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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 96-016-30]

RIN 0579-AA83

#### Karnal Bunt; Approved Treatments

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations to add three alternative treatments for seed that originates from a regulated area and that will be planted within a regulated area. We made this change based on new data that demonstrates that these treatments are comparable in effectiveness to the other treatments authorized. This action reduced the regulatory burden on wheat growers and other affected persons in the regulated area.

**EFFECTIVE DATE:** The interim rule was effective on November 28, 1997.

**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

In an interim rule effective on November 28, 1997, and published in the **Federal Register** on December 5, 1997 (62 FR 64263-64265, Docket No. 96-016-27), we amended the Karnal bunt regulations in § 301.89-13 by adding three alternative treatments for seed originating from a regulated area

that will be planted within a regulated area.

Comments on the interim rule were required to be received on or before February 3, 1998. We did not receive any comments by that date. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### Regulatory Flexibility Act

This rule affirms an interim rule that amended 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 made 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 reduces the regulatory burden on wheat growers and other affected persons in the regulated area.

Wheat growers stand to benefit from this change in two ways. First, it offers them more and less costly treatment options: The cost of chemicals for each of the three new treatment options for 100 pounds of seed is listed below:

1. 6.8 fl. oz. of Carboxin thiram (10% + 10%, 0.91 + 0.91 lb. ai./gal.) .....	\$1.60
2. 4.0 fl. oz. of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) .....	1.25
3. 3.0 fl. oz. of pentachloronitrobenzene (2.23 lb. ai./gal.) .....	0.50

Prior to the effective date of the interim rule, growers had only two treatment options: either a combination of options 1 and 3 or a combination of options 2 and 3.

The interim rule thus has the potential to save growers as much as \$1.60 or as little as \$0.50 per 100 pounds of seed. However, grower savings are likely to be no more than \$0.85 per 100 pounds of seed, since typically, growers used a combination of options 1 and 3 before the effective date of the interim rule, and have used option 2 since then because they believe it is the most effective single treatment

option. The \$0.85 in calculated savings is based on the cost of chemicals only; it does not take into account grower costs for labor or equipment. Any changes in labor or equipment costs which result from the interim rule are expected to be minimal, at most.

Second, the interim rule may improve growers' seed germination. Research shows that double treated seed may germinate in some cases at a lower rate than untreated seed. We anticipate that single treated seeds may in some cases have germination rates slightly lower than untreated seeds and slightly higher than double treated seeds. It should be noted that many factors affect germination, and it is not possible to attribute increase or decrease in germination only to seed treatments.

There are an estimated 373 wheat growers in the four States containing regulated areas (248 in Arizona, 21 in California, 23 in New Mexico, and 81 in Texas). This grower estimate is based on data for the 1997-98 planting season. However, the full impact of the interim rule will not be felt until the 1998-99 planting season, because some of the seed planted for this year's crop was treated with a double fungicide. That seed was planted before the interim rule became effective on November 28, 1997.

We anticipate that the number of wheat growers within the regulated area will increase by approximately 100 (to an estimated total of 473) during the 1998-99 planting season due to reduced regulatory restrictions. Presumably, most of these wheat growers currently have gross receipts of less than \$0.5 million, the U.S. Small Business Administration's threshold for classifying wheat producers as small entities. Accordingly, the impact of the interim rule will largely be on small entities.

It is estimated that during the 1998-99 planting season, 24,683,550 pounds of seed from the regulated area will be treated with a single fungicide prior to planting that seed in the regulated area. This is an average of 52,185 pounds of seed per grower, assuming 473 growers. Based on savings of \$0.85 per 100 pounds of seed, calculated above, it is estimated that growers will save up \$444 each year as a result of the interim rule. This savings, although positive, represents only 1 percent of the average wheat grower's annual sales.

This \$444 in cost savings is in addition to any benefits that might accompany potentially higher seed germination rates. If seed germination rates improve as anticipated, grower yield and sales may increase by as much as 2 percent.

Thus, the economic impact of the interim rule on small entities will be positive, but relatively insignificant, equivalent to no more than 3 percent of the annual sales for the average wheat grower.

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.

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

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

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 62 FR 64263–64265 on December 5, 1997.

**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).

Done in Washington, DC, this 28th day of August, 1998.

