

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 11

#### Organization and Function

**AGENCY:** National Appeals Division, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document provides notice of the organization of the National Appeals Division (NAD) and provides information and addresses with respect to filing requests with NAD for information under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

**EFFECTIVE DATE:** August 21, 1998.

**FOR FURTHER INFORMATION CONTACT:** C. Larry Shrum, National Appeals Division, U.S. Department of Agriculture, 3101 Park Center Drive, Suite 1113, Alexandria, Virginia 22302, (703) 305-1020, FAX number (703) 305-2108.

#### SUPPLEMENTARY INFORMATION:

#### Background and Purpose

Under 7 CFR 1.3(a), the Secretary has required that all Department of Agriculture (USDA) agencies and staff offices publish FOIA regulations supplemental to USDA FOIA regulation at 7 CFR part 1 in order to provide the public with specific information as to where and how FOIA requests should be filed for individual agencies and staff offices.

This final rule sets forth the organization of NAD and NAD regulations implementing the FOIA in accordance with 7 CFR 1.3(a).

#### Classification

This rule is related to agency organization, management, procedure, and practice, and does not substantially affect the rights or obligations of non-agency parties. Accordingly, this rule is

exempt from Administrative Procedure Act requirements for notice and comment rulemaking (5 U.S.C. 553(a)(2)) and Congressional reporting and review (5 U.S.C. Chapter 8) and may be made effective less than 30 days after publication in the **Federal Register**. Since this rule relates to internal agency management, it is also exempt from the provisions of Executive Order No. 12866. This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and thus is exempt from the provisions of this Act. Finally, this final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

#### List of Subjects in 7 CFR Part 11

Administrative practice and procedure, Agriculture, Agricultural commodities, Crop insurance, Ex parte communications, Farmers, Federal aid programs, Freedom of Information, Guaranteed loans, Insured loans, Loan programs, Price support programs, Soil conservation.

For the reasons set out in the preamble, Title 7, part 11, of the Code of Federal Regulations is amended as set forth below:

#### PART 11—NATIONAL APPEALS DIVISION RULES OF PROCEDURES

1. The authority citation for part 11, subpart A is as follows:

**Authority:** 5 U.S.C. 301; Title II, Subtitle H, Pub. L. 103-354, 101 Stat. 3223 (7 U.S.C. 6991 *et seq.*); Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

2. The current text of 7 CFR Part 11 is redesignated as subpart A and a heading for subpart A is added to read as follows:

#### Subpart A—National Appeals Division Rules of Procedures

3. Subparts B and C are added to read as follows:

#### Subpart B—Organization And Functions

Sec.

11.20 General statement.

11.21 Organization.

11.22 Functions.

**Authority:** 5 U.S.C. 301 and 552; 7 CFR part 2.

#### § 11.20 General statement.

This subpart provides guidance for the general public as to the organization and functions of NAD.

#### § 11.21 Organization.

NAD was established on October 13, 1994. Delegation of authority to the Director, NAD, appears at § 2.34 of this title. The organization is comprised of three regional offices: Eastern Regional Office, Indianapolis, Indiana; Southern Regional Office, Memphis, Tennessee; and Western Regional Office, Lakewood, Colorado; and the headquarters staff located in Alexandria, Virginia. NAD is headed by a Director. NAD is assigned responsibility for certain administrative appeals as set forth in subpart A of this part.

#### § 11.22 Functions.

(a) *Director.* Provides executive direction for NAD. The Director is responsible for developing and implementing nationwide plans, policies, and procedures for the timely and orderly hearing and disposition of appeals filed by individuals or entities in accordance with subpart A of this part. The Director will respond to all FOIA requests concerning appeal decisions and case records maintained by NAD.

(b) *Deputy Director for Hearings and Administration.* Responsible for all administrative functions of NAD, including budget, correspondence, personnel, travel, equipment, and regulation review and development.

(c) *Deputy Director for Planning, Training, and Quality Control.* Responsible for NAD strategic planning, including the organization's compliance with the Government Performance and Results Act, Pub. L. 103-62, employee training, and the establishment and maintenance of a quality assurance program.

(d) *Assistant Directors for Regions.* Responsible for oversight of the adjudication process for cases filed in the NAD regional offices. Assistant Directors ensure statutory and administrative time frames are met, and oversee the administrative functions, training, and supervision of the support staff located in the regional offices and the large dispersed staff of professional hearing officers located throughout the regions. The three regional offices serve as the custodian for all NAD determinations and case records.

**Subpart C—Availability of Information to the Public**

Sec.

- 11.30 General statement.  
 11.31 Public inspection and copying.  
 11.32 Initial request for records.  
 11.33 Appeals.

## Appendix A—List of Addresses

**Authority:** 5 U.S.C. 301 and 552; 7 CFR 1.1–1.16.

**§ 11.30 General statement.**

This subpart implements the regulations of the Secretary of Agriculture at 7 CFR 1.1 through 1.16 concerning FOIA (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of the records of NAD to the public.

