# Proposed Rules

Federal Register
Vol. 68, No. 130
Tuesday, July 8, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 02–056–1]**

### Karnal Bunt; Revision of Domestic Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend our Karnal bunt regulations to incorporate updates and improvements identified as a result of our review of their provisions. The proposed changes include clarifying our method for determining Karnal bunt infestation and the circumstances under which a field or area would be classified as a regulated area, as well as adding provisions and criteria for the release of fields or areas from regulation; modifying the restrictions that apply to the planting of wheat, durum wheat, and triticale seed originating in regulated areas; and modifying cleaning and disinfection requirements for certain equipment and storage facilities involved in the harvesting, planting, or storage of Karnal bunt-positive host crops or seeds, as well as providing for the disposal of chemically treated, spore-positive seed. These proposed changes would improve the clarity and effectiveness of the regulations, thus helping to prevent the spread of Karnal bunt within the United States.

**DATES:** We will consider all comments we receive on or before September 8, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–056–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–056–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–056–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Spaide, Senior Program Manager, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–7819.

**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 primarily through the movement of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine. Therefore, 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 domestic quarantine and other regulations regarding Karnal bunt are set forth in ''Subpart—Karnal Bunt'' (7 CFR 301.89–1 through 301.89–16, referred to below as the regulations). Among other things, the regulations describe articles and areas regulated for Karnal bunt; criteria for classifying areas or fields as regulated areas; requirements for planting wheat, durum wheat, and triticale in regulated areas; restrictions on movement of regulated articles from regulated areas; permitting, cleaning, disinfection, and treatment requirements; and requirements for growers, handlers, seed companies, and other entities seeking compensation from the USDA to mitigate losses or expenses incurred because of Karnal bunt. The regulations are designed to prevent the artificial spread of Karnal bunt.

We have conducted a review of our regulations. As a result of this review, we are proposing to incorporate changes aimed at improving the clarity, transparency, and effectiveness of the regulations. More specifically, the proposed changes would include the following: Clarifying our method for determining Karnal bunt infestation; adding or removing several definitions; adding or removing certain articles from the list of regulated articles; clarifying the circumstances under which a field or area would be classified as a regulated area, as well as adding provisions and criteria for the release of fields or areas from regulation; modifying the restrictions that apply to the planting of wheat, durum wheat, and triticale seed originating in regulated areas; and modifying cleaning and disinfection requirements for mechanized harvesting equipment, seed conditioning equipment, and storage facilities involved in the harvesting, planting, or storage of Karnal bunt-positive host crops or seed, as well as adding a requirement for the disposal of chemically treated, spore-positive seed.

#### Definitions

In § 301.89–1, we are proposing to remove two of the existing definitions, amend three, and add six new ones. We would remove the definition of *farm tools*, as farm tools are no longer considered regulated articles and that term is no longer used in the regulations. We would also remove the definition of *milling products and byproducts*, as we are proposing in this document to remove milling products and byproducts from the list of regulated articles.

We would amend the definition of *contaminated seed* to specify that seed will be determined to be contaminated based on the presence of bunted kernels or teliospores. The regulations in § 301.89–4 currently provide that seed originating in a regulated area must be tested and found free of spores and bunted kernels before it may be planted in a regulated area; our proposed change to the definition of *contaminated seed* would reflect that standard. Similarly, we would amend the definition of *infestation (infected)* to specifically identify bunted kernels in grain and bunted kernels or teliospores in seed as identifiable stages of development of *Tilletia indica*, the presence of which will lead to a determination of infestation. The current definition of *infestation (infested)* would remain the same, but for identifying the stages of development of *Tilletia indica.* Again, including the bunted kernel standard for grain and the bunted kernel/teliospore standards for seed in the definition of *infestation (infected)* would make that definition consistent with the standards used elsewhere in the regulations. We would also amend the definition of *mechanized cultivating equipment and mechanized harvesting equipment* by adding grain buggies, trucks, and swathers as examples of equipment used for harvesting purposes and by removing cotton harvesters as one of those examples. Cotton harvesters are at low risk for becoming contaminated with the Karnal bunt pathogen, whereas grain buggies, trucks, and swathers used in connection with the harvest of wheat, durum wheat, or triticale are at greater risk of contamination.

We would add definitions for *grain*, *hay*, *host crops, plant*, *seed*, and *straw*. We are proposing to include all of these articles on the list of regulated articles in § 301.89–2, so including their definitions would aid users in understanding and complying with the regulations. We would define *grain* as wheat, durum wheat, and triticale used for consumption or processing, while *seed* would be defined as wheat, durum wheat, and triticale used for propagation. We propose to define *host crops* as consisting of plants or plant parts, including grain, seed, or hay, of wheat, durum wheat, and triticale. We propose to define *plant* as any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed. This is the definition provided in the Plant Protection Act (7 U.S.C. 7701 *et seq.*). We would define *hay* as consisting of host crops cut and dried for feeding to livestock. The definition would also note that hay cut after reaching the dough stage may contain mature kernels of the host crop. *Straw* would be defined as the vegetative material left after the harvest of host crops. This proposed definition would also refer to the common uses of straw as animal feed, bedding, mulch, or for erosion control.

