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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03-047-2]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by adding certain areas in Arizona to the list of regulated areas either because they were found during surveys to contain a bunted wheat kernel, or because they are within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. We also removed certain areas from the list of regulated areas in Riverside County, CA, because detection and delineating surveys showed them to be free of Karnal bunt. These actions were necessary to prevent the spread of Karnal bunt into noninfected areas of the United States and to relieve restrictions that were no longer warranted.

EFFECTIVE DATE: The interim rule became effective on January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Spaide, Senior Program Advisor, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737-1236; (301) 734-4387.

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, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

Upon detection of Karnal bunt in Arizona in March of 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 quarantine continues in effect, although it has since been modified, both in terms of its physical boundaries and in terms of its restrictions on the production and movement of regulated articles from regulated areas. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89-1 through 301.89-16 (referred to below as the regulations).

In an interim rule effective and published in the **Federal Register** on January 5, 2004 (69 FR 245-247, Docket No. 03-047-1), we amended the regulations by adding certain areas in Arizona to the list of regulated areas either because they were found during surveys to contain a bunted wheat kernel, or because they are within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. We also removed certain areas from the list of regulated areas in Riverside County, CA, because detection and delineating surveys show them to be free of Karnal bunt. These actions were necessary to prevent the spread of Karnal bunt into noninfected areas of the United States and to relieve restrictions that are no longer warranted.

Comments on the interim rule were required to be received on or before March 5, 2004. We received one comment by that date. The comment was from a State wheat commission and supported the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

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

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the Karnal bunt regulations by adding certain areas in Arizona to the list of regulated areas and by removing certain areas in California from the list of regulated areas. These actions were necessary to prevent the spread of Karnal bunt into noninfected areas of the United States and to relieve restrictions that were no longer warranted.

The following analysis addresses the economