But I
14 did want to bring to your attention today these
15 two areas, the areas of the fact that marketing
16 fruit that might be treated under Medfly
17 controlled procedures might really be very
18 difficult, and that IPM systems might be in
19 jeopardy.

20 So in conclusion I would like to
21 again thank you for this opportunity and to state
22 that we will give further comments. And I do
23 really request that APHIS takes all of our
24 comments to heart and come back with a rule, a
25 proposed rule, final rule, that can meet our

1 needs. Thank you.

2 MR. RHOADS: Thank you.

3 At this point we'll take a recess,
4 adjourn till, say, about 25 after.

5 (Recess taken.)

6 MR. RHOADS: For your reference, the
7 speakers who I've got registered I'll read you out
8 in order so you can get a sense of where you're
9 going to fall in the procession.

10 The first speaker will be Matt
11 McInerney. Second speaker will be Jeremy Tittle.
12 The third Jess Herrera. The fourth Earl McPhail.
13 The fifth Al Stehly. Sixth John Grether. Then
14 Nick Hill. Gabrielle Ludwig. Jim Churchill.
15 Ted Batkin. And Etienne Rabe.

16 And I believe -- is there anyone else
17 who registered whose name I didn't read?

18 Okay. Then we will call -- I'll now
19 call Matt McInerney, Western Growers Association,
20 to make his presentation.

21 MR. McINERNEY: Good morning. My
22 name is Matt McInerney. I'm Executive
23 Vice-president of Western Growers Association.
24 Last name M-c-I-n-e-r-n-e-y.

25 Thank you for the opportunity to be

1 here today and thank you for coming to California.
2 In particular, thank you for keeping the room so
3 cool. I think we've reached Probit 9.

4 MR. RHOADS: First it was too hot and
5 then it's too cool. Thank you.

6 MR. McINERNEY: Western Growers
7 Association is an agricultural trade association
8 established in 1926 and represents over 3,500
9 members who grow, pack, process, distribute and/or
10 ship nearly 300 various fresh fruit and vegetable,
11 fresh vegetable and nut items in the states of
12 California and Arizona. WGA's membership is
13 responsible for nearly 60 percent of the fresh
14 fruit and over 90 percent of the fresh vegetable
15 production in both states, which translates to
16 over half of the United States annual consumption
17 of produce.

18 Of this, approximately 250
19 commodities produced by our members are considered
20 host to invasive pests such as the Mediterranean
21 fruit fly from Spain which could be introduced
22 into California and Arizona with the resumption of
23 importation of Spanish clementines. Thus, we
24 examine the proposed rule as a Medfly issue and
25 not simply a resumption of shipments of Spanish

1 clementines.

2 Specifically WGA is concerned that a
3 thorough science based review has not occurred
4 through this remarkably expedited process that
5 resulted in this proposed rule being published for
6 comments.

7 It is well established, and prior
8 speakers have commented, that the Mediterranean
9 fruit fly is one of the most destructive pests
10 having the potential of causing a devastating
11 economic impact on all U.S. growers, not just
12 California and Arizona. Potential financial
13 losses to the industry from an outbreak could
14 easily translate into the hundreds of millions of
15 dollars, if not into the billions of dollars,
16 should the theoretical assumptions contained in
17 the proposed rule prove to be flawed in any way.

18 It appears from our judgment that the
19 proposed rule is chasing an arbitrarily
20 established time frame and could be, in the
21 process, jeopardizing sound science.

22 Because of the potential of the
23 impact to the diverse growing regions and
24 commodities susceptible to the Medfly infestation,
25 in the estimation of WGA, this must be approached

1 cautiously first and foremost as a pest exclusion
2 issue and not specifically as a proposed rule to
3 resume Spanish clementine shipments.

4 In our opinion, the rule must protect
5 the integrity of the APHIS process not only for
6 this ongoing rule, but future rules and issues
7 that will be brought before the agency by our
8 foreign trading partners.

9 It is important to keep in
10 perspective that the Spanish clementine exports to
11 the United States amount to only six percent of
12 the total production in Spain. But any
13 miscalculation in the proposed rule will place a
14 hundred percent of U.S. industry at risk. We
15 question the cost/benefit justification to rush
16 this rule before it being fully reviewed and
17 vetted.

18 While we applaud the swiftness with
19 which the USDA approached the crisis at the outset
20 with the multi-state discovery of live Medfly
21 larvae from Spanish clementines, including 13
22 counties here in the State of California
23 confirming either live or dead larvae, it was our
24 understanding at the outset of the crisis that it
25 would be handled with transparency, stakeholder

1 involvement, and most critically that throughout
2 this matter science and science alone would be the
3 only determinant relative to developing a protocol
4 and plan for the potential resumption of Spanish
5 clementine shipments into the U.S.

6 Seemingly, sound science has taken a
7 back seat to a predetermined commitment to allow
8 clementines back into the U.S. market for this
9 upcoming season. We believe this is a most
10 inappropriate approach and could have negative
11 ramifications for future pest exclusion issues by
12 APHIS. Caution and a pragmatic approach to this
13 Spanish Medfly issue should be the only priority.

14 While it is critical to address
15 sanitary and phytosanitary issues with our trading
16 partners in a timely manner, it must not and
17 cannot be accomplished in an arbitrary manner. It
18 is imperative that any plan be implemented with
19 full cooperation with all constituency groups.

20 As such, a variety of areas within
21 the proposed rule are of concern to WGA members,
22 starting specifically with the responsibility and
23 obligation of Spain to implement and document a
24 Best Management Practices protocol. This BMP is
25 essential in order to provide for compliance that

1 will verify Spanish growers are following a strict
2 procedure, like California and Arizona growers,
3 for monitoring, trapping and treating clementine
4 groves year round, not simply six weeks before
5 harvest.

6 It is our understanding that the USDA
7 APHIS technical review team that traveled to Spain
8 in December 2001 indicated in their final report
9 that there were a variety of conditions in the
10 Spanish growing region that may have contributed
11 to clementines with live Medfly larvae being
12 shipped throughout six states in the U.S. It was
13 of great concern to U.S. producers to learn that
14 it was difficult for USDA to validate appropriate
15 protocol being followed in Spain due to a lack of
16 significant data being provided at the time of the
17 site visit.

18 Candidly, if Spain was operating for
19 years under an authorized work plan by USDA to
20 allow shipments to the U.S., the inability to
21 provide trapping data and/or bait spray program
22 documentation raises red flags to U.S. producers.