**Regulated Articles**

We are proposing several changes to the list of regulated articles in § 301.89–2 of the regulations. Currently, paragraph (a) of that section identifies conveyances such as trucks, railroad cars, and other containers used to move wheat, durum wheat, or triticale as regulated articles, and paragraph (b) identifies grain elevators, equipment, and structures used to store or handle those commodities as regulated articles. We would amend these paragraphs to specify that the conveyances listed in paragraph (a) and the equipment and structures listed in paragraph (b) would be regulated articles only if used to move or to store and handle the grain of host crops produced in a regulated area that test positive for Karnal bunt due to the presence of bunted kernels.

Current paragraph (c) of § 301.89–2 lists milling products or byproducts other than flour as regulated articles. We would remove this paragraph and would no longer regulate milling products or byproducts. Such products and byproducts are believed to present a low risk of spreading Karnal bunt because the milling process would have eliminated bunted kernels.

We are proposing to add hay cut after the dough stage to the list of regulated plants or plant parts in current paragraph (d). As noted in the proposed definition of *hay* discussed previously, hay cut after reaching the dough stage may contain mature kernels of the host crop and could, therefore, serve as a means of spreading Karnal bunt. We would also amend that paragraph to specify that the listed plants or plant parts would be considered regulated articles only if they were produced in a regulated area, and would provide exceptions for certain straw, stalks, and seed heads that have been processed or manufactured prior to movement and are intended to be used indoors for decorative purposes. We consider these items to present a low risk of transmitting Karnal bunt because of their end use as indoor decorative material and already exempt those articles from the certificate/limited permit requirements of § 301.89–5. Because we would specify that these articles are not regulated articles, it would no longer be necessary to provide an exemption for them in § 301.89–5.

Current paragraphs (f) through (h), which identify as regulated articles root crops with soil, soil from areas where field crops are produced, and manure from animals that have fed on untreated or raw wheat, durum wheat, or triticale, would be removed. Bunted kernels are not associated with these articles, and while they may contain spores of *Tilletia indica,* we regulate only seed for spores. In addition, the end uses of these articles make them unlikely to transmit Karnal bunt. Root crops, for example, would go to market after harvesting and would not be replanted.

Current paragraph (i) lists mechanized harvesting equipment, when used in the production of wheat, durum wheat, and triticale that tests positive for Karnal bunt, as a regulated article. To reflect the standards used elsewhere in the regulations, as described in the proposed definition of *infestation (infected)* in § 301.89–1, we would amend that paragraph to specify that a positive test result for Karnal bunt would be determined by the presence of bunted kernels. Similarly, we would amend current paragraph (j), which lists seed conditioning equipment used in the production of wheat, durum wheat, and triticale as a regulated article, to specify that the seed conditioning equipment would be considered a regulated article only if it had been used in the production of wheat, durum wheat, and triticale found to contain the spores of *Tilletia indica.* We would also amend this paragraph to include storage/handling equipment.

Current paragraph (k) provides that any product, article, or means of conveyance not covered in the previous paragraphs will be considered to be a regulated article when an inspector determines that the product, article, or means of conveyance presents a risk of spreading Karnal bunt due to its proximity to an infestation of Karnal bunt and the person in possession of the product, article, or means of conveyance has been notified that it is regulated under the regulations. We would amend that paragraph by removing the language pertaining to the proximity of the product, article, or means of conveyance to an infestation of Karnal bunt and would replace it with a statement specifying that the inspector's determination of risk would be based upon appropriate testing and the intended use of the product, article, or means of conveyance.

Because, as discussed previously, we are proposing to remove paragraph (c) and paragraphs (f) through (h), it would be necessary to redesignate paragraphs

(d) and (e) as paragraphs (c) and (d), respectively, and paragraphs (i) through (k) as paragraphs (e) through (g), respectively.

**Regulated Areas**

In § 301.89–3, paragraphs (a) through (e) provide criteria for the designation of States or areas of States as regulated areas for Karnal bunt, and paragraph (f) describes the boundaries of regulated areas. Current paragraph (e)(3) indicates that a field or area will be classified as a regulated area if it contains at least one field that was found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted kernel. We would remove the reference to spores so that the paragraph would be consistent with the other provisions in paragraph (e), which classify fields or areas as regulated areas based on the presence of bunted kernels. Grain would be tested for spores as well as bunted kernels only if intended for use as seed.

