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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03-052-1]

Karnal Bunt; Compensation for Custom Harvesters in Northern Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations to provide for the payment of compensation to custom harvesters for losses they incurred due to the requirement that their equipment be cleaned and disinfected after four counties in northern Texas were declared regulated areas for Karnal bunt during the 2000-2001 crop season. We are also amending the regulations to provide for the payment of compensation to owners or lessees of other equipment that came into contact with Karnal bunt-positive host crops in those counties and was required to be cleaned and disinfected during the 2000-2001 crop season. The payment of compensation is necessary to reduce the economic burden imposed by the regulations and to encourage the participation of, and obtain cooperation from, affected individuals in our efforts to contain and reduce the presence of Karnal bunt in the United States.

DATES: This interim rule is effective May 5, 2004. We will consider all comments that we receive on or before July 6, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 03-052-1, 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. 03-052-1.

- **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. 03-052-1" on the subject line.

- **Agency Web site:** Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

Reading Room: 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.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Spaide, Senior Program Advisor, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 98, Riverdale, MD 20737; (301) 734-3769.

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. 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 are set forth in 7 CFR 301.89-1 through 301.89-16 (referred to below as the regulations). Among other things, the regulations define areas regulated for Karnal bunt and restrict the movement of certain regulated articles, including wheat seed and grain, from the regulated areas. The regulations also provide for the payment of compensation for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey who incurred losses and expenses because of Karnal bunt during certain years. These provisions are in § 301.89-15, "Compensation for growers, handlers, and seed companies in the 1999-2000 and subsequent crop seasons," and § 301.89-16, "Compensation for grain storage facilities, flour millers, and National Survey participants for the 1999-2000 and subsequent crop seasons."

On August 6, 2001, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** a final rule (66 FR 40839-40843, Docket No. 96-016-37) that established the compensation levels for the 1999-2000 crop season and subsequent years and made several other changes to the compensation regulations. One of these changes was that, after the 2000-2001 crop season, compensation would no longer be made available to persons growing or handling host crops that were knowingly planted in previously regulated areas.

On May 1, 2002, APHIS published in the **Federal Register** an interim rule (67 FR 21561-21566, Docket No. 01-112-1) that amended the regulations governing compensation to address five particular situations in four counties in northern Texas that arose during the 2000-2001 crop season. In Archer, Baylor, Throckmorton, and Young Counties, certain wheat growers, handlers, and other parties covered by the compensation regulations appeared to be ineligible to receive compensation for grain or seed affected by Karnal bunt due to restrictive language in the regulations that did not anticipate certain complications in the harvest and storage of grain that arose following

discovery of Karnal bunt in those counties. Due to the need to quickly declare these counties as regulated areas, we were unable to modify the compensation regulations at that time to address certain relevant aspects of the way seed and grain were moved, stored, and used in the newly regulated areas. The May 2002 interim rule amended the compensation provisions of the regulations to allow persons included in these five situations to apply for compensation.

We solicited comments concerning the interim rule for 60 days ending July 1, 2002. We received 86 comments by that date. They were from producers, representatives of industry groups, and representatives of State and foreign governments. In this document, we address the comments we received regarding the payment of compensation to custom harvesters and owners or lessees of other equipment in the four Texas counties during the 2000–2001 crop season. The other comments we received in response to the interim rule will be addressed in a subsequent document.

Seventy-eight commenters urged APHIS to provide for the payment of compensation to custom harvesters who operate in areas regulated for Karnal bunt, in addition to the compensation for growers, handlers, and other affected individuals provided by the interim rule. Some commenters stated that the cost of cleaning and disinfecting mechanized harvesting equipment after it has been used to harvest Karnal bunt-positive host crops prior to movement from a regulated area, as required by § 301.89–12(a), would either be absorbed by custom harvesters, causing them significant economic losses, or passed on to growers, already suffering losses from restrictions on the movement of their crops, in the form of higher rates.

Some custom harvesters, other commenters argued, might choose to avoid harvesting in regulated areas altogether; this would increase the economic losses suffered by growers in regulated areas, since the demand for custom harvesting services in regulated areas would exceed the supply, and growers would likely have to pay higher fees to have their crop harvested. If custom harvesters that normally operate in regulated areas chose to avoid harvesting in such areas, this would also drive down the incomes of custom harvesters that normally harvest outside regulated areas, due to increased competition.

Finally, many commenters noted that encouraging growers to participate in the Karnal bunt eradication program is

a stated goal of the compensation program currently in place; without similar incentives for custom harvesters, they might not clean their mechanized harvesting equipment in accordance with the regulations when moving from a regulated area to an area not affected by Karnal bunt, possibly leading to further spread of Karnal bunt.