23 As such, a reasonable person would
24 question why U.S. industry should now have
25 confidence that there will be a new commitment by

1 the Spanish industry to actually follow updated
2 protocol when there was a failure to follow the
3 old protocol.

4 WGA certainly does not share the
5 level of confidence that Spain should now be
6 immediately rewarded entry into the United States
7 without first demonstrating through evidence
8 compliance to an agreed upon inspection system
9 which can only be obtained through documentation.
10 Spanish industry must be challenged to earn this
11 confidence through documentation being authorized
12 for re-entry into the United States.

13 Thus USDA must first scrutinize
14 trapping procedures to determine if the number of
15 traps are acceptable, the type of traps are
16 adequate, and that the number of fruit being
17 sampled is sufficient.

18 Also buffer zones between infested
19 and non-infested growers needs to be re-examined.

20 In addition to the appropriate
21 establishment of buffer zones in Spain, clearly
22 the proposed rule must protect host commodities in
23 the United States with additional buffer states.
24 The five states currently recommended be excluded
25 from receiving imports of Spanish clementines is

1 simply insufficient and must require additional
2 states to protect against the potential for
3 infestation which is a real possibility supported
4 by the multi-state outbreak last year.

5 Also, the HACCP style approach to
6 calculating the potential for a Medfly to be
7 exported to the United States from Spain is a risk
8 mitigation tool that is invaluable perhaps in a
9 food safety program, but must be fully considered
10 for its appropriateness when dealing with invasive
11 pests. Until our trading partners concede and/or
12 provide reciprocity to such a HACCP like approach,
13 it seems inappropriate to use this as a tool and
14 certainly in this proposal.

15 Separately, on the cold storage
16 treatment protocol, there is no adequate science
17 to remotely suggest that the extension of cold
18 treatment by two days is appropriate to accomplish
19 by itself the elimination of live Medfly larvae in
20 Spanish clementines.

21 We must remember that cold treatment
22 is the final step, not the only step in
23 prevention. Researchers must conduct trial
24 shipments to support the concept that a mere 48
25 hours is a magic bullet, the answer to eliminating

1 the Medfly that may be in the fruit. Sound
2 science again requires that the data first be
3 submitted, first be documented, and do that
4 through hands-on experience before re-entry is
5 allowed into the U.S.

6 In summary, as a two state
7 organization that has experienced firsthand the
8 financial challenges of embargoes from
9 international trading partners and other states
10 because of a Medfly outbreak, due process should
11 warrant changes to the current proposal as written
12 before U.S. agriculture and the economies of the
13 states of California and Arizona are again
14 subjected to Medfly infestations.

15 Clearly, the current proposal is
16 flawed and technically incomplete in its current
17 form. In the spirit of transparency, which was a
18 commitment at the outset, implementation of the
19 proposed rule as currently submitted is simply
20 just not justifiable.

21 WGA respectfully requests that the
22 proposal be re-examined and that the authorization
23 for re-entry of Spanish clementines be delayed
24 until critical components in the proposal can be
25 considered further.

1 With that, I thank you for the
2 opportunity to submit these comments today on
3 behalf of the vegetable and fresh fruit industry.

4 MR. RHOADS: Thank you.

5 Next speaker will be Jeremy Tittle
6 for Congresswoman Lois Capps

7 MR. TITTLE: My name is Jeremy
8 Tittle, T-i-t-t-l-e. And I'm the district
9 representative for Congresswoman Lois Capps.

10 Congresswoman Capps' district
11 currently covers San Luis Obispo and Santa Barbara
12 Counties. And after the redistricting process is
13 put into effect and completed she will be
14 extending down south in the coastal Ventura County
15 also.

16 The Congresswoman asked me to come
17 today to express her serious concerns about this
18 proposed rule. It has potentially devastating
19 economic impacts for both the state, the Central
20 Coast of California in particular, and our nation
21 as a whole.

22 In particular, a potential Medfly
23 crisis would have an especially devastating impact
24 on the agriculture and shipping industries that
25 are such a key component of our economy here

1 locally in Ventura County and also in Santa
2 Barbara County.

3 The Congresswoman feels that
4 sufficient time and review did not go into
5 proposing this rule and she urges the USDA over
6 the next couple of months to work with the growers
7 and other stakeholders involved in this process to
8 improve upon this proposed rule. It is only then
9 that the decision should be reconsidered.

10 I'd also like to submit a letter from
11 the Congresswoman to Secretary Veneman detailing
12 her concerns.

13 And thanks for having me here today.
14 Thank you.

15 MR. RHOADS: Next speaker will be
16 Jess Herrera, Oxnard Harbor District.

17 MR. HERRERA: Jess Herrera,
18 H-e-r-r-e-r-a.

19 Good morning, everyone. I'm Jess
20 Herrera. I'm a Commissioner of the Oxnard Harbor
21 District. I'm currently its Vice-president.

22 The Oxnard Harbor District and the
23 Port of Hueneme have often been called the
24 region's agricultural gateway to the world. It's
25 also been known as the port that the farmers

1 built.

2 We all know how devastating --
3 especially I think I do, I spent 35 years of my
4 life at that port -- how devastating it would be
5 to have a Medfly quarantine.

6 Agricultural imports are extremely
7 important to our port, as you know. Thousands of
8 jobs are dependent on these agricultural exports
9 every year.

10 Our port produces about a half
11 billion dollars to the local economy, much of
12 which would be endangered by such a quarantine.
13 Ten years ago we faced a similar outbreak and, of
14 course, proactive action by USDA and other
15 agencies helped curtail this threat.

16 I think we should be as aggressive at
17 this time in our history to help contain the
18 Medfly and not allow it into any of our ports.

19 We encourage the federal government
20 to work with local agencies like the Oxnard Harbor
21 District in providing resources to ensure that
22 appropriate levels of cargo inspection are
23 achieved. By working together, as I said,
24 proactively, we can eliminate a great danger to
25 our agricultural products, our working families

1 and our economy.

2 The Port of Hueneme is in the
3 business of doing trade. But our trade should
4 enhance our standard of living and not endanger
5 it. Thank you.

6 MR. RHOADS: The next speaker will be
7 Earl McPhail, Ventura County Agriculture
8 Commissioner.

9 MR. McPHAIL: My name is Earl
10 McPhail, M-c-P-h-a-i-l. And I'm the Ventura
11 County Agricultural Commissioner. And I would
12 like to thank you for the opportunity of speaking
13 here today. And since I was on vacation last
14 week, I did not have time to type up my remarks.
15 But you will receive them by mail before September
16 9th.