We are also proposing to add a new paragraph to § 301.89–3 that would provide conditions under which a field known to have been infected with Karnal bunt, as well as any non-infected acreage surrounding the field, could be released from regulation. Under these proposed conditions, such a field would be eligible for release from regulation if it is no longer being used for crop production or if it has been subjected to any one of the following management practices each year for 5 consecutive years (the practice used may vary from year to year): (1) Planted with a cultivated non-host crop, (2) tilled once annually, or (3) planted with a host crop that tests negative, through the absence of bunted kernels, for Karnal bunt. These criteria are consistent with emerging technical information about Karnal bunt. We would add these proposed conditions to § 301.89–3 as paragraph (f), while the current paragraph (f), which describes the boundaries of the currently regulated areas, would be redesignated as paragraph (g). A reference in paragraph (d) to the current paragraph (f) would be amended to reflect this redesignation.

**Planting**

We would amend the planting restrictions contained in § 301.89–4. Under paragraph (a) of that section, all wheat seed, durum wheat seed, and triticale seed originating within a regulated area must be tested and found free from bunted wheat kernels and spores before it may be planted within a regulated area. Current paragraph (b) prohibits the planting of wheat, durum wheat, and triticale outside a regulated area if they originated inside a regulated area. We are proposing to amend § 301.89–4 by removing current paragraph (b) and by allowing wheat, durum wheat, or triticale that originates in a regulated area and that has been tested and found free of bunted kernels and spores to be used as seed in fields outside the regulated area. We believe that wheat, durum wheat, or triticale that has been tested and found free of bunted kernels and spores would not pose a risk of disease transmission, so there would be no need to prohibit its planting outside a regulated area. (As indicated, planting inside a regulated area is currently, and would continue to be, allowed.)

**Movement of Regulated Articles From Regulated Areas**

Section 301.89–5 provides conditions under which regulated articles may be moved from regulated areas. Paragraph (a)(4) of that section provides that straw/stalks/seed heads for decorative purposes that have been processed or manufactured prior to movement and are intended for use indoors can be moved from a regulated area without a certificate or limited permit. Because, as noted earlier, we are proposing to amend § 301.89–2(d) to exclude these articles from the list of regulated articles, we are proposing to remove § 301.89–5(a)(4).

**Issuance of a Certificate or Limited Permit**

Section 301.89–6 provides criteria for the issuance of certificates or limited permits for the movement of regulated articles outside regulated areas. Current paragraph (b) states that to be eligible for movement under a certificate, grain from a field within a regulated area must be tested prior to its movement from the field or before it is commingled with other grains and found free from bunted kernels. If bunted kernels are found, the grain will be eligible for movement only under a limited permit issued in accordance with paragraph (c). Paragraph (b) goes on to provide that no wheat, durum wheat, or triticale moved out of a regulated area under a certificate may be used for planting outside the regulated area.

We are proposing to amend § 301.89–6(b) to add references to hay cut after reaching the dough stage in the first and second sentences, in keeping with our proposal to add such hay to the list of regulated articles in § 301.89–2. The second sentence of proposed paragraph (b) would indicate that if bunted kernels are found in grain or hay that comes from a field within a regulated area, the grain or hay could only be moved out of the regulated area under a limited permit issued in accordance with paragraph (c) of § 301.89–6, and the field of production will be considered positive for Karnal bunt. As noted earlier, the presence of bunted kernels indicates infestation. We would also remove the provision in paragraph (b) prohibiting the planting of regulated articles outside regulated areas because, as discussed earlier, our proposed § 301.89–4 would allow such planting under certain conditions.

We are also proposing to amend paragraph (c) of § 301.89–6. That paragraph currently describes the criteria for issuing limited permits for the movement of regulated articles within or outside regulated areas. Under our proposal, we would no longer require limited permits for movement of regulated articles within regulated areas. This restriction, while appropriate for an eradication program, generally is not needed for a control program like the current Karnal bunt program when a commodity is moving only within a regulated area.

**Cleaning, Disinfection, and Disposal**

We would revise § 301.89–12 to add or amend provisions relating to the cleaning and, when necessary, disinfection of certain regulated articles for which treatments are prescribed in § 301.89–13 and to provide for the disposal of certain seed. Current § 301.89–12 states that mechanized harvesting equipment that has been used to harvest host crops that test positive for Karnal bunt and seed conditioning equipment that has been used in the production of any host crops must be cleaned and disinfected in accordance with § 301.89–13(a) prior to movement from a regulated area. Our revised § 301.89–12 would be considerably broader in scope.

Proposed paragraph (a) states that mechanized harvesting equipment that has been used to harvest host crops that test positive for Karnal bunt based on the presence of bunted kernels must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with § 301.89–13 prior to movement from a regulated area. Because cleaning alone may suffice to remove bunted kernels from such equipment, we would no longer require disinfection in all cases, but inspectors would retain the authority to require disinfection when necessary. Proposed paragraph (a) also accords with our proposed new definition of *infestation (infected)* in § 301.89–1 by indicating that the

determination of host-crop infestation is based on the presence of bunted kernels.