Most commenters favored compensating custom harvesters for the cost of cleaning their equipment if it is used to harvest Karnal bunt-positive host crops in a regulated area. The commenters also noted that custom harvesters typically set their schedules months in advance, meaning that custom harvesters could lose harvesting contracts due to the downtime (typically 8 hours) necessitated by cleaning and disinfecting mechanized harvesting equipment after it had been used to harvest Karnal bunt-positive host crops in a regulated area; compensation for contracts lost for this reason was also requested.

We agree that custom harvesters who operated in the four affected Texas counties suffered economic losses due to the designation of these counties as areas quarantined for Karnal bunt during the 2000–2001 crop season. Furthermore, because these counties became regulated areas late in the crop season, custom harvesters operating in those counties could not have been aware that they were harvesting crops that may have tested positive for Karnal bunt. Therefore, in this interim rule, we are providing for the payment of compensation to custom harvesters who harvested Karnal bunt-positive host crops in Archer, Baylor, Throckmorton, and Young Counties, TX, during the 2000–2001 crop season. This compensation is intended to reimburse custom harvesters for the cost of cleaning and disinfecting their mechanized harvesting equipment. We are also providing for the payment of compensation equivalent to the value of one contract that an eligible custom harvester lost due to the downtime necessitated by cleaning and disinfection. If an eligible custom harvester did not lose a contract due to this downtime, we are providing compensation for the fixed costs he or she incurred during the time the machine was being cleaned and disinfected. We are also providing for the payment of compensation for the expenses associated with the cleaning and disinfection of other types of equipment used in the four affected counties. The specific provisions of these compensation provisions are discussed below.

Note: Although the regulations in § 301.89–12 at the time specifically required that mechanized harvesting equipment be cleaned and disinfected after it has been used to harvest Karnal bunt-positive host crops prior to movement from a regulated area, during the 2000–2001 crop season equipment was allowed to move out of the regulated counties without disinfection if the inspector who issued the PPQ–540 certificate allowing such movement determined that cleaning alone was sufficient to remove all Karnal bunt spores. We have since amended the regulations in § 301.89–12 to require disinfection only if it is determined to be necessary by an inspector [see 69 FR 8091–8097, Docket No. 02–056–2, published February 23, 2004]. Therefore, custom harvesters seeking compensation under the regulations established by this interim rule will be required to present a copy of the PPQ–540 certificate allowing the movement of equipment from an area regulated for Karnal bunt, but they will not be required to present proof that their equipment was both cleaned and disinfected.

In all cases, claims for the compensation provided for by this interim rule must be received by APHIS on or before September 2, 2004. The Administrator may extend this deadline upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before this date. If comments we receive in response to this interim rule cause us to change the rule, we will provide an additional 120-day period after the effective date of the final rule during which affected persons may submit claims for compensation.

Cleaning and Disinfection of Mechanized Harvesting Equipment

During the 2000–2001 crop season, the regulations in § 301.89–12(a) required that mechanized harvesting equipment that has been used to harvest host crops that test positive for Karnal bunt must be cleaned and disinfected in accordance with § 301.89–13(a) prior to movement from a regulated area. (As noted previously, § 301.89–12 has since been amended.) In § 301.89–13, paragraph (a) described four acceptable methods for cleaning and disinfection.

APHIS has estimated that cleaning and disinfection costs for mechanized custom harvesting equipment are typically \$750 per harvesting machine. Therefore, under this interim rule, custom harvesters who harvested Karnal bunt-positive host crops in Archer, Baylor, Throckmorton, or Young Counties during the 2000–2001 crop season and whose mechanized harvesting equipment was then required to be cleaned and disinfected will be eligible to receive either compensation for the actual cost of the cleaning and

disinfection or \$750 per harvesting machine cleaned, whichever amount is lower.

To receive compensation for the cost of cleaning and disinfecting mechanized harvesting equipment, custom harvesters must provide copies of a contract or other signed agreement for harvesting in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season, signed on a date prior to the designation of the county as a regulated area for Karnal bunt, or an affidavit stating that the custom harvester entered into an agreement to harvest in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season prior to the designation of the county as a regulated area for Karnal bunt; a copy of the PPQ–540 certificate issued to allow the movement of mechanized harvesting equipment from a regulated area after it had been used to harvest Karnal bunt-positive host crops and had been subsequently cleaned and disinfected; and a receipt showing the cost of the cleaning and disinfection. (Throckmorton and Young Counties, TX, were declared regulated areas in an interim rule effective on June 8, 2001 and published in the **Federal Register** on June 14, 2001 [66 FR 32209–32210, Docket No. 01–058–1]; Archer and Baylor Counties, TX, were declared regulated areas in an interim rule effective on July 13, 2001 and published in the **Federal Register** on July 19, 2001 [66 FR 37575–37576, Docket No. 01–063–1].)