17 As the Agricultural Commissioner of
18 Ventura County, one of my many responsibilities is
19 protection of agriculture commodities in the urban
20 areas, their fruit, nuts and vegetables, from
21 infestation of invasive species not known to occur
22 here.

23 Of a total budget of 2.6 million
24 dollars for my department, approximately \$1
25 million is spent on pest exclusion and pest

1 detection each and every year.

2 In 2001 Ventura County produced 270
3 million dollars worth of Medfly host material. We
4 also ranked tenth in the state for total
5 agricultural production of a little more than a
6 billion dollars.

7 A little history. In 1994 and 1995
8 we had a Medfly infestation in this county. And
9 Mr. Herrera, I think he snuck out already, was
10 very integral in some of the things we had to do
11 with some of our trading partners who wanted to
12 come over every other day and visit our project
13 and see what was going on.

14 And Jerry Davidson is kind of
15 laughing back there. But he knows what I'm
16 talking about because we took a lot of helicopter
17 rides with Japanese and Australians and Koreans
18 and New Zealands and Taiwanese.

19 One of the things the Japanese were
20 extremely concerned about is where is the
21 infestation in relationship to the harbor. And we
22 flew that corridor many, many times showing them
23 that the harbor was far enough away from the City
24 of Camarillo where the infestation was and make
25 sure that we could continue to use the Port of

1 Hueneme to ship our produce to those Pacific Rim
2 countries.

3 One of the things that we had to deal
4 with and were able to deal with with the 1994-95
5 infestation was that we were able to use
6 helicopters for the eradication of Medfly. That's
7 the last infestation in the State of California
8 where the helicopters will be used, I've been
9 told. So we're not going to be able to eradicate
10 it as fast as we did before.

11 Because of our pest detection
12 program, we were able to isolate the Medfly
13 infestation to one property in the City of
14 Camarillo. Even managing one property in the City
15 of Camarillo, we had an 86 mile quarantine area
16 and a 16 mile eradication area for a cost of 1.5
17 million dollars to eradicate it.

18 One of the things I find interesting
19 in the protocol is the USDA is asking only for
20 trapping for six weeks prior to shipment. We're
21 required, because of our trading partners and
22 phytosanitary requirements of other countries, to
23 have a year round trapping program. Ventura
24 County has 12 full time trappers year round.

25 How many trappers is Spain going to

1 have for whatever acreage they're going to have in
2 Spain if they want to ship clementines to this
3 country? What kind of oversight inspections are
4 there going to be and who are going to do those
5 oversight inspections?

6 We have quality control inspections
7 from CDFA and USDA personnel on a year round
8 basis. Sterile flies are planted in traps
9 throughout the county to make sure our trappers
10 know what they're looking for.

11 What kind of quality control in the
12 trapping program are you going to have there? Six
13 weeks before is something really nice, and we
14 would like to be able to do that with our trading
15 partners. But we're not able to do that because
16 USDA will not negotiate the same deals with our
17 trading partners as you want to ask us to do with
18 Spain. It's got to be a level playing field, and
19 the playing field here is not level.

20 Each summer California finds exotic
21 fruit flies all the way from the Bay Area to the
22 Mexican border. Twenty-two of the California
23 congressional delegation is asking the USDA for an
24 additional 5.5 million dollars to augment our high
25 risk inspection program.

1 California finds a new invasive
2 species on an average of every 60 days. And now
3 the USDA wants us to accept another potential
4 fruit fly infestation and ask us to do it from
5 their own people that we entrust with the safety
6 of our industry.

7 One of the most incredible things in
8 this whole process is the 1.5 percent infestation.
9 We can't live with 1.5 percent infestation of
10 fruit coming into the United States. Once again,
11 you're putting our growers at jeopardy, not only
12 from the Medfly infestation, you've already heard
13 about the 250 commodities and billions of dollars
14 we're talking about.

15 Our trading partners on the Pacific
16 Rim especially require zero tolerance from our
17 growers. Once USDA gets a commitment from our
18 Pacific Rim customers that they will accept 1.5
19 percent infestation and six weeks of trapping,
20 then I think you can come back and talk to us
21 about your proposal.

22 But until that time, I think you need
23 to go back, look at the science, and say the
24 science is flawed. Because if six to eight other
25 foreign countries require zero tolerance and year

1 round trapping, I think the USDA scientists need
2 to relook at what they're talking about.

3 I understand politics. I'm a
4 political animal myself, unfortunately, on a local
5 level. Politics dictates a lot. But when it
6 comes to California agriculture, agriculture in
7 the United States, we've got to remember science
8 is the only thing that we can rely on.

9 Thank you.

10 MR. RHOADS: Thank you, Mr. McPhail.

11 Next speaker will be Hal Stehly

12 UNIDENTIFIED SPEAKER: Mr. Stehly was
13 not able to join us today.

14 MR. RHOADS: Okay. Then the next
15 speaker will be John Grether, U.S. Citrus Science
16 Council.

17 MR. GRETHER: Good morning,
18 Mr. Rhoads and members of the panel.

19 Let me join with others today and
20 thank all of you for traveling to California to
21 hold this hearing. We appreciate the personal
22 effort on the part of each of you to make the
23 trip.

24 My name is John Grether,
25 G-r-e-t-h-e-r. And I am appearing here today as a

1 representative of the United States Citrus Science
2 Council which represents some 5,000 growers,
3 packers and shippers of citrus in California and
4 Arizona.

5 In my paid job I am an owner of a
6 family held business, the Grether Farming Company.
7 We grow a number of varieties of citrus including
8 lemons and mandarins. My family has been involved
9 in the California citrus industry for over 50
10 years and I have been personally active myself for
11 25 years.

12 The issue of Medflies and citrus is
13 quite important to me personally, as most of our
14 family farm was within the quarantined zone which
15 Earl McPhail referred to a few moments ago when
16 Medflies were found near here in Camarillo in
17 1994. As you may recall, the quarantine lasted
18 ten months and was only lifted after 14 aerial
19 applications of malathion and an eradication cost
20 of over 30 million dollars to agriculture in
21 Ventura County.

22 And as an aside, I would add that
23 cost did not include the personal cost of
24 increased paperwork, the disruption of IPM
25 programs after being within the malathion

1 treatment area, or the sleepless nights that we
2 had as farmers worrying whether or not we would be
3 able to stay in business.