Seed conditioning equipment would be provided for separately in proposed paragraph (b), which states that seed conditioning equipment that was used in the conditioning of seed containing spores of *Tilletia indica* must be cleaned and disinfected in accordance with § 301.89–13 prior to handling seed that has tested negative for spores or to being moved from a regulated area. We would retain the disinfection requirement for seed conditioning equipment because disinfection is thought to be necessary to deactivate spores.

A new paragraph (c) would state that all grain storage facilities, including on-farm storage, used to store seed that has tested bunted kernel or spore positive or grain that has tested bunted-kernel positive must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with § 301.89–13 if the facilities will be used to store grain or seed in the future. As is the case with mechanized harvesting equipment, cleaning alone may sometimes suffice to decontaminate grain storage facilities. The decision to require disinfection as well would be left to the inspector.

A new paragraph (d) would provide exceptions to the cleaning and disinfection requirements for certain conveyances used to move bunted-kernel-positive host crops, including trucks, railroad cars, and other containers, if the conveyances are self-cleaning. In order to be considered self-cleaning, the conveyances would have to have sloping metal sides leading directly to a bottom door or slide chute.

Finally, a new paragraph (e) would state that spore-positive wheat, durum wheat, or triticale seed that has been treated with any chemical that renders it unfit for human or animal consumption would have to be disposed of by means of burial under a minimum of 24 inches of soil in a non-agricultural area that will not be cultivated or in an approved landfill. Spore-positive seed cannot be used for planting, and fungicide or other chemical treatments not approved for use in feed renders the seed unfit for use as feed. Thus, disposal by burial is necessary to prevent the seed from being used for any purpose.

**Treatments**

Current paragraph (a) of § 301.89–13 describes approved cleaning and disinfection techniques for conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures used for storing and handling wheat, durum wheat, or triticale for which cleaning and disinfection are required. We would amend the paragraph to coincide with the changes to the cleaning and disinfection requirements that we are proposing in § 301.89–12. The proposed paragraph would treat cleaning and disinfection separately, stating that all conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures used for storing and handling wheat, durum wheat, or triticale required to be cleaned under the regulations must be cleaned by removing all soil and plant debris and that if disinfection is required in addition to cleaning, the articles must be disinfected by one of the methods specified in § 301.89–13, unless a particular treatment is designated by an inspector. This paragraph would become the introductory text of our proposed § 301.89–13.

The disinfection method specified in current paragraph (a)(1) involves wetting all surfaces of the regulated articles to the point of runoff with a solution of 1.5 percent sodium hypochlorite—*e.g.*, with a solution of sodium hypochlorite mixed with water applied at the rate of 1 gallon of household chlorine bleach (5.2 percent sodium hypochlorite) mixed with 2.5 gallons of water—and letting stand for 15 minutes. We would amend this paragraph to indicate that the bleach used must be Ultra Clorox brand regular bleach (6 percent sodium hypochlorite) or CPPC Ultra Bleach 2 (6.15 percent sodium hypochlorite). These are the only two bleach products that are approved for such use by the Environmental Protection Agency.

The minimum temperature for the hot water and detergent treatment, which is specified in current paragraph (a)(3) as 180 °F, would be changed to 170 °F, which has been determined to be the temperature needed to inactivate Karnal bunt. A temperature of 170 °F is also specified for the treatment described in current paragraph (a)(2), which would remain unchanged.

The Federal quarantine exemption permitting the use of methyl bromide for treatment of Karnal bunt has been withdrawn. Therefore, we are proposing to remove current paragraph (a)(4), which specifies fumigation with methyl bromide as a disinfection method for the conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures covered under this section, and paragraph (b), which specifies fumigation with methyl bromide as a treatment for soil.

Current paragraph (c), which specifies a treatment for millfeed that has resulted from the milling of Karnal bunt-positive wheat, would be removed. Millfeed, like other milling products and byproducts, would no longer be considered a regulated article under this proposed rule.

Finally, we would remove the current paragraph (e), which contains treatment requirements for seed used for germ plasm or research purposes. Because we have eliminated the requirement for fungicide treatment of seed as of May 1, 2002, and are proposing, in § 301.89–4, to allow the movement of bunted kernel- and spore-negative seed from regulated areas, these treatment requirements would no longer apply.

For greater clarity, we would redesignate the bleach treatment in current paragraph (a)(1) as paragraph (a), the steam treatment in current paragraph (a)(2) as paragraph (b), and the hot water and detergent treatment in current paragraph (a)(3) as paragraph (c).

**Miscellaneous**

Section 301.89–14, which deals with compensation for the 1995–1996 crop season, is outdated and, therefore, would be removed and reserved.

In addition to the changes described above, we propose to make some nonsubstantive editorial changes to the regulations. These changes would include the updating of the addresses given in some footnotes.

The intent of this proposed rule is to improve the clarity, transparency, and effectiveness of our Karnal bunt regulations in order to help to prevent the spread of Karnal bunt within the United States.

*Executive Order 12866 and Regulatory Flexibility Act*

This proposed 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.