Contracts Lost Due to Downtime Necessitated by Cleaning and Disinfection

The process of cleaning and disinfecting mechanized harvesting equipment takes approximately 8 hours, meaning that the custom harvesting equipment is unusable for one workday while it is being cleaned and disinfected. Custom harvesters typically schedule their harvesting contracts months in advance. Therefore, the downtime necessitated by cleaning and disinfecting mechanized harvesting equipment after it was used to harvest Karnal bunt-positive host crops in Archer, Baylor, Throckmorton, and Young Counties during the 2000–2001 crop season caused some custom harvesters to be unable to fulfill previously scheduled harvesting contracts.

In this interim rule, we are providing for the payment of compensation to custom harvesters who operated in Archer, Baylor, Throckmorton, or Young Counties during the 2000–2001 crop season and whose mechanized

harvesting equipment was required to be cleaned and disinfected for the full value of one contract that was lost due to downtime necessitated by cleaning and disinfection. Compensation will only be provided for one contract lost due to cleaning and disinfection. The maximum value of compensation for this contract is \$23.48 per acre that was to be harvested. This figure is APHIS' calculation of the average cost per acre of harvesting wheat; it was derived from data provided by U.S. Custom Harvesters, an industry trade group. APHIS will pay \$23.48 per acre that was to be harvested or the full value of the contract, whichever is less.

To receive compensation for the value of a contract lost due to downtime necessitated by cleaning and disinfection, custom harvesters must provide copies of a contract or other signed agreement for harvesting in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season, signed on a date prior to the designation of the county as a regulated area for Karnal bunt, or an affidavit stating that the custom harvester entered into an agreement to harvest in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season prior to the designation of the county as a regulated area for Karnal bunt; a copy of the PPQ–540 certificate issued to allow the movement of mechanized harvesting equipment from a regulated area after it had been used to harvest Karnal bunt-positive host crops and had been subsequently cleaned and disinfected; and the contract for harvesting in an area not regulated for Karnal bunt that was lost due to downtime necessitated by cleaning and disinfection of mechanized harvesting equipment, signed on a date prior to the designation of the relevant county as a regulated area for Karnal bunt, for which the custom harvester will receive compensation.

Compensation for Fixed Costs Incurred During Cleaning and Disinfection

Custom harvesters who did not lose contracts due to downtime necessitated by cleaning and disinfection nevertheless had to pay fixed costs associated with custom harvesting while their equipment was being cleaned and disinfected; they could not recoup these costs by using their equipment during this time. Fixed costs associated with custom harvesting include labor costs, travel costs, insurance, telephone and utility costs, and interest. According to U.S. Custom Harvesters, such fixed costs typically total \$250 per hour. Custom harvesters whose mechanized harvesting equipment was required to

be cleaned and disinfected thus typically incurred \$2,000 in unavoidable fixed costs because their equipment was idle for 8 hours. Therefore, we are providing for the payment of \$2,000 in compensation to each custom harvester who harvested Karnal bunt-positive host crops in Archer, Baylor, Throckmorton, and Young Counties during the 2000–2001 crop season and who does not apply for compensation for a contract lost due to time lost to cleaning and disinfection. This compensation will ensure that all custom harvesters are compensated for economic losses associated with the cleaning and disinfection of their equipment.

To receive compensation for fixed costs incurred during cleaning and disinfection, custom harvesters must provide copies of a contract or other signed agreement for harvesting in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season, signed on a date prior to the designation of the county as a regulated area for Karnal bunt, or an affidavit stating that the custom harvester entered into an agreement to harvest in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season prior to the designation of the county as a regulated area for Karnal bunt; and a copy of the PPQ–540 certificate issued to allow the movement of mechanized harvesting equipment from a regulated area after it had been used to harvest Karnal bunt-positive host crops and had been subsequently cleaned and disinfected.

In the event that a custom harvester who harvested Karnal bunt-positive host crops in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season had to cancel a contract due to time lost to cleaning and disinfection that was valued at less than \$2,000, that custom harvester may request the compensation for fixed costs incurred during cleaning and disinfection and receive \$2,000 under this interim rule. Because the compensation for fixed costs does not address the variable costs that must be accounted for in the total cost of a contract, we believe that this situation is extremely unlikely to have occurred; in fact, APHIS currently estimates the average value of contracts lost due to downtime necessitated by cleaning and disinfection at \$25,000. However, we believe it would not encourage participation in the Karnal bunt eradication program if we required that a custom harvester with documented losses of under \$2,000 due to cleaning and disinfection receive less compensation than a custom harvester without documented losses receives as

a generic valuation of his or her fixed costs.