4 As you may know, the U.S. Citrus
5 Science Council was founded in 1998. To date it's
6 primary focus has been on the rule providing for
7 the importation of citrus fruit from regions of
8 Argentina where insect pests and serious plant
9 diseases are prevalent.

10 Members of the Science Council felt
11 that the council should participate in this
12 hearing since the council was a lead plaintiff in
13 a legal case that resulted in the suspension of
14 the Argentine citrus rule.

15 We believe it is important to
16 emphasize some of the key holdings of that federal
17 court decision rendered in September of 2001 which
18 the government subsequently chose not to appeal.

19 One of the key holdings of the
20 Argentine citrus court decision was that APHIS
21 must define what it considers to be a, quote,
22 negligible level of risk, unquote, in the context
23 of a rule authorizing the importation of fruit
24 from a disease and pest infested area.

25 The Citrus Science Council believes

1 that here in this present proceeding APHIS must
2 certainly define what it considers to be a
3 negligible or acceptable level of risk. And it
4 must also adequately explain that determination.
5 The proposed rule does not do so. Nor has APHIS
6 made any attempt to articulate why this essential
7 issue is not being addressed.

8 In these circumstances it is
9 impossible to fully understand why the proposal is
10 framed the way it is and what the implication that
11 that has to the risk of Medfly introduction.

12 As we understand the provisions of
13 the World Trade Organization's sanitary and
14 phytosanitary agreement, as well as the standards
15 that have been developed to implement the SPS by
16 the International Plant Protection Convention, the
17 IPPC, a definition of the appropriate level of
18 protection is the first step that must be taken
19 when a country is considering allowing the
20 importation of a quarantined commodity from
21 another country. Only after the appropriate level
22 of protection or the acceptable level of risk is
23 established, will the destination country be in a
24 position to consider what phytosanitary measures,
25 if any, need to be implemented in order to assure

1 that its phytosanitary requirements will be met.

2 Accordingly, we strongly urge APHIS,
3 as it proceeds with this matter, to first identify
4 explicitly the standard of negligible or
5 acceptable risk that it is applying in evaluating
6 the Spanish clementine import request. And
7 secondly, to explain how the provisions of the
8 rule, as analyzed in the risk mitigation document,
9 provide assurance that the risk of Medfly
10 introduction associated with the importation of
11 Spanish clementines will conform to that standard.

12 A second key holding of the Court in
13 the Argentine citrus decision was that the risk
14 assessment should be transparent with, quote,
15 complete and transparent documentation of data
16 used in the assessment.

17 In our view, the risk mitigation
18 analysis that has been prepared for the Spanish
19 clementine import proposal does not meet this
20 test. We are told that even informed experts are
21 not able to comprehend the analysis contained in
22 that document.

23 Furthermore, the RMA appears to
24 assess the efficacy of a systems approach that
25 differs from the one that would be established

1 under the proposed rule. For example, the RMA
2 assumes the Medfly infestation rate in fruit
3 packed for export will not exceed 1.5 percent.
4 However, the proposed rule would not assure an
5 infestation level that low after the first year.

6 In addition, the RMA presumes a level
7 of effectiveness for cold treatment that seems at
8 odds with what APHIS's own observations found to
9 be the case last fall.

10 While the time periods for cold
11 treatment will be extended by two days from
12 current requirements at each temperature level,
13 APHIS has not provided any data or studies that
14 would justify placing confidence in the levels of
15 cold treatment assumed in the RMA. Indeed, if
16 anything, in an assessment prepared by the USDA
17 Office of Risk Assessment and Cost Benefit
18 Analysis suggests that the additional two days of
19 cold treatment will not provide an adequate level
20 of quarantine security, particularly at the
21 temperatures in the rage of 32 to 34 degrees
22 Fahrenheit.

23 There is one final point that I
24 believe merits brief comment. The Court reviewing
25 the Argentine citrus rule also found that

1 Argentina's Plant Protection Organization had not
2 conducted itself in a manner which instilled
3 confidence in its activities.

4 The Citrus Science Council notes that
5 the APHIS Technical Review from the trip made in
6 December of 2001 states that the Spaniards had not
7 kept the type of records on trapping and bait
8 spraying programs that the work plan required them
9 to keep. This is one of the reasons it has been
10 so difficult to determine what went wrong last
11 fall with respect to the Medflies.

12 Although the lack of good records by
13 the Spaniards is perhaps not as egregious an error
14 as what the Argentines did, we still believe that
15 APHIS must insist on scrupulous adherence to the
16 work plan, and that there should be steep
17 penalties for not doing so.

18 In the Argentine citrus rule the
19 Court found, quote, the administration of the
20 program in the growing country is critical to the
21 success of the systems approach.

22 The same would be certainly true here
23 as well in the case of the Spanish clementines.

24 The Citrus Science Council is
25 committed to remaining involved in all matters

1 relating to import requests that pose potential
2 risks to the citrus industry. We believe the
3 process which is now evolving at APHIS for the
4 review of import requests from countries with
5 phytosanitary problems that could threaten U.S.
6 agriculture is critically important because our
7 livelihoods and our orchards depend on no mistakes
8 being made. Given our experience here in
9 California, we believe that with the Medfly there
10 is no margin for error.

11 Unfortunately, as indicated earlier,
12 we see a number of areas in the proposed rule that
13 appears to us to be problematic and to create room
14 for error. For this reason we join with others
15 here today who are advocating that APHIS go back
16 to the drawing board with this proposal.

17 We suggest that the first step should
18 be establishing what APHIS believes to be the
19 acceptable level of risk and then developing a
20 proposed protocol that achieves that level of
21 risk. And that that all be supported by rigorous,
22 objective, and scientifically sound risk
23 assessment.

24 As members of the Science Council
25 have indicated in other forums, we are dependent

1 on and interested in expanding markets for our
2 products. We support the tenets of the SPS
3 agreement which essentially state that decisions
4 on requests for imports should be made on sound
5 science and not for political reasons. For this
6 reason, we believe it is essential that the
7 scientific and analytic underpinning for a rule
8 which will allow for the importation of Spanish
9 clementines to resume, must be of the highest
10 quality and above question.

11 The underpinning of the current APHIS
12 proposal is not nearly as rigorous as we believe
13 it should be, especially in a situation where the
14 pest of concern is the Medfly.

15 Thank you again for this opportunity
16 to speak with you on a very important issue.

17 MR. RHOADS: Thank you.

18 The next registered speaker is Nick
19 Hill.

20 MR. HILL: Good morning. My name is
21 Nick Hill. I'm the General Manager of Green Leaf
22 Farms, a diversified farming company that produces
23 oranges, lemons, minneolas, grapefruit, pistachios
24 and plums on about a thousand acres. I farm in
25 two counties. And all of these commodities I

1 produce can be the host for the Medfly.