This proposed rule is intended to improve the clarity, transparency, and effectiveness of our Karnal bunt regulations. This proposal is the result of a review of the regulations.

Of the proposed substantive changes to the regulations, four stand out as having the potential to have the most economic impact: (1) Adding provisions for removing fields or areas from the list of regulated areas, (2) modifying seed planting restrictions, (3) removing animal manure from the list of regulated articles, and (4) modifying cleaning and disinfecting requirements for seed conditioning equipment. These four

changes—all of which would have a favorable impact on any affected entities—are discussed individually in the paragraphs that follow.

**Adding Provisions for Removing Fields or Areas From the List of Regulated Areas**

The current regulations do not contain criteria for the removal of fields or areas from the list of regulated areas, although we have removed some fields or areas from regulation in the past on a case-by-case basis. This proposed rule would establish uniform criteria for the removal of fields or areas from regulation.

Under the current regulations, even wheat testing Karnal bunt-negative is not eligible for a phytosanitary certificate with an additional declaration if it was grown in fields that previously tested Karnal bunt-positive—a situation that adversely impacts the wheat's marketability and value.[1] By allowing wheat from those fields to become eligible for such a certificate (if certain conditions are met), the proposed rule would yield potential—and in some cases immediate—economic benefits for affected producers.

In San Saba and McCulloch Counties, TX, there are approximately 28 producers with fields that previously tested positive for Karnal bunt—including about 8 that would be immediately eligible for deregulation since they have already satisfied the proposed conditions for release. It is estimated that these 28 producers would have received, collectively, at least about $295,000 more for their wheat this past crop season if it had been eligible for export—an average of about $10,500 per producer. These dollar estimates are based on a price differential of at least $1.80 per bushel between uncertified wheat sold for animal feed and certified wheat in Texas sold for the export market.[2]

This proposed rule also has the potential to enable the approximately 25 producers in 4 north Texas counties (Young, Throckmorton, Archer, and Baylor) with fields in a regulated area to recover lost revenues. Based on their estimated production capacity of about 81,000 bushels of wheat per crop season, the proposed rule, by allowing the 25 growers to obtain the phytosanitary certificate with the additional declaration needed to market their wheat for export, has the potential to enable them to recover $145,000 or more in annual revenues, based on current prices.[3]

Growers in Arizona and California would also benefit. The proposed rule would enable the approximately 67 producers in Arizona with fields that previously tested Karnal bunt-positive, to recover, collectively, revenues estimated at about $1,433,000 per year. The four producers in California with fields that previously tested positive would stand to recover, collectively, about $210,000 per year in lost revenues.[4]

**Modifying Seed Planting Requirements**

Under the current regulations, wheat seed grown in regulated areas cannot be planted outside those areas. Under the proposed rule, such seed would be eligible for planting outside the regulated areas if it were tested and found free of both bunted kernels and spores.

Seed producers in regulated areas would benefit because they would be able to sell their seed outside those areas, recapturing markets that they had previously lost. Furthermore, by removing a disincentive for certified seed producers to operate in regulated areas, the proposed rule also has the potential to benefit owners of seed conditioning equipment who operate in those areas.

Even producers who do not sell seed outside the regulated area stand to benefit. In Texas, for example, it is not uncommon for producers to hold back a quantity of grain for use as seed in the next planting season. With the proposed changes in effect, producers in regulated areas would be able to use their grain as seed in fields that they operate outside the regulated area—instead of having to purchase higher-priced commercial seed for use in those fields. In San Saba and McCulloch Counties, TX, it is estimated that 14 producers would have saved a total of about $60,000 this past crop season if they had been able to use their grain as seed in fields that they operated outside the regulated area.[5] It is estimated that about half of the approximately 450 wheat producers in the regulated areas of northern Texas would benefit to at least some extent from this aspect of the proposed rule.

**Removing Animal Manure From the List of Regulated Articles**

Currently, manure from animals that have fed on untreated or raw wheat is a regulated article under § 301.89–2. Although not set forth in the regulations, it has been our practice to require a 5-day ''clean-out'' period for livestock that have been fed untreated or raw wheat before the animals can be moved from the regulated area. During the clean-out period, livestock can be fed only Karnal bunt-negative wheat or a non-host crop. The proposal would remove animal manure from the list of regulated articles in § 301.89–2, effectively eliminating the clean-out requirement.

This aspect of the proposed rule would benefit livestock producers, since the clean-out requirement may compel them to switch their animals to an alternative, but less desirable, feed crop during the 5-day period. A change in feeding rations during the clean-out period can adversely impact weight gain, which, in turn, can adversely affect animal prices. In northern Texas, where this proposed rule has the potential to have the most impact, it has been estimated that cattle can lose up to 20 percent of their weight in the first week following a feed-crop change. For a single head of cattle weighing 700 lbs. before clean out, therefore, the clean-out requirement can translate into a loss of up to $109 (based on the current price of about $0.78/lb).