Cleaning and Disinfection of Other Equipment

During the 2000–2001 crop season, § 301.89–12 of the regulations required that mechanized harvesting equipment that had been used to harvest host crops that test positive for Karnal bunt and seed conditioning equipment that had been used in the production of any host crops in a regulated area be cleaned and disinfected in accordance with § 301.89–13(a) prior to movement from a regulated area. Mechanized harvesting equipment that has been used to harvest Karnal bunt-positive host crops and seed conditioning equipment that has been used in the production of host crops are the only types of equipment required to be treated prior to movement from a regulated area. However, § 301.89–6 allows an inspector or a person operating under a compliance agreement to issue a certificate or limited permit for the movement within or outside a regulated area of a regulated article if the inspector determines that the regulated article, among other possibilities, is to be moved in compliance with any additional conditions the Administrator may impose to prevent the artificial spread of Karnal bunt. These additional conditions may include cleaning and disinfection.

In Archer, Baylor, Throckmorton, and Young Counties during the 2000–2001 crop season, several pieces of equipment other than mechanized harvesting equipment and seed conditioning equipment that had come into contact with Karnal bunt-positive wheat were found by inspectors to require cleaning and disinfection so that they could be moved from the quarantined area without spreading Karnal bunt. The owners or lessees of these pieces of equipment had scheduled the movement of the equipment from the quarantined area prior to the declaration of these counties as regulated areas and needed to move the equipment out of the regulated areas to continue their harvesting. APHIS estimates that these pieces of equipment cost \$100 each to clean and disinfect.

Therefore, we are providing for the payment of compensation in the amount of \$100 for each piece of equipment to owners or lessees of equipment that was required by an inspector to be cleaned and disinfected during the 2000–2001 crop season after the equipment came into contact with Karnal bunt-positive wheat in Archer, Baylor, Throckmorton, and Young Counties. To receive this compensation, owners or lessees must

submit a copy of the PPQ–540 certificate issued to allow the movement of the equipment from a regulated area after it had been in contact with Karnal bunt-positive host crops and had been subsequently cleaned and disinfected.

We are adding the provisions described above as a new paragraph § 301.89–16(d), “Special allowances for custom harvesters and equipment owners or lessees for costs related to cleaning and disinfection of mechanized harvesting and other equipment in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000–2001 crop season.” This new paragraph describes the circumstances under which custom harvesters and owners or lessees of equipment that were required to be cleaned and disinfected may receive compensation and the process by which they may apply for compensation.

Related Regulatory Action

We plan to initiate rulemaking to amend the regulations to provide for the payment of similar compensation to custom harvesters who harvest host crops that test positive for Karnal bunt and owners or lessees of other equipment that is exposed to host crops that test positive for Karnal bunt in any areas not previously regulated for Karnal bunt. That proposed rule, which would apply to the 2002–2003 through 2005–2006 crop seasons, is being prepared, in part, in response to other comments we received on our May 2002 interim rule.

Immediate Action

Immediate action is necessary to relieve the economic burden placed on small entities by the domestic quarantine regulations for Karnal bunt. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

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.

Karnal bunt is a fungal disease of wheat, durum wheat, and triticale (a hybrid of wheat and rye). Upon detection of Karnal bunt in Arizona in March 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat producing areas in the United States. The spread of the disease in the United States would have significant adverse economic consequences, since many U.S. wheat export markets require that wheat from the United States be from areas where Karnal bunt is not known to occur. By certifying that U.S. wheat is from such areas, APHIS facilitates exports to some markets that otherwise would likely be closed. It has been estimated that termination of the certification program would result in a cumulative reduction of national net farm income of \$5.3 billion from 2003 to 2007.

The unexpected discovery of Karnal bunt and subsequent Federal emergency actions have disrupted the production and marketing flows of wheat in the quarantined areas, causing economic hardship for a number of persons.¹ In order to mitigate that hardship, and to help ensure full and effective compliance with the quarantine program, the USDA has offered compensation to certain growers, handlers and others. Compensation has been offered to mitigate losses incurred in the 1995–1996, 1996–1997, 1997–1998, and 1999–2000 and subsequent crop seasons.

This interim rule provides for custom harvesters and other equipment owners or lessees in Archer, Baylor, Throckmorton, and Young counties in northern Texas to receive compensation for certain disease-related losses and expenses that they had not been eligible for under the previous regulations. Specifically, custom harvesters are offered compensation for: (1) The cost of required cleaning and disinfection of mechanized harvesting equipment; and (2) lost harvesting contracts due to downtime necessitated by cleaning and disinfection of mechanized harvesting equipment or fixed costs incurred when mechanized harvesting equipment is idled for required cleaning and disinfection. Compensation is also offered, in specific cases, for the cost of required cleaning and disinfection of equipment other than mechanized

¹ As an example, it was estimated that the impact of Karnal bunt and subsequent Federal actions on the wheat industry totaled \$44 million in the 1995–1996 crop season, comprised primarily of losses in the value of wheat and seed.

harvesting equipment. Compensation would be offered only in connection with APHIS-required cleaning and disinfection stemming from the use of equipment in those four counties in northern Texas during the 2000–2001 crop season.