2 I'm also the chairman of a non-profit
3 organization put together by local growers in an
4 effort to enhance Future Farmers of America High
5 School Program. We have land, we have the people
6 and the student desire to learn innovative
7 techniques in farming. The emphasis will be on
8 permanent crops, floral and some vegetables. Each
9 one of those are potential hosts for the Medflies.

10 I would like to consider our company
11 and myself as good stewards of the land and
12 excellent farmers. I'm cost conscious and yet do
13 not sacrifice quality. I am mindful of
14 environmental issues and cognizant of concerns by
15 consumers regarding food safety and chemical use.

16 I have transitioned our farming
17 practices into an Integrated Pest Management
18 program throughout our operations. This took
19 several years at considerable expense. And I have
20 switched from harsher crop protection tools to
21 softer targeted materials.

22 Beneficial insects are an established
23 part of my farming operation. And building the
24 population to the level that accomplishes these
25 objectives of eliminating unwanted pests is not an

1 overnight success story. I rely on predatory
2 mites, six-spotted mites, decollate snails and red
3 scale predators, just to name a few, to sustain my
4 management, pest management program.

5 Your rule and its flaws threaten to
6 wipe out years of my work. A larvae and/or a fly
7 find would require extensive use of materials that
8 would devastate my Integrated Pest Management
9 Program.

10 Fly and larvae finds require
11 extensive eradication programs that would cost me
12 money. Fly and larvae finds require more
13 applications of materials at a greater cost to my
14 farming operation. Fly and larvae finds would
15 lead to farm worker safety issues and residues
16 issues. It will require more involvement from
17 local compliance officials and greater amounts of
18 paperwork on myself and my company.

19 I will spend more money to produce an
20 equal amount of fruit for the marketplace. This
21 will be sold into fewer markets because of
22 quarantine restrictions, creating oversupply
23 situations. I will eliminate years of work with
24 one application to eliminate larvae. I will spend
25 more money and make less.

1 And I did not see any of that in the
2 economic impact analysis that the USDA put out.
3 Quite frankly, the analysis is an insult to me and
4 to my farming friends. Your economics focuses
5 solely on the cost to the federal government
6 should a mistake occur and the benefit to the
7 consumer without any consideration to the impact
8 on the farm, my family, my community and the
9 industry and it is not worthy of the paper which
10 it's printed on.

11 That analysis fails to take into
12 consideration the true economics of the Medfly
13 infestation. To focus solely on a superficial
14 treatment of the costs to the federal government
15 is as incomplete as an analysis could be.

16 I suggest a complete economic impact
17 analysis would include impacts on the farmers
18 should the Medfly or the larvae be discovered. I
19 suggest that the world doesn't revolve solely
20 around the federal government, but the people who
21 farm the products, transport the product, and
22 harvest the product and all who make it happen.

23 I suggest that the person that
24 developed this analysis did so with the
25 instructions to complete a report as rapidly as

1 possible and did not take into consideration all
2 necessary components.

3 I suggest that like so many other
4 aspects of this proposed rule, it's politics over
5 science. I suggest that it is an effort to
6 placate an industry exporting seven percent of its
7 crop to the United States that has energized one
8 hundred percent of the fruit and vegetable
9 industry in opposition. That's something we in
10 California agriculture have been trying to do for
11 years, and I suppose we can thank you for that.

12 I suggest that this is a rule, as so
13 many others have stated before, you need to go
14 back to the drawing board. Thank you.

15 MR. RHOADS: The next speaker will be
16 Gabriele Ludwig.

17 MS. LUDWIG: My name is Dr. Gabriele
18 Ludwig. That's L-u-d-w-i-g. I work for Schramm,
19 Williams and Associates in Washington D.C. and my
20 comments today are on behalf of California Citrus
21 Mutual.

22 My comments today will focus on three
23 general areas. First touches on does the proposed
24 rule fix the problem and what's the scientific
25 basis for that.

1 The second is focusing on fundamental
2 inconsistencies between the various rule making
3 documents.

4 And the third is dealing with the
5 transparency and the meaning of the risk
6 mitigation assessment.

7 So the first question, which is
8 really the question that's been posed throughout
9 most of the comments today, is does the proposed
10 rule fix the problems.

11 And what I'm getting at is are the
12 measures proposed different enough from the
13 conditions that existed in the 2001 situation to
14 prevent the recurrence of the entry of live Medfly
15 larvae in the United States.

16 So far APHIS has provided no evidence
17 that the shipments where live Medflies larvae were
18 found had infestation levels above 1.5 percent or
19 were cold treated for only ten days at 32 degrees
20 Fahrenheit, or whatever the minimum number of days
21 required by the PPQ treatment.

22 As Dr. Sequeira pointed out in his
23 talk, the proposed rule relies on two critical
24 control points as part of the systems approach.
25 And the first critical control point is to try to

1 limit the fruit infestation levels, and here I
2 will disagree with your talk, to 1.5 percent in
3 the first year. And after that it can go up to
4 three percent.

5 Now, again, the question, is that any
6 different than what existed in 2001? And there is
7 data, we have the data from fruit cutting done at
8 the port inspections and data from the cutting
9 done by CDFA, and APHIS actually in their revised
10 risk mitigation assessment includes some of that
11 information. And the analysis done by APHIS
12 indicates that an average infestation rate in 2001
13 was only 0.5 to 0.16 percent.

14 Now, if I look at those numbers, that
15 does not help support the conclusion that by
16 limiting infestation to 1.5 percent or three
17 percent, that that will make any difference to
18 what existed before.

19 The second critical control point,
20 and this is something that has been pointed out
21 numerous times already today, is that cold
22 treatment that has been extended by two days. And
23 again, the question is is this different from what
24 existed before.

25 According to what Spanish exporters

1 claim in their court papers that a 32 degree
2 Fahrenheit or below schedule was applied for 12 to
3 14 days to Spanish clementines. Now, if that is
4 the case, how is the proposed rule going to change
5 the situation from what existed in 2001?

6 And again, data exists from the cold
7 treatment records for those shipments where we
8 know that the cold treatment failed that could
9 have been used to help support one way or the
10 other the proposed rule.

11 The third area where no data was
12 provided is there's no scientific justification
13 provided for the reduction of the sampling rate
14 that's currently in the proposed rule.