Livestock producers would further benefit because clean-out can also involve gathering the animals and transporting them to a new location, such as a new pasture, during the 5-day period. The time and expense associated with gathering and transporting cattle to a new location for clean-out would vary among individual livestock producers, depending on such factors as the distance to the new location, the cost for the use of the new location, and the equipment needed for transport to the new location.

To date in northern Texas, only a few cattle producers have had to clean out their animals, since most moved their animals before the wheat reached the soft dough stage. However, there are at least 500 cattle producers in northern Texas who would potentially benefit from this aspect of the proposed rule, including some who move up to about 25,000 head annually.[6]

[1] Major foreign importers will not accept wheat from the United States that does not have such an additional declaration. Furthermore, many U.S. elevators will not commingle wheat from previously tested positive fields with wheat destined for the export market.

[2] Source: George Nash (APHIS). Approximately 70 percent of the wheat produced in Texas is exported.

[3] Source: Barte Smith (APHIS).

[4] Dollar estimates are derived from data provided by Michael Hennessey and Cindy Umbdenstock (APHIS). Dollar estimates assume a price differential of $1.80/bushel between uncertified and certified wheat.

[5] George Nash (APHIS).

[6] Source: Barte Smith (APHIS).

**Modifying Cleaning and Disinfecting Requirements for Seed Conditioning Equipment**

Under the current regulations, seed conditioning equipment used in the production of any host crop must be cleaned and disinfected (using USDA-approved methods) prior to being moved from the regulated area. (Cleaning means the removal of all soil and plant debris, and disinfecting means the treatment by one of three approved methods, including steam and hot water and detergent.)

Under the proposal, only seed conditioning equipment that was used to condition seed that was tested and found to contain spores or bunted kernels would have to be cleaned and disinfected prior to being moved from a regulated area (or prior to handling spore-negative seed).

As a result of this proposed rule, fewer pieces of portable seed conditioning equipment would have to be cleaned and disinfected. The affected entities would benefit, because a single cleaning and disinfecting is estimated to cost at least $150. However, the number of entities potentially affected by this aspect of the proposed rule, and the potential impact on each, is unknown.

*Economic Impact on Small Entities*

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. This proposed rule should have an overall beneficial impact on the entities affected by the regulations, especially wheat producers. However, we do not expect it would have a significant economic impact on a substantial number of entities, large or small.

Parts of three States (Texas, Arizona, and California) are currently regulated for Karnal bunt. In Texas, there are approximately 285,000 agricultural acres and about 550 wheat producers under regulation. The equivalent figures for Arizona and California are, respectively, 465,000 acres (120 producers) and 105,000 acres (18 producers).

Wheat producers that would be affected by this proposal are likely to be small in size, when judged by the U.S. Small Business Administration's (SBA's) standards. This assumption is based on composite data for providers of the same and similar services. In 1997, Arizona had a total of 6,135 farms of all types. Of those farms, 89 percent had annual sales that year of less than $500,000, well below the SBA's small entity threshold of $750,000 for wheat farms. Similarly, the comparable percentages of small entities for Texas (194,301 total farms) and California (74,126 total farms) were 98 percent, and 89 percent, respectively.

For some of the affected entities, especially the smaller ones, the benefits of this proposed rule change could be substantial. However, the number of entities that would experience substantial benefits should be small relative to all entities potentially affected by this proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

*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, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

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

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.89–1 would be amended by removing the definitions for *farm tools* and *milling products and byproducts* and by adding, in alphabetical order, definitions for *grain, hay, host crops, plant, seed,* and *straw* and revising the definitions for *contaminated seed, infestation (infected),* and *mechanized cultivating equipment and mechanized harvesting equipment* to read as follows:

**§ 301.89–1 Definitions.**

* * * * *

*Contaminated seed.* Seed from sources in which the Karnal bunt pathogen (*Tilletia indica* (Mitra) Mundkur) has been determined to exist by the presence of bunted kernels or teliospores.

* * * * *

*Grain.* Wheat, durum wheat, and triticale used for consumption or processing.

* * * * *

*Hay.* Host crops cut and dried for feeding to livestock. Hay cut after reaching the dough stage may contain mature kernels of the host crop.

*Host crops.* Plants or plant parts, including grain, seed, or hay, of wheat, durum wheat, and triticale.

*Infestation (infected*). The presence of Karnal bunt, or any identifiable stage of development (*i.e.*, bunted kernels in grain, bunted kernels or teliospores in seed) of the fungus *Tilletia indica* (Mitra) Mundkur, or the existence of circumstances that make it reasonable to believe that Karnal bunt is present.

* * * * *

*Mechanized cultivating equipment and mechanized harvesting equipment.* Mechanized equipment used for soil tillage, including tillage attachments for farm tractors—*e.g.*, tractors, disks, plows, harrows, planters, and subsoilers; mechanized equipment used for harvesting purposes—*e.g.*, combines, grain buggies, trucks, swathers, and hay balers.