The four counties named above became regulated for Karnal bunt late in the 2000–2001 crop season, after much of the wheat in those counties had already been harvested. Because they had no prior knowledge that their equipment would be used in a Karnal bunt-infested area, custom harvesters operating in the four counties during the 2000–2001 crop season did not have an opportunity to avoid the area.

The compensation provided by this interim rule is designed to reduce the economic impact of the Karnal bunt regulations on custom harvesters and other equipment owners and to help obtain cooperation from affected individuals in efforts to contain and reduce the prevalence of Karnal bunt. As an alternative, APHIS could elect to make no changes to the regulations, but that alternative would not encourage cooperation by custom harvesters and others subject to the cleaning and disinfection requirements of the regulations and other efforts designed to prevent the spread of the disease.

Cleaning and Disinfection of Mechanized Harvesting Equipment

The regulations for Karnal bunt in place during the 2000–2001 crop season required that mechanized harvesting equipment be cleaned and disinfected prior to being moved from a regulated area if it was used to harvest Karnal bunt-positive host crops.

This interim rule offers harvesters compensation for the actual cost of cleaning and disinfection, up to a maximum of \$750 per cleaning and disinfection.²

USDA's compensation liability under this aspect of the interim rule is estimated at \$37,500. This estimate assumes 50 machine cleanings (50 combines and associated equipment) at \$750 per cleaning.³ Although the estimate is based on 50 combines, fewer than 40 harvesters are expected to be affected by the interim rule, as some harvesters own more than one combine.

²The \$750 figure is based on data provided by U.S. Custom Harvesters, a trade group. Harvesters would be eligible to receive compensation more than once, assuming they otherwise qualify.

³It is estimated that 130 pieces of harvesting equipment required cleaning—50 combines and 80 pieces of harvesting equipment other than combines. The 80 pieces of equipment other than combines were cleaned along with, and at the same time as, the 50 combines.

Contracts Lost Due to Downtime Necessitated by Cleaning and Disinfection

Custom harvesters typically negotiate their combining contracts well in advance of the harvest season. In addition, they set rigorous schedules for harvesting, so as to get maximum utilization from their equipment. Contracts are specific for reporting dates at a given location.

Because cleaning and disinfection delays the movement of their equipment to a subsequent location under contract, cleaning and disinfection may cause custom harvesters to default on contracts or to subcontract with other harvesters to fulfill the contracts. This interim rule offers custom harvesters compensation for the full value of one contract lost due to downtime necessitated by cleaning and disinfection, up to a maximum of \$23.48 per acre of land to be harvested under the contract.⁴ (Custom harvesters would be able to apply for this compensation or the compensation for downtime costs discussed above, but not both.)

USDA's compensation liability under this aspect of the interim rule is estimated at \$250,000, assuming 10 lost contracts at an average of \$25,000 per contract. No more than 10 harvesters are likely to be affected.

Compensation for Fixed Costs Incurred During Cleaning and Disinfection

In addition to the cost of cleaning and disinfection itself, harvesters incur other costs during the time their machines are cleaned and disinfected. These fixed costs (e.g., for labor, travel, insurance, telephone, utilities, and interest) are distinct from variable costs (e.g., for fuel and lubrication). This rule will provide custom harvesters compensation for fixed costs incurred during cleaning and disinfection at a rate of \$2,000 per machine cleaning. The rate of \$2,000 assumes fixed costs of \$250 per hour for 8 hours, the typical time required for cleaning and disinfection of a combine.⁵

USDA's compensation liability under this aspect of the interim rule is estimated at \$80,000. This estimate assumes 40 combine cleanings for which the combines' owners are compensated at \$2,000 per cleaning. Fewer than 30 harvesters are expected to be affected by this aspect of the interim rule, since some harvesters own more than one combine.

⁴The \$23.48 per acre figure represents average harvesting costs; it is based on data provided by U.S. Custom Harvesters, a trade group.

⁵Harvesters would be eligible to receive compensation more than once, assuming they otherwise qualify.

Harvesters would be able to apply for this compensation or the compensation for lost harvesting contracts discussed above, but not both. This is why the compensation estimate of \$80,000 is based on only 40 combines, 10 fewer than the 50 combines assumed to require cleaning earlier in this analysis under the heading "Cleaning and Disinfection of Mechanized Harvesting Equipment."