15 As stated, one of the critical
16 control points is the infestation, limiting the
17 infestation rate. And the current proposed rule
18 proposes to reduce the sample size to monitor the
19 infestation rate from 200 to 76 fruit per shipment
20 based on the number of shipments rejected on the
21 previous year.

22 There are a couple of questions here.
23 One is why are we reducing the sample size in the
24 first place? There's no justification for that.

25 But the second one is there is no

1 scientific justification provided that there is a
2 correlation between the previous year's rejection
3 rate, or the previous year's infestation rate, and
4 this year's infestation rate.

5 As a matter of fact, I would argue
6 that the record, and what I understand of Medfly
7 lifecycle is that where enough insects undergo
8 multiple life cycles within a season that
9 infestation levels the previous year have a
10 limited relationship to infestation levels of the
11 current year.

12 One of the claims of the Spanish
13 government is that warm spring and warm fall
14 temperatures in the 2001 season contributed to the
15 high levels. Now, how is that going to relate to
16 this year's Medfly levels?

17 So in conclusion, what I'm trying to
18 say here is data was available that could have
19 helped form the theory used -- form the risk
20 assessment, and form the risk mitigation of
21 measures proposed. Probable infestation rates on
22 a per shipment basis could have been calculated
23 from the data that's available. The actual cold
24 treatment data for shipments with live larvae
25 should be available.

1 And then the third point, either data
2 that does exist showing a correlation should be
3 provided or studies need to be done to show a
4 correlation between the previous year's
5 infestation rate and this year's infestation rate
6 if that trigger mechanism is to be followed
7 through. And actual data would increase the
8 credibility of the proposed measures.

9 Second area I want to touch upon is
10 inconsistencies between the various rule making
11 documents. And these documents include the
12 proposed rule, the risk mitigation assessment,
13 ORACBA cold treatment analysis and the regulatory
14 impact analysis.

15 First inconsistency is between the
16 risk mitigation assessment and the proposed rule.
17 And this is in my mind a very, very fundamental
18 inconsistency, given that APHIS and the U.S.
19 government goes out and says that they're trying
20 to make sure that their phytosanitary measures are
21 based on science and based on a risk assessment.

22 Currently the risk assessment does
23 not follow what has been proposed. Risk
24 mitigation assessment only looks at limiting the
25 infestation levels to 1.5 percent with a 95

1 percent confidence that the sampling will detect a
2 1.5 percent infestation level.

3 But the proposed rule would allow the
4 sample size to decrease to the point that only a
5 three percent infestation level would be detected
6 with a 90 percent confidence of detecting it.

7 And that brings up the question of,
8 well, what is the probability, what is the risk
9 proposed by that measure? And that has not been
10 looked at within the risk mitigation document.
11 And this infestation level was considered one of
12 the key components of the whole risk mitigation
13 proposal.

14 Second inconsistency, which has also
15 been pointed out by other speakers, is in the
16 analysis by the risk mitigation assessment and
17 ORACBA of the cold treatment. They're not
18 consistent.

19 In essence, the risk mitigation
20 assessment developed equations to assess the
21 efficacy of the cold treatment based on
22 assumptions that were informed by the cold
23 treatment data.

24 ORACBA, which is an independent risk
25 analysis agency within USDA, analyzed actual cold

1 treatment data to try and come up with the
2 equations for the efficacy of the cold treatment.
3 And their conclusions of the efficacy of the cold
4 treatment are quite different than the conclusions
5 in the equations used in the risk mitigation
6 assessment. And that has been stated previously
7 indicates that the cold treatment is not as
8 effective as assumed in the risk mitigation
9 assessment. So far ORACBA's analysis has not been
10 incorporated or even referenced in the risk
11 mitigation assessment.

12 Another inconsistency is between the
13 regulatory impact analysis and the risk mitigation
14 assessment. And this is coming down to the
15 question we all have, which is what is the risk
16 posed by, in this case a single shipment, what's
17 the chance of introduction of a Medfly pair by a
18 single shipment of Spanish clementines?

19 The economic assessment assumes that
20 the probability is 1.31 times 10 to 12. Whereas
21 the risk mitigation assessment has a number of 2.5
22 times ten to the fifth in the Appendix 3. That's
23 more than one millionfold difference in the
24 probability and raises questions about the lack of
25 communication between the different parts of the

1 agency. And it makes it really hard to understand
2 which of these numbers are we supposed to believe.

3 And this leads to the third area
4 which is this issue about the risk mitigation
5 assessment itself.

6 I must say I find it interesting,
7 having listened to most of the speakers today, how
8 almost no one has even attempted to talk about the
9 risk mitigation assessment. Even though I believe
10 that the agency has made much more effort to try
11 and make the risk mitigation assessment more
12 transparent, and providing documents for comments
13 of the draft was very much appreciated. But the
14 understandability and transparency of what the
15 outputs mean still leaves much to be desired.

16 A couple of comments there. One is
17 despite extensive comments provided during the
18 comment period on the draft mitigation documents,
19 there have been no changes to the methodology of
20 the risk mitigation. And no justification given
21 for why or why not comments were used or not used.

22 Also, despite during the comment
23 period some strong recommendations made that the
24 output from the risk mitigation document be made
25 more transparent, currently the Table 4D, which

1 supposedly states the probabilities of risks of
2 introduction of Medfly from three different
3 scenarios, is still completely incomprehensible
4 from that document. Just cannot tell what went in
5 to get those numbers.

6 And then if you try and go back, and
7 with the help of the Excel file that is provided,
8 but you do need to have the At Risk software to
9 read it, if you do go into trying to understand
10 where those numbers come from, there are
11 inconsistencies between the text and the
12 calculated outputs.

13 According to the text, one of the
14 scenarios calculated is what are the chances of a
15 live Medfly pairs larvae being introduced from all
16 shipments going to suitable locations?

17 And in the text it's stated that
18 that's the unrealistic assumption that all
19 shipments going to suitable locations go to the
20 same place at the same time.

21 But when you go into the
22 calculations, it looks like what was calculated is
23 actually the probability for introduction of
24 Medfly from any shipment going to any suitable
25 location at any point in time, which is actually a

1 fairly realistic scenario.

2 And that raises a couple of
3 questions. A, what scenarios were assessed? That
4 is not clear. And then what do those
5 probabilities mean? And B, why not use real world
6 scenarios.