* * * * *

*Plant.* Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

*Seed.* Wheat, durum wheat, and triticale used for propagation.

* * * * *

*Straw.* The vegetative material left after the harvest of host crops. Straw is generally used as animal feed, bedding, mulch, or for erosion control.

3. Section 301.89–2 would be revised to read as follows:

**§ 301.89–2 Regulated articles.**

The following are regulated articles:

(a) Conveyances, including trucks, railroad cars, and other containers used to move host crops produced in a regulated area that have tested positive for Karnal bunt through the presence of bunted kernels;

(b) Grain elevators/equipment/structures used for storing and handling host crops produced in a regulated area that have tested positive for Karnal bunt through the presence of bunted kernels;

(c) Plants or plant parts (including grain, seed, and straw) and hay cut after reaching the dough stage of all varieties of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*) that are produced in a regulated area, except for straw/stalks/seed heads for decorative purposes that have been processed or manufactured prior to movement and are intended for use indoors;

(d) *Tilletia indica* (Mitra) Mundkur;

(e) Mechanized harvesting equipment that has been used in the production of wheat, durum wheat, or triticale that has tested positive for Karnal bunt through the presence of bunted kernels;

(f) Seed conditioning equipment and storage/handling equipment that has been used in the production of wheat, durum wheat, and triticale found to contain the spores of *Tilletia indica;* and

(g) Any other product, article, or means of conveyance when:

(1) An inspector determines that it presents a risk of spreading Karnal bunt based on appropriate testing and the intended use of the product, article, or means of conveyance; and

(2) The person in possession of the product, article, or means of conveyance has been notified that it is regulated under this subpart.

4. Section 301.89–3 would be amended as follows:

a. In paragraph (d), by revising the fourth sentence to read as set forth below.

b. By revising paragraph (e)(3) to read as set forth below.

c. By redesignating paragraph (f) as paragraph (g) and adding a new paragraph (f) to read as set forth below.

d. In newly redesignated paragraph (g), by revising the introductory text to read as set forth below.

**§ 301.89–3 Regulated areas.**

* * * * *

(d) * * * As soon as practicable, this area either will be added to the list of designated regulated areas in paragraph (g) of this section, or the Administrator will terminate the designation. * * *

(e) * * *

(3) It is a distinct definable area that contains at least one field that has been determined to be associated with grain at a handling facility containing a bunted kernel of a host crop (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to the field associated with the bunted kernel at the handling facility).

(f) A field known to have been infected with Karnal bunt, as well as any non-infected acreage surrounding the field, will be released from regulation if:

(1) The field is no longer being used for crop production; or

(2) Each year for a period of 5 consecutive years, the field is subjected to any one of the following management practices (the practice used may vary from year to year):

(i) Planted with a cultivated non-host crop;

(ii) Tilled once annually; or

(iii) Planted with a host crop that tests negative, through the absence of bunted kernels, for Karnal bunt.

(g) The following areas or fields are designated as regulated areas (maps of the regulated areas may be obtained by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 98, Riverdale, MD 20737–1236):

* * * * *

5. Section 301.89–4 would be revised to read as follows:

**§ 301.89–4 Planting.**

Any wheat, durum wheat, or triticale that originates within a regulated area must be tested and found free from bunted wheat kernels and spores before it may be used as seed within or outside a regulated area.

**§ 301.89–5 [Amended]**

6. Section 301.89–5 would be amended as follows:

a. In paragraph (a)(3), footnote 1, by removing the words ''Domestic and Emergency Operations, 4700 River Road Unit 134'' and adding the words ''Surveillance and Emergency Programs Planning and Coordination, 4700 River Road Unit 98'' in their place.

b. By removing paragraph (a)(4).

7. Section 301.89–6 would be amended as follows:

a. In the introductory text of paragraph (a), footnote 2, by removing the words ''Domestic and Emergency Operations, 4700 River Road Unit 134'' and adding the words ''Surveillance and Emergency Programs Planning and Coordination, 4700 River Road Unit 98'' in their place and by removing the words '', or from the Karnal Bunt Project, 3658 E. Chipman Rd. Phoenix, Arizona 85040''.

b. By revising paragraph (b) and the introductory text of paragraph (c) to read as set forth below.

**§ 301.89–6 Issuance of a certificate or limited permit.**

* * * * *

(b) To be eligible for movement under a certificate, hay cut after the dough stage or grain from a field within a regulated area must be tested prior to its movement from the field or before it is commingled with similar commodities and must be found free from bunted kernels. If bunted kernels are found, the grain or hay will be eligible for movement only under a limited permit issued in accordance with paragraph (c) of this section, and the field of production will be considered positive for Karnal bunt.