Cleaning and Disinfection of Other Equipment

Under the regulations, owners or lessees of equipment other than mechanized harvesting equipment may be required to clean and disinfect their equipment (e.g., hay wagons, balers, grain carts, and trailers) prior to moving it from a regulated area. This rule offers equipment owners or lessees compensation for the cost of cleaning and disinfection, at a rate of \$100 per cleaning.⁶

USDA's compensation liability under this aspect of the interim rule is estimated at \$1,000. This estimate assumes compensation for 10 pieces of equipment (10 × \$100). No more than 10 owners or lessees are likely to be affected.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses, organizations, and governmental jurisdictions. This interim rule affects certain wheat harvesters and other equipment owners or lessees in northern Texas. Affected entities will benefit, because the interim rule will allow them to receive compensation for certain disease-related losses and expenses that they are not now eligible for under the current regulations.

Most entities that are affected are likely to be small in size, when judged by the U.S. Small Business Administration's (SBA) standards.⁷ Composite data for wheat growers offers an example. In 1997, there were a total of 50,176 U.S. farms in North American Industry Classification System (NAICS) category 11114, a classification category comprised of establishments primarily engaged in growing wheat and/or producing wheat seeds. The per-farm average sales for those farms that year was \$78,260, well below the SBA's small entity threshold of \$750,000 in annual sales for farms in that NAICS

⁶Equipment owners or lessees would be eligible to receive compensation more than once, assuming they otherwise qualify.

⁷The overwhelming majority of business entities, in general, are small under the SBA's standards.

category.⁸ Affected harvesters are also likely to be small in size. In 2000, there were 338 firms in NAICS category 115113, classification comprised of establishments primarily engaged in mechanical harvesting, picking, and combining of crops. Of the 338 firms, 306, or 91 percent, had fewer than 20 employees, thus falling below the SBA's small entity threshold.⁹

The interim rule is not expected to have a significant economic impact on a substantial number of entities, large or small. This is because no more than about 40 harvesters and equipment owners or lessees are likely to be affected by the rule. For some harvesters, especially those whose profit margins are small, the receipt of \$25,000 in compensation for a contract lost due to downtime necessitated by cleaning and disinfection could be considered significant. It is possible that a small number of harvesters, no more than about 10, could experience substantial economic benefits from compensation for lost harvesting contracts, assuming average per-contract compensation of \$25,000.

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.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim

rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579-0248 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 03-052-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 03-052-1 and send your comments within 60 days of publication of this rule.

This interim rule provides for the payment of compensation to custom harvesters for losses they incurred due to the requirement that their equipment be cleaned and disinfected after four counties in northern Texas were declared regulated areas for Karnal bunt during the 2000-2001 crop season and for the payment of compensation to owners of other equipment that came into contact with Karnal bunt-positive host crops in those counties and was required to be cleaned and disinfected during the 2000-2001 crop season. In order to receive compensation for the cost of cleaning and disinfection of mechanized harvesting equipment and for fixed costs incurred during cleaning and disinfection, custom harvesters must provide copies of a contract or other signed agreement for harvesting in Archer, Baylor, Throckmorton, or Young County during the 2000-2001 crop season, signed on a date prior to the designation of the county as a regulated area for Karnal bunt, or an affidavit stating that the custom harvester entered into an agreement to harvest in Archer, Baylor, Throckmorton, or Young County during the 2000-2001 crop season prior to the designation of the county as a regulated area for Karnal bunt; a copy of the PPQ-540 certificate issued to allow the movement of mechanized harvesting equipment from a regulated area after it had been used to harvest Karnal bunt-positive host crops and had been subsequently cleaned and disinfected; and a receipt showing the cost of the cleaning and disinfection. Custom harvesters seeking compensation for a lost contract must additionally provide a copy of the contract for which they are seeking compensation. Owners of other equipment seeking compensation must provide a copy of the PPQ-540 certificate allowing the movement of the equipment. We are soliciting comments

from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.2 hours per response.

Respondents: Custom harvesters, owners of other equipment, lessees of other equipment.

Estimated annual number of respondents: 40.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 40.

Estimated total annual burden on respondents: 8 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine,

⁸ Source: SBA and 1997 Census of Agriculture (NASS).

⁹ Source: SBA. The SBA's size standard for firms in NAICS 115113 is based on annual sales, not the number of employees. However, composite sales data for firms in that NAICS category are not available.

Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues 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 301.89–16 is amended by revising the section title and adding a new paragraph (d) and an OMB control number citation to read as follows:

§ 301.89–16 Compensation for grain storage facilities, flour millers, National Survey participants, and certain custom harvesters and equipment owners or lessees for the 1999–2000 and subsequent crop seasons.