7 Furthermore, I would like to say that
8 if the numbers that were calculated are correct
9 for this realistic assumption, what's the
10 probability of allowing -- that a Medfly pair
11 would be introduced from 40 percent of all the
12 clementine shipments that go to suitable
13 locations? According to APHIS, the probabilities
14 are somewhere in the two to four percent range.
15 And that ties in to the question, what is
16 negligible risk? Is that an acceptable level of
17 risk?

18 Next point of the risk mitigation
19 assessment, which is something again other people
20 pointed out, is that the risk mitigation
21 assessment focuses exclusively on citrus growing
22 regions, and is that really appropriate?

23 A couple of scenarios. One is, as
24 appointed out, that from a temperature range or
25 from a host plant species there's more than just

1 the citrus growing regions to focus on.

2 Another one is looking at the fact
3 that the shipping season for Spanish clementines
4 goes from roughly beginning of October to end of
5 February.

6 Just taking Washington, D.C. as an
7 example, there was no significant frost up until
8 the first week of January. So what's -- and then
9 also looking at the biology of the Medfly, looking
10 at how long the -- how long it takes the Medfly to
11 pupate, how long an adult Medfly larvae can
12 survive, looking at that, saying are there chances
13 outside of citrus growing areas for the Medfly to
14 become established?

15 Another quibble with the risk
16 mitigation assessment is that in the text it talks
17 about looking at the chances of introduction into
18 commercial groves. And this is a more generic
19 comment. The question really is what is the
20 chance of introduction from consumer's homes into
21 their garadens? Probably the vast majority of you
22 who live around here have citrus in your
23 frontyard, your backyard, or your neighbor's
24 backyard or frontyard.

25 In conclusions, and I think what I'm

1 saying here, I'm going to step back and reflect on
2 what I've been hearing today, is despite APHIS's
3 improved efforts to try and communicate what they
4 assumed and what the output from the risk
5 mitigation assessment is, they have not been able
6 to provide the data and make the risk assessment
7 transparent enough that people in this room feel
8 and have confidence that the proposed measures
9 will provide phytosanitary security. And the
10 inconsistencies between the various documents
11 fundamentally undermine the credibility of what
12 APHIS is doing.

13 Thank you.

14 MR. RHOADS: Thank you.

15 The next registered speaker is Jim
16 Churchill of the Environmental Defense Center.

17 Mr. Churchill?

18 Okay. Then the next registered
19 speaker will be Etienne Rabe.

20 MR. RABE: Good morning. My name is
21 Etienne Rabe. E-t-i-e-n-n-e. The last name is
22 Rabe, R-a-b-e.

23 Ladies and gentlemen. I'm a
24 professor at the University of Stellenbosch in
25 horticultural science in South Africa, but also

1 technically involved with some citrus growing in
2 California.

3 I'm making some of these comments
4 under friendly duress because my rubber arm was
5 twisted by some powerful people around here,
6 because I made, on request, some comments to an
7 entity in California based on the document, the
8 risk mitigation document which was put out by
9 APHIS. And I've been asked to just relay some of
10 the comments which I've made.

11 So I've made one or two changes, so
12 please bear with me. It will only take two or
13 three minutes.

14 The first point I want to make is the
15 reason for the high incidence of fruit fly
16 infestation in 2001. In the report, paragraph
17 three, it indicates that I think it's due to an
18 atypically warm year and a very early season in
19 Spain.

20 Obviously, this can happen again in
21 the future. How can we be sure that the Spanish
22 growers would in future be able to control such
23 populations? Should this not be evaluated for one
24 or two more seasons before they can be allowed
25 back?

1 The second point I want to make is
2 the quality management of the cold treatment
3 procedure. There obviously were lapses in this
4 during the last season.

5 The policing of the critical control
6 points should be very precise. Variation in cold
7 sterilization regimes during the voyage should be
8 cause for rejection. Will this be properly
9 policed on the USA side at the port of entry?

10 The third point, and I think this is
11 a point which wasn't raised very much this
12 morning, which I just labeled key phytosanitary
13 measures and traceability issues. In paragraph
14 eight of the document, a number of key
15 phytosanitary measures I outlined. These include
16 bait sprays which will be applied once a certain
17 threshold level has been detected. How will this
18 be monitored by the Spanish government or the
19 Spanish citrus industry?

20 The report also indicates about
21 traceability issues in the same paragraph,
22 paragraph eight, relative to tracing back fruit to
23 the originating farm. I do not think, in light of
24 the very small farms in Spain, sometimes half a
25 hectare each, that this would be entirely

1 possible. Meaning the traceability issue.

2 I would suggest that one should only
3 allow export from traceable entities. That is,
4 from certain minimum size growers where fruit can
5 being packed separately in a packing house. Right
6 now the many small growers cause packing houses to
7 pool fruit for packing purposes and, therefore,
8 loss of traceability.

9 Point four. The next two points are
10 just some comments on the document.

11 The number of fruit per container.
12 In the calculations they use fruit sizes of
13 between counts 20 to 25 that are 2.5 kilograms. I
14 think this is probably in many cases
15 underestimating fruit numbers. Counts 28 and 32
16 are also at stake. However, this probably does
17 not materially affect the calculations which have
18 been made relative to the probabilities of finding
19 a mated pair.

20 Next point, the likelihood of a
21 single container ending up in a susceptible grove.
22 And I think the lady ahead of me also made that
23 point. In page nine, under the paragraph, quote,
24 Integrating the Components, unquote. It was
25 assumed there was very little likelihood of fruit

1 ending up close to susceptible groves.

2 My question is what about backyard
3 trees of some of the susceptible crops?

4 The next important point I think that
5 I wanted to make is the -- something about the
6 cold sterilization regime. I've spoken in a
7 personal communication with Dr. Vaugh Hattingh,
8 Market Access Manager of the South African Citrus
9 Industry, based on South African studies on the
10 Medfly that conclusively showed that we need 12
11 days at minus .5 degrees Celsius to adequately
12 control Medfly. That's, I think, about 30.5
13 degrees F. This morning we only heard about 32
14 degrees and up.

15 My question is why did APHIS not rely
16 heavily on these newer scientific based studies in
17 their review of the proposed new protocols? And I
18 refer you to studies in South Africa as well as
19 Australia.

20 The new protocol only calls for the
21 lengthening of the cold sterilization period.
22 Nobody has mentioned anything about reducing the
23 temperature.

24 My conclusion. I think that while
25 there's probably no question of time that the

1 Spanish industry would be exporting fruit back
2 into the United States. In the meantime, however,
3 I think an argument -- there is an argument to be
4 made out in favor of a trial period for limited
5 volumes to be sent into the United States in the
6 next season to ensure that all the critical
7 control points can be properly monitored.