**§ 11.31 Public inspection and copying.**

Section 1.5 of this title requires that certain materials be made available by each USDA agency for public inspection and copying in accordance with 5 U.S.C. 522(a)(2). Members of the public wishing to gain access to these NAD records should write to the appropriate address shown in Appendix A of this subpart.

**§ 11.32 Initial requests for records.**

(a) Requests for NAD records should be in writing and addressed to the NAD official having custody of the records desired as indicated in § 11.22(d). Addresses are found in Appendix A of this subpart. In his or her petition, the requester may ask for a fee waiver if there is likely to be a charge for the requested information. The criteria for waiver of fees are found in section 6 of appendix A, subpart A of part 1 of this title. All requests for records shall be deemed to have been made pursuant to FOIA, regardless of whether FOIA is specifically mentioned. To facilitate processing of a request, the phrase "FOIA REQUEST" should be placed in capital letters on the front of the envelope.

(b) A request must reasonably describe records to enable NAD personnel to locate them with reasonable effort. Where possible, a requester should supply specific information, such as dates, titles, appellant name or appeal number, that may help identify the records. If the request relates to a matter in pending litigation, the court and its location should be identified.

(c) If NAD determines that a request does not reasonably describe the records, it shall inform the requester of this fact and extend the requester an opportunity to clarify the request or to confer promptly with knowledgeable NAD personnel to attempt to identify

the records he or she is seeking. The "date of receipt" in such instances, for purposes of § 1.12(a) of this title, shall be the date of receipt of the amended or clarified request.

(d) Nothing in this subpart shall be interpreted to preclude NAD from honoring an oral request for information, but if the requester is dissatisfied with the response, the NAD official involved shall advise the requester to submit a written request in accordance with paragraph (a) of this section. The "date of receipt" of such a request for purposes of § 1.12(a) of this title shall be the date of receipt of the written request. For recordkeeping purposes, the NAD official responding to an oral request for information may ask the requester to also submit his or her request in writing.

(e) If a request for records or a fee waiver under this subpart is denied, the person making the request shall have the right to appeal the denial. Requesters also may appeal NAD decisions regarding a requester's status for purposes of fee levels under section 5 of Appendix A, subpart A of part 1 of this title. All appeals must be in writing and addressed to the official designated in § 11.33. To facilitate processing of an appeal, the phrase "FOIA APPEAL" should be placed in capital letters on the front of the envelope.

(f) NAD shall develop and maintain a record of all written and oral FOIA requests and FOIA appeals received by NAD, which shall include, in addition to any other information, the name of the requester, brief summary of the information requested, an indication of whether the request or appeal was denied or partially denied, the FOIA exemption(s) cited as the basis for any denials, and the amount of fees associated with the request or appeal.

**§ 11.33 Appeals.**

Any person whose initial FOIA request is denied in whole or in part may appeal that denial to the Director, National Appeals Division, U.S. Department of Agriculture, 3101 Park Center Drive, Suite 1113, Alexandria, Virginia 22302. The Director will make the final determination on the appeal.

**Appendix A—List of Addresses**

This list provides the titles and mailing addresses of officials who have custody of NAD records. This list also identifies the normal working hours, Monday through Friday, excluding holidays, during which public inspection and copying of certain kinds of records is permitted.

Director, National Appeals Division, U.S. Department of Agriculture, 3101 Park Center Drive, Suite 1113, Alexandria, Virginia 22302, Hours: 8 a.m.–5 p.m.

Regional Assistant Director, Eastern Region, National Appeals Division, U.S. Department of Agriculture, 3500 DePauw Boulevard, Suite 2052, Indianapolis, Indiana 46268, Hours: 8 a.m.–5 p.m.

Regional Assistant Director, Southern Region, National Appeals Division, U.S. Department of Agriculture, 7777 Walnut Grove Road, LLB–1, Memphis, Tennessee 38120, Hours: 8 a.m.–5 p.m.

Regional Assistant Director, Western Region, National Appeals Division, U.S. Department of Agriculture, 755 Parfet Street, Suite 494, Lakewood, Colorado 80215–5506, Hours: 8 a.m.–5 p.m.

Done at Washington, DC, this 11th day of August 1998.

**Norman G. Cooper,**

*Director.*

[FR Doc. 98–22451 Filed 8–20–98; 8:45 am]

BILLING CODE 3410–01–P

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. 98–083–2]

**Mediterranean Fruit Fly; Addition to Quarantined Areas**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Mediterranean fruit fly regulations by adding a portion of Orange County, CA, to the list of quarantined areas and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

**DATES:** Interim rule effective August 14, 1998. Consideration will be given only to comments received on or before October 20, 1998.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 98–083–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–083–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.