* * * * *

(d) *Special allowances for custom harvesters and equipment owners or lessees for costs related to cleaning and disinfection of mechanized harvesting and other equipment in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000–2001 crop season.* All claims for compensation under this paragraph § 301.89–16(d) must be received by APHIS on or before September 2, 2004. The Administrator may extend this deadline upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before this date. All compensation payments made under this paragraph § 301.89–16(d) will be issued by APHIS. Claims for compensation should be sent to Plant Protection and Quarantine, APHIS, USDA, 304 West Main Street, Olney, TX 76374.

(1) *Custom harvesters.* (i) *Cleaning and disinfection of mechanized harvesting equipment.* Custom harvesters who harvested host crops that tested positive for Karnal bunt and that were grown in Archer, Baylor, Throckmorton, or Young Counties, TX, during the 2000–2001 crop season are eligible to receive compensation for the cost of cleaning and disinfecting their mechanized harvesting equipment as required by § 301.89–12(a). Compensation for the cost of cleaning and disinfection mechanized harvesting equipment used to harvest Karnal bunt-positive host crops will be either the

actual cost or \$750 per cleaned machine, whichever is less. To claim compensation, a custom harvester must provide copies of a contract or other signed agreement for harvesting in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season, signed on a date prior to the designation of the county as a regulated area for Karnal bunt, or an affidavit stating that the custom harvester entered into an agreement to harvest in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season prior to the designation of the county as a regulated area for Karnal bunt; a copy of the PPQ–540 certificate issued to allow the movement of mechanized harvesting equipment from a regulated area after it had been used to harvest Karnal bunt-positive host crops and had been subsequently cleaned and disinfected; and a receipt showing the cost of the cleaning and disinfection.

(ii) *Contracts lost due to cleaning and disinfection.* Custom harvesters who harvested host crops that tested positive for Karnal bunt and that were grown in Archer, Baylor, Throckmorton, or Young Counties, TX, during the 2000–2001 crop season are also eligible to be compensated for the revenue lost if they lost one contract due to downtime necessitated by cleaning and disinfection, if the contract to harvest Karnal bunt-positive host crops in a previously nonregulated area was signed before the area was declared a regulated area for Karnal bunt. Compensation will only be provided for one contract lost due to cleaning and disinfection. Compensation for any contract that was lost due to cleaning and disinfection will be either the full value of the contract or \$23.48 for each acre that was to have been harvested under the contract, whichever is less. To claim compensation, a custom harvester must provide copies of a contract or other signed agreement for harvesting in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season, signed on a date prior to the designation of the county as a regulated area for Karnal bunt, or an affidavit stating that the custom harvester entered into an agreement to harvest in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season prior to the designation of the county as a regulated area for Karnal bunt; a copy of the PPQ–540 certificate issued to allow the movement of mechanized harvesting equipment from a regulated area after it had been used to harvest Karnal bunt-positive host crops and had been subsequently cleaned and disinfected; and the contract for harvesting in an

area not regulated for Karnal bunt that had been lost due to time lost to cleaning and disinfecting harvesting equipment, signed on a date prior to the designation of the relevant county as a regulated area for Karnal bunt, for which the custom harvester will receive compensation.

(iii) *Fixed costs incurred during cleaning and disinfection.* Custom harvesters who harvested host crops that tested positive for Karnal bunt and that were grown in Archer, Baylor, Throckmorton, or Young Counties, TX, during the 2000–2001 crop season who do not apply for compensation for a contract lost due to cleaning and disinfection as described in paragraph (d)(1)(ii) of this section are eligible for compensation for fixed costs incurred during cleaning and disinfection. Compensation for fixed costs incurred during cleaning and disinfection will be \$2,000. To claim compensation, a custom harvester must provide copies of a contract or other signed agreement for harvesting in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season, signed on a date prior to the designation of the county as a regulated area for Karnal bunt, or an affidavit stating that the custom harvester entered into an agreement to harvest in Archer, Baylor, Throckmorton, or Young County during the 2000–2001 crop season prior to the designation of the county as a regulated area for Karnal bunt; and a copy of the PPQ–540 certificate issued to allow the movement of mechanized harvesting equipment from a regulated area after it has been used to harvest Karnal bunt-positive host crops and has been subsequently cleaned and disinfected.

(2) *Other equipment; cleaning and disinfection.* Owners or lessees of equipment other than mechanized harvesting equipment and seed conditioning equipment that came into contact with host crops that tested positive for Karnal bunt in Archer, Baylor, Throckmorton, or Young Counties, TX, during the 2000–2001 crop season and that was required by an inspector to be cleaned and disinfected are eligible for compensation for the cost of cleaning and disinfection. Compensation for the cleaning and disinfection of such equipment will be \$100. To receive this compensation, owners or lessees must submit a copy of the PPQ–540 certificate issued to allow the movement of the equipment from a regulated area after it had been in contact with Karnal bunt-positive host crops and had been subsequently cleaned and disinfected.