8 The Spanish industry needs to
9 demonstrate that they would be able to reduce
10 fruit fly levels in the orchard and throughout the
11 whole system before major volumes can be exported
12 again. The new protocols proposed seems very
13 hastily put together.

14 Ladies and gentlemen, I trust my
15 comments are of value. Thank you.

16 MR. RHOADS: Thank you.

17 The next registered speaker is Ted
18 Batkin, Citrus Research Board.

19 MR. BATKIN: Good afternoon. And
20 thank you for the opportunity to appear here today
21 at this hearing.

22 My name is Ted Batkin. That's
23 B-a-t-k-i-n. I'm the President of the Citrus
24 Research Board and the Citrus Improvement Program
25 in California. But I also serve as the Chairman

1 of the California Commodities Committee, which is
2 the broadbased research program for the 46
3 different commodities that provide research
4 programs in the State of California, and serve as
5 other roles such as involved in the Exotic Fruit
6 Fly Research Symposium and the International
7 Invasive Species Advisory Committee.

8 My comments today are going to be
9 short because we're going to be submitting a
10 rather lengthy package of data to the proceedings.
11 But I just kind of want to back up to some of the
12 things that were already said and that some of the
13 my previous colleagues have taken some of my
14 points already and made them very clear.

15 We will be providing supporting data
16 on the comments that Richard Matoian made from Jim
17 Thompson at the University of California regarding
18 the number of probes and the protocols for the
19 cold treatment system and how that it is
20 impossible to reach the level of acceptable risk
21 using the current protocols that are published in
22 the APHIS treatment manual.

23 Further, we would like to point out
24 that the Scientific Review Panel and other
25 scientists have stated that it is necessary to

1 completely review the cold treatment protocols.
2 We do understand that there is an effort that has
3 been started already. It is the combination of
4 efforts between USDA APHIS and their sister
5 organization, the Agriculture Research Scientists.

6 It is our position that there should
7 be no final rule making published at all prior to
8 the completion of that review and the acceptance
9 of the new data that could possibly come out of
10 that.

11 We also ask that that process, where
12 they are planning to recreate the studies, also
13 include an indepth review of the scientific
14 studies that have been conducted in South Africa
15 and in Australia in the last two years and that
16 that data be incorporated into the overall risk
17 assessment.

18 I think you will find that the number
19 of fruit that were tested in the Australian study
20 far exceeds anything that has been conducted
21 either in the United States or any of the other
22 countries. And that provides a massive amount of
23 data points to come to an acceptable conclusion.

24 Additionally, we would like the risk
25 assessment process to go back and review published

1 -- peer reviewed published data that indicates the
2 areas in which Medfly can survive. It is not just
3 the citrus producing areas of the world. That the
4 larvae have the capability of overwintering even
5 in frozen conditions. And that the importation of
6 fruit into a citrus producing area -- or just
7 blocking it from the five states is unacceptable.

8 I think if you go back and review the
9 data from the Mexican Haas avocado importation,
10 you can find that attempting to keep fruit that is
11 shipped into the United States in an acceptable
12 position from being backshipped into the warmer
13 climates is impossible. If the fruit is demanded
14 in the lower areas, it will get there, whether it
15 was shipped there originally or whether it was
16 trans-shipped once it came into the United States.

17 So that issue has to be completely
18 re-visited. And to our feeling and in our
19 opinion, a rule that is acceptable into the
20 central part of the United States must also
21 equal -- meet the test for acceptability into the
22 southern tiers. Therefore, it is not possible to
23 split the rules.

24 Finally, just a couple of editorial
25 comments because I am the caboose of this train

1 that's here right now.

2 I am really dismayed in the timing of
3 the submission of comments. There is every year
4 we hold a National Fruit Fly Research Symposium at
5 which it gives the opportunity for all the
6 scientists, both in the U.S. and in foreign
7 countries, to come in and annually review all of
8 the protocols that we have for fruit fly
9 infestations, whether they be Medfly, Mexican
10 fruit fly or any.

11 And it seems rather strange to me
12 that the issue of the Spanish clementine
13 importation came to surface the last day of the
14 2001 Research Symposium. And the closing date for
15 comments this year happens to be seven days prior
16 to the next one. So we have not had the
17 opportunity to gather the scientists that actually
18 do the work, both U.S. and nationally, to review
19 this document as a group. So we're going to be
20 forced to do it individually by individual process
21 and submit our comments.

22 But I find that just kind of ironic.
23 Not that I am accusing anybody of shuffling the
24 dates. But it just happens to be a bit of a
25 problem to us in preparing the adequate data.

1 My closing comment is simply this.
2 That if we understand the -- not only the citrus
3 industry, but all the other 46 commodities that
4 discuss this issue, understand the importance to
5 the Golden Rule of Trade. We in California have
6 that driven home to us very clearly by the current
7 USDA Secretary, Ann Veneman, when she was
8 Secretary of Agriculture here in California, in
9 that whatever we impose on a foreign country we
10 have to be expected to be imposed upon us.

11 But I think it's very clear in this
12 process and the data that's shown that we are not
13 requiring our foreign trading partners to match up
14 to the same level of protocols that we are here in
15 the United States. And that violates the Golden
16 Rule of Trade which is held in such high esteem at
17 both the Department of Agriculture and the rest of
18 the government agencies.

19 So with that, thank you for your
20 comments. Appreciate your time.

21 MR. RHOADS: Mr. Batkin was the last
22 registered speaker. Are there any other speakers
23 who would like to provide testimony?

24 Then if there are no other speakers,
25 at this time the hearing is concluded. Thank you

1 for coming.

2 Again, the comment period for the
3 proposed rule closes on September 9th. And we
4 will accept written comments and comments by
5 e-mail until that date.

6 Thank you.

7 (Proceedings concluded at 12:45 P.M.)
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1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF VENTURA)

4 I, SHARON M. BEST, Certified Shorthand
5 Reporter, No. 6025, for the State of California,
6 do hereby certify:

7 That the above referenced public hearing was
8 taken down by me at the time and place therein
9 named, and thereafter reduced into printed form by
10 compute-assisted transcription;

11 That the foregoing pages consist of a full,
12 true, and complete transcript of said proceedings.

13 I further certify that I am not interested
14 in the event of the action.

15 Witness my hand this 25th day of August,
16 2002.

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Certified Shorthand Reporter
for the State of California

