

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

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**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.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247; or e-mail: michael.b.stefan@usda.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Mediterranean fruit fly, *Ceratitidis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78-10; referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of Medfly has occurred in a portion of Orange County, CA.

The regulations in 301.78-3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately four-and-one-half miles from the detection sights. The boundary lines may vary due to factors such as the location of Medfly host material, the location of transportation centers such as bus stations and airports, the patterns of persons moving in that State, the

number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78-3 by adding a portion of Orange County, CA, to the list of quarantined areas. The new quarantined area is described in the rule portion of this document.

**Emergency Action**

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective August 14, 1998. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we received and any amendments we are making to the rule as a result of the comments.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule amends the Medfly regulations by adding a portion of Orange County, CA, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Medfly into noninfested areas of the United States.

This rule also restricts the interstate movement of regulated articles from the quarantined area of Orange County, CA. We estimate that there are 77 entities in the quarantined area of Orange County, CA, that sell, process, handle, or move regulated articles. This estimate includes 55 fruit sellers, 12 growers, and 10 nurseries. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of these

entities are small in size, since the overwhelming majority of businesses in California, as well as the rest of the United States, are small entities by SBA standards.

Few, if any, of the 77 entities will be significantly affected by the quarantine action taken in this interim rule because few of those entities move regulated articles outside the State of California during the normal course of their business. Nor do consumers of products purchased from those entities generally move those products interstate. The effect on any small entities that do move regulated articles interstate from the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow those small entities to move regulated articles interstate with very little additional costs. Also, many of those small entities sell other items in addition to regulated articles, so the effect, if any, of the interim rule should be minimal.

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

**Executive Order 12372**

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

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for this rule. The site specific environmental assessment and programmatic Medfly environmental impact statement provide a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection 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 copies are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

**PART 301—DOMESTIC QUARANTINE NOTICES**

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

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78-3, paragraph (c) is amended by adding an entry for Orange County, CA, in alphabetical order, to read as follows:

**§ 301.78-3 Quarantined areas.**

\* \* \* \* \*

**California**

*Orange County.* That portion of Orange County in the Lake Forest area bounded by a line beginning at the intersection of Interstate Highway 5 and State Highway 133; then northeast along an imaginary line to its intersection with Marine Way and the El Toro Marine Corps Air Station perimeter; then northeast along the El Toro Marine

Corps Air Station perimeter to Irvine Boulevard; then southeast along Irvine Boulevard to N Street; then northeast along N Street to the El Toro Marine Corps Air Station perimeter; then northeast along the El Toro Marine Corps Air Station perimeter to State Highway 241; then southeast along State Highway 241 to Antonio Parkway; then southwest along Antonio Parkway to Oso Parkway; then west along Oso Parkway to Felipe Road; then southwest along Felipe Road to Marguerite Parkway; then south along Marguerite Parkway to Crown Valley Parkway; then southwest along Crown Valley Parkway to State Highway 73; then northeast along State Highway 73 to State Highway 133; then north along State Highway 133 to the point of beginning.

\* \* \* \* \*

Done in Washington, DC, this 13th day of August 1998.

**Joan M. Arnoldi,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 98-22458 Filed 8-20-98; 8:45 am]

BILLING CODE 3410-34-P

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 78**

[Docket No. 98-086-1]

**Validated Brucellosis-Free States; Alabama**

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

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

**SUMMARY:** We are amending the brucellosis regulations concerning the interstate movement of swine by adding Alabama to the list of validated brucellosis-free States. We have determined that Alabama meets the criteria for classification as a validated brucellosis-free State. This action relieves certain restrictions on the interstate movement of breeding swine from Alabama.

**DATES:** Interim rule effective August 21, 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. 98-086-1, 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. 98-086-1. 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.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Taft, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231, (301) 734-4916.

**SUPPLEMENTARY INFORMATION:**

**Background**

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*. The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), prescribe conditions for the interstate movement of cattle, bison, and swine.

Under the swine brucellosis regulations, States, herds, and individual animals are classified according to their brucellosis status. Interstate movement requirements for swine are based upon the disease status of the individual animal or the herd or State from which the animal originates.

We are amending § 78.43 of the regulations, which lists validated brucellosis-free States, to include Alabama. A State may apply for validated brucellosis-free status when: (1) Any herd found to have swine brucellosis during the 2-year qualification period preceding the application has been depopulated. More than one finding of a swine brucellosis-infected herd during the qualification period disqualifies the State from validation as brucellosis-free; and (2) during the 2-year qualification period, the State has completed surveillance, annually, by either complete herd testing, market swine testing, or statistical analysis.

Breeding swine originating from a validated brucellosis-free State or herd may be moved interstate without having been tested with an official test for brucellosis within 30 days prior to interstate movement, which would otherwise be required.

After reviewing its brucellosis program records, we have concluded that Alabama meets the criteria for classification as a validated brucellosis-free State. Therefore, we are adding Alabama to the list of States in § 78.43. This action relieves certain restrictions on the interstate movement of breeding swine from Alabama.

**Immediate Action**

The Administrator of the Animal and Plant Health Inspection Service has