(Approved by the Office of Management and Budget under control number 0579-0248.)

Done in Washington, DC, this 29th day of April 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04-10195 Filed 5-4-04; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98-035-5]

RIN 0579-AB75

Importation of Orchids of the Genus *Phalaenopsis* From Taiwan in Growing Media

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of plants and plant products to add orchids of the genus *Phalaenopsis* from Taiwan to the list of plants that may be imported in an approved growing medium subject to specified growing, inspection, and certification requirements. We are taking this action in response to a request by Taiwan and after determining that *Phalaenopsis* spp. plants established in growing media can be imported without resulting in the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

EFFECTIVE DATE: June 4, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; (301) 734-6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests and noxious weeds. The regulations in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," §§ 319.37 through 319.37-14 (referred to below as the regulations or Quarantine 37) contain, among other things, prohibitions and restrictions on the importation of plants, plant parts, and seeds for propagation.

The regulations in Quarantine 37 currently allow the importation of orchids from all countries of the world, provided that the plants are (1) free of sand, soil, earth, and other growing media, (2) accompanied by phytosanitary certificate of inspection, (3) imported under a permit issued by the Animal and Plant Health Inspection Service (APHIS), and (4) imported into a Federal plant inspection station listed in § 319.37-14(b), where they are subject to inspection by APHIS. Such plants are imported bare-rooted into the United States, and are rooted and potted for sale by U.S. nurseries.

On September 1, 1998, we published in the **Federal Register** (63 FR 46403-46406, Docket No. 98-035-1) a proposal to amend the regulations by allowing the importation of orchids of the genus *Phalaenopsis* established in an approved growing medium, subject to specified growing, inspection, and certification requirements. We proposed this action in response to a request from Taiwan and after determining that the degree of pest risk posed by these plants is no greater than the pest risk associated with the importation of bare-rooted *Phalaenopsis* spp. orchids, which may already be imported under the regulations. We accepted comments on our proposal for a total of 90 days, ending December 1, 1998.¹

In response to comments received on the proposed rule (discussed in detail later in this document), APHIS narrowed the application of the rule to *Phalaenopsis* spp. orchids from Taiwan and entered into consultation with the U.S. Fish and Wildlife Service (FWS) to assess the potential effects of the proposed action on endangered or threatened species, as required under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). On April 7, 2003, FWS concluded the section 7 consultation process by concurring with APHIS's determination that the importation of *Phalaenopsis* spp. orchids from Taiwan in growing media will not adversely affect federally listed or proposed endangered or threatened species or their habitats. The section 7 consultation for this rule is described later in this document.

Upon receiving concurrence from FWS, APHIS completed an environmental assessment 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's NEPA Implementing Procedures (7 CFR part 372). On May 9, 2003, we published in the **Federal Register** (68 FR 24915, Docket No. 98-035-3) a notice announcing the availability of the environmental assessment, and solicited comments on the environmental assessment for 30 days ending June 9, 2003. On June 11, 2003, we published in the **Federal Register** (68 FR 34898-37899, Docket No. 98-035-4) another notice that extended the comment period on the environmental assessment for an additional 30 days ending July 9, 2003.

2003 Risk Analysis

Also in response to public comments, APHIS updated the risk assessment that was prepared in support of this rulemaking action. The original risk assessment, referred to elsewhere in this document as the 1997 risk assessment, identified pests that are known to be associated with *Phalaenopsis* spp. plants in Taiwan and assessed the risk posed by those pests in the absence of the mitigative effects of the requirements of § 319.37-8(e), which are designed to establish and maintain a pest-free production environment and ensure the use of pest-free seeds or parent plants. However, as noted by commenters, the 1997 risk assessment did not contain a thorough description of how the mitigation measures required under the regulations in § 319.37-8(e) reduce the risk posed by the specific quarantine pests of *Phalaenopsis* spp. orchids that were identified in the risk assessment. Because the original risk assessment was prepared in April 1997, APHIS believes it was appropriate to update the risk document that supported this rule in several ways in order to address commenters' concerns regarding its adequacy. These changes were necessary to provide the most transparent communication of risk possible at this time.

First, we revised the 1997 risk assessment to bring it up to date with current APHIS guidelines for pathway-initiated risk assessments. As a result of this update, some of the risk ratings that were identified in the 1997 risk assessment have changed.² These changes are a result of the fact that the new risk assessment guidelines employ the use of a different risk rating system

¹ The comment period on the proposed rule was extended from 60 to 90 days in a notice published in the **Federal Register** on October 29, 1998 (63 FR 57932, Docket 98-035-02).

² In the 2003 risk analysis, the baseline pest risk potential for 5 of the identified pests has been reassessed as "medium" rather than "high."