**Joan M. Arnoldi,**

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

[FR Doc. 98–23905 Filed 9–3–98; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

##### Animal and Plant Health Inspection Service

##### 9 CFR Parts 1 and 3

[Docket No. 93–076–10]

RIN 0579–AA59

##### Animal Welfare; Marine Mammals, Swim-With-the-Dolphin Programs

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the Animal Welfare regulations to establish standards for “swim-with-the-dolphin” interactive programs. These standards are being promulgated under the authority of the Animal Welfare Act and

are necessary to ensure that the marine mammals used in these programs are handled and cared for in a humane manner.

**EFFECTIVE DATE:** October 5, 1998.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1228, (301) 734–7833.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) (AWA), Congress authorized the Department of Agriculture to promulgate regulations and standards for the humane handling, care, treatment, and transportation of captive marine mammals by regulated entities. The AWA regulations are contained in title 9 of the Code of Federal Regulations, chapter I, subchapter A, parts 1, 2, and 3. Part 1 provides definitions of terms used in parts 2 and 3. Part 2 is designated as “Regulations,” and part 3 is designated as “Standards” for the humane handling, care, treatment, and transportation of covered animals by regulated entities. Subpart E of part 3 contains the standards applicable to marine mammals.

On January 23, 1995, we published in the **Federal Register** (60 FR 4383–4389, Docket No. 93–076–2) a proposal to amend the regulations by establishing standards for “swim-with-the-dolphin” (SWTD) programs in a new § 3.111.

We solicited comments concerning our proposal for an initial comment period of 30 days ending February 22, 1995, followed by three extensions ending March 24, 1995 (see 60 FR 10810, Docket No. 93–076–4; 60 FR 12908, Docket No. 93–076–5; and 60 FR 15524–15525, Docket No. 93–076–6).

##### Comments Received on the SWTD Proposed Rule

From January 23, 1995, the date the comment period on proposed rule Docket No. 93–076–2 opened, until March 24, 1995, the final close of the comment period, we received a total of 22 comments. They came from exhibitors, exhibitor associations, animal protection organizations, Federal agencies, and other members of the public. The comments are discussed below by topic.

In this final rule, we are establishing regulations and standards for the humane handling, care, and treatment of cetaceans used in SWTD programs. These regulations and standards address space requirements, veterinary care, personnel and handling requirements, and recordkeeping.

We are amending the definition we proposed for “Swim-with-the-dolphin (SWTD) program” to substitute the word “cetacean” for “dolphin” in the first sentence and throughout this final rule, except in the generally accepted name of these interactive programs. We consider the term cetacean to more accurately describe the types of marine mammals that may be used in SWTD programs. For consistency’s sake, in the preamble of this final rule, we use the term cetacean in discussing the comments submitted by the public. We consider such use to be consistent with the intent of the issues raised.

##### Opposition to SWTD Programs

One commenter opposed SWTD programs because of what the commenter saw as the risk of zoonotic diseases being transmitted to the cetaceans from humans. The commenter stated that because cetaceans tend to mask signs of illness, they do not lend themselves to efficient diagnosis, and, therefore, are unsuited to captivity.

The issues raised by the commenter, those of whether cetaceans should be used in SWTD programs, and whether cetaceans should be kept in captivity at all, transcend the scope of the proposed rule. The rule as proposed was predicated on the assumption that marine mammals will continue to be used in interactive programs. The proposed provisions were intended to address the regulatory needs of the specialized captive display SWTD programs, so that the animals used in the programs are treated in a humane manner. The statement that cetaceans tend to mask signs of illness as long as possible can be made for many species. However, competent use of behavioral and feeding observations, and preventive and therapeutic veterinary medical programs of care, can and do provide adequate information and a strong basis for efficient medical diagnosis and treatment. Therefore, we are making no changes to the final rule based on this comment.

One commenter stated that no new SWTD programs should be approved until APHIS has independent, trained observers conduct a long-term continuous study on all aspects of human/cetacean interaction.

Prior to the reauthorization of the Marine Mammal Protection Act (MMPA) and the cessation of SWTD program oversight by the National Marine Fisheries Service (NMFS), U.S. Department of Commerce, NMFS commissioned an independent study of the SWTD programs operating at that time. The results of that study, submitted to NMFS in 1994, and