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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96-016-27]

RIN 0579-AA83

Karnal Bunt; Approved Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations by adding three alternative treatments for seed originating from a regulated area that will be planted within a regulated area. We are making this change based on new data that demonstrates that these treatments are sufficient to prevent the spread of Karnal bunt through planted seed. This action will reduce the regulatory burden on wheat growers and other affected persons in the regulated area.

DATES: Interim rule effective November 28, 1997. Consideration will be given only to comments received on or before February 3, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96-016-27, 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. 96-016-27. 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. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt in the United States are set forth in 7 CFR 301.89-1 through 301.89-14.

Section 301.89-4 sets forth requirements for the planting of Karnal bunt host crops in a regulated area. Wheat, durum wheat, and triticale may be planted in surveillance areas and restricted areas for seed, but not in restricted areas for regulated articles other than seed. If the wheat seed, durum wheat seed, or triticale seed to be planted originated within a regulated area, then, prior to planting, the seed must be tested and found free from spores and bunted wheat kernels and treated with a fungicide in accordance with § 301.89-13(d).

Section 301.89-13 provides treatment requirements for seed and regulated articles other than seed that originated within a regulated area. Section 301.89-13(d) provides two options for treating seed that originated within a regulated area and that will be planted within a regulated area. Those two treatment options are: (1) The seed is treated with 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. active ingredient (ai.)/gal.) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed; or (2) the seed is treated with 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid and 3 fluid ounces of

pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed.

Both of the treatment options require the use of a combination of two fungicides: Carboxin thiram and pentachloronitrobenzene. The two treatments differ only in the formulations of these fungicides. We established these double fungicide treatment options in a final rule, published in the **Federal Register** on October 4, 1996 (61 FR 52190-52213, Docket No. 96-016-14). At that time, our decision to require a double fungicide treatment was based on our experience controlling other kinds of plant diseases and on discussions with Karnal bunt experts from other countries. When the regulations were first established, we had had no prior experience with Karnal bunt in the United States. Therefore, initially, we decided on the double fungicide treatment options in an effort to establish safeguards that we could be certain would quickly and effectively control the spread of Karnal bunt.

Now, however, based on new information, we are amending the regulations to allow three alternative treatments for seed that originated in a regulated area and that will be planted in a regulated area. Specifically, we are allowing three different single fungicide treatments for such seed. Seed for planting in the regulated area may be treated with either Carboxin thiram or pentachloronitrobenzene, as follows: (1) With 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid per 100 pounds of seed; (2) with 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. ai./gal.) flowable liquid per 100 pounds of seed; or (3) with 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed. We are adding these single fungicide treatment options based on research¹ that demonstrates that any of these single fungicide treatments, together with negative testing for Karnal bunt, is adequate to prevent the spread of Karnal bunt through planted seed. The research that demonstrated this was performed at the International Center for Maize and Wheat Improvement (CIMMYT) in Mexico, in cooperation with Gustafson, Inc. The research protocol involved

¹ Information on this research is available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

adding *Tilletia indica* teliospores uniformly to a wheat seed source, applying the fungicides at the specified concentrations, and plating teliospores recovered from the wheat samples onto growth media to assess teliospore viability at 15, 60, 120, and 180 days after treatment. The results indicated that treatment with either of the fungicides Carboxin thiram or pentachloronitrobenzene was comparable in effectiveness to the double treatment using both.

These additional treatment options will offer more flexibility to wheat growers and other affected entities in regulated areas, and will also help minimize the use of pesticides and reduce the costs associated with treating seed originating in a regulated area that will be planted in a regulated area. This action will continue to prevent the spread of Karnal bunt through planted seed while addressing a concern that some growers have regarding a possible reduction in germination of seed treated with one of the double fungicide treatments. We are, however, continuing to offer double fungicide treatments as an alternative seed treatment to enable growers whose seed has already been treated in that manner, or growers who choose to continue to treat seed with a double fungicide treatment, to plant that seed in coming seasons.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Growers have expressed concern that the double fungicide treatment may negatively affect seed germination, and preliminary data from research commissioned by the Arizona Department of Agriculture and industry groups suggests that this effect may occur for at least some varieties of seed. This research data indicates that for the seed varieties tested, untreated seed germinated at a rate of 96.5 percent, while double treated varieties germinated at rates of 91 percent to 95 percent, depending on the seed variety.

Growers are ready to plant seed for this season's wheat crop. Although some seed has been treated with a double fungicide treatment, a significant portion of seed has not yet been treated. As discussed above, we have data indicating that the single fungicide treatments contained in this rule will effectively prevent the spread of Karnal bunt through planted seed, and amending the regulations to allow a single treatment will reduce the loss to growers. Immediate action is necessary

to give growers the option of planting seed that has received a single fungicide treatment.