(c) An inspector or a person operating under a compliance agreement will issue a limited permit for the movement outside the regulated area of a regulated article not eligible for a certificate if the inspector determines that the regulated article:

* * * * *

8. Section 301.89–7 would be amended by revising footnote 4 to read as follows:

**§ 301.89–7 Compliance agreements.**

* * * * *[4]

[4] Compliance agreements may be initiated by contacting a local office of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices of Plant Protection and Quarantine may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Surveillance and Emergency Program Planning and Coordination, 4700 River Road Unit 98, Riverdale, Maryland 20737–1236.

9. Section 301.89–12 would be revised to read as follows:

**§ 301.89–12 Cleaning, disinfection, and disposal.**

(a) Mechanized harvesting equipment that has been used to harvest host crops that test positive for Karnal bunt based on the presence of bunted kernels must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with § 301.89–13 prior to movement from a regulated area.

(b) Seed conditioning equipment that was used in the conditioning of seed that was tested and found to contain

spores or bunted kernels of *Tilletia indica* must be cleaned and disinfected in accordance with § 301.89–13 prior to being used in the conditioning of seed that has tested negative for the spores of *Tilletia indica* or to being moved from a regulated area.

(c) Any grain storage facility, including on-farm storage, that is used to store seed that has tested bunted-kernel or spore positive or grain that has tested bunted-kernel positive must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with § 301.89–13 if the facility will be used to store grain or seed in the future.

(d) Conveyances used to move bunted-kernel-positive host crops, including trucks, railroad cars, and other containers, that have sloping metal sides leading directly to a bottom door or slide chute, are self cleaning and will not be required to be cleaned and disinfected.

(e) Spore-positive wheat, durum wheat, or triticale seed that has been treated with any chemical that renders it unfit for human or animal consumption must be disposed of by means of burial under a minimum of 24 inches of soil in a non-agricultural area that will not be cultivated or in an approved landfill.

10. Section 301.89–13 would be revised to read as follows:

**§ 301.89–13 Treatments.**

All conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures used for storing and handling wheat, durum wheat, or triticale required to be cleaned under this subpart must be cleaned by removing all soil and plant debris. If disinfection is required by an inspector in addition to cleaning, the articles must be disinfected by one of the methods specified in paragraph (a), (b), or (c) of this section, unless a particular treatment is designated by an inspector. The treatment used must be that specified by an inspector:

(a) Wetting all surfaces to the point of runoff with one of the following 1.5 percent sodium hypochlorite solutions and letting stand for 15 minutes, then thoroughly washing down all surfaces after 15 minutes to minimize corrosion:

(1) One part Ultra Clorox brand regular bleach (6 percent sodium hypochlorite; EPA Reg. No. 5813–50) in 3 parts water; or

(2) One part CPPC Ultra Bleach 2 (6.15 percent sodium hypochlorite; EPA Reg. No. 67619–8) in 3.1 parts water.

(b) Applying steam to all surfaces until the point of runoff, and so that a critical temperature of 170 °F is reached at the point of contact.

(c) Cleaning with a solution of hot water and detergent, applied under pressure of at least 30 pounds per square inch, at a minimum temperature of 170 °F.

**§ 301.89–14 [Removed and Reserved]**

11. Section 301.89–14 would be removed and reserved.

Done in Washington, DC, this 1st day of July 2003.

**Kevin Shea,**

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

[FR Doc. 03–17202 Filed 7–7–03; 8:45 am]

**BILLING CODE 3410–34–P**

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 7 CFR Part 373

## 9 CFR Part 60

**[Docket No. 02–062–1]**

**RIN 0579–AB50**

## Cost-Sharing for Animal and Plant Health Emergency Programs

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing new regulations that would establish criteria to determine the Federal share of financial responsibility relative to States and other cooperators in an emergency in which an animal or plant pest or disease threatens the agricultural production of the United States. The increasing frequency of new pest and disease incursions, the variation in cost-sharing arrangements among past and present emergency programs, and constraints on Federal and State resources necessitate a more consistent and predictable approach to cost allocation among program participants. The cost-sharing arrangements provided in this proposed rule would apply to most emergency program activities, including the payment of compensation, that are authorized under the Plant Protection Act and the Animal Health Protection Act. This would include funding provided to respond to an emergency, as well as funding included in the annual budget request for ongoing actions previously funded through emergency authority. The intent of this proposal is to facilitate long-term resource planning and funding decisions by both the Federal Government and cooperators. Since infestations can have a national impact, as well as affect State and local governments, industry, and producers, and remedial actions will benefit all affected interests, there needs to be a way to determine the appropriate allocation of responsibility in combating these infestations. The purpose of this rulemaking is to describe the criteria that would be used to determine the appropriate levels of responsibility between the Federal Government and cooperators.

**DATES:** We will consider all comments that we receive on or before September 8, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–062–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–062–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–062–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Shea, Director, Policy and Program Development, APHIS, 4700 River Road, Unit 116, Riverdale, MD 20737–1237; (301) 734–5136.

**SUPPLEMENTARY INFORMATION:**

### Background

*Emergency Program Authorities and Operations*

The Plant Protection Act (7 U.S.C. 7701–7772) and the Animal Health