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 it effective upon signature. 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**. It will include a discussion of any comments we receive 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. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We expect this action to have a slight positive economic impact on growers and other affected persons in regulated areas. However, this emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

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

The environmental assessment and finding of no significant impact prepared for an earlier final rule provides a basis for the conclusion that the anti-fungicide treatments required

under the Karnal bunt regulations do not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. (See Docket No. 96-016-14, October 4, 1996, 61 FR 52189.) 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 (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 proposed rule contains no new 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 § 301.89-13, paragraph (d) is revised to read as follows:

§ 301.89-13 Treatments.

* * * * *

(d) Seed for planting must be treated by one of the following methods:

(1) With 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. ai./gal.) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed;

(2) With 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed;

(3) With 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid per 100 pounds of seed;

(4) With 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. ai./gal.) flowable liquid per 100 pounds of seed; or

(5) With 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed.

* * * * *

Done in Washington, DC, this 28th day of November.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-31902 Filed 12-4-97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 91 and 93

[Docket No. 94-076-2]

Cattle Imported In Bond for Feeding and Return to Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the animal exportation and importation regulations by removing provisions that allowed the temporary, in-bond importation of cattle from Mexico into the United States for feeding and return to Mexico for slaughter. That interim rule was necessary because the U.S. Customs Service, to comply with provisions of the North American Free Trade Agreement, had discontinued its collection of duties and cash bonds on cattle imported into the United States from Mexico; without a cash bond, we were unable to meaningfully penalize importers who failed to return those cattle to Mexico. We continue to believe that the termination of the in-bond program was necessary to prevent the dissemination of animal diseases into

the United States by in-bond cattle that may have remained in the United States in violation of the regulations.

EFFECTIVE DATE: January 5, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 734-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.435), referred to below as the regulations, pertains to the importation of ruminants. Sections 93.424 through 93.429 of the regulations contain specific provisions regarding the importation of ruminants, including cattle, from Mexico.

Note: At the time the interim rule referred to in this document was published, the provisions described in the previous paragraph were located in 9 CFR part 92. However, on October 28, 1997, we published in the **Federal Register** (62 FR 56000-56026, Docket No. 94-106-9) a final rule that redesignated part 92 as part 93. In describing the actions taken in the interim rule, we will use the part and section numbers used in the interim rule; where appropriate, however, we will cross-reference part 92 citations with their current locations in part 93.)

In an interim rule published in the **Federal Register** on March 15, 1995 (60 FR 13896-13898, Docket No. 94-076-1), and effective March 30, 1995, we amended the regulations by removing § 92.427(e), "Cattle imported in bond for feeding and return to Mexico," in its entirety and by removing five references to the in-bond program that were found elsewhere in part 92 and in the animal export regulations in 9 CFR part 91. Before the effective date of the interim rule, § 92.427(e) of the regulations provided for the temporary importation of cattle from Mexico into the United States under U.S. Customs bond for feeding and return to Mexico for slaughter. Cattle imported under that in-bond program were exempt from some animal disease testing requirements that applied to the importation of other cattle from Mexico, but were subject to additional restrictions during the time they were in the United States that did not apply to other cattle imported from Mexico.

We solicited comments concerning the interim rule for 60 days ending May 15, 1995. We received six comments by

that date. They were from a foreign government, foreign and domestic trade associations and industry groups, and a customs brokerage. One of the commenters strongly supported the interim rule, while the remaining five commenters opposed the discontinuation of the program. Their comments are discussed below.

Two commenters reported that they had experienced no problems with the in-bond program and felt that it could continue in the absence of a bond, but offered no specific evidence to support their position. Similarly, two other commenters stated that the in-bond program had presented no animal health problems in its 5 years of existence, so there was no reason to believe that the opposite would be true in the future. Those commenters stated that the safeguards contained in the in-bond program, such as the use of sealed vehicles for movement and the requirement that in-bond cattle be held in quarantined feedlots, had proven sufficient in the past to prevent the spread of disease, and could continue to do so. We agree that the quarantine and movement restrictions of the in-bond program were effective in mitigating the disease risk associated with in-bond cattle. However, as we stated in the interim rule, the actions of some importers led us to believe that the posting of a bond was necessary to ensure compliance with those provisions of the in-bond program. Without the authority to institute a bond system similar to that administered by the U.S. Customs Service at U.S. ports of entry on the Mexican border prior to January 1, 1994, we found that it was necessary to terminate the in-bond program in order to prevent animal diseases from being introduced into, and disseminated within, the United States.

One commenter stated that the Animal and Plant Health Inspection Service (APHIS) was incorrect in claiming that cattle imported temporarily for feeding and return to Mexico were no longer covered by a bond; Customs bonds do still apply, the commenter argued, so the in-bond program could continue. We noted in the interim rule that Customs and APHIS continued to allow temporary importations of cattle from Mexico even after January 1, 1994, when the Customs Service discontinued its collection of duties and cash bonds on imported Mexican cattle in order to comply with provisions of the North American Free Trade Agreement (NAFTA). From January 1, 1994, until March 30, 1995, the effective date of the interim rule, the entry of those cattle was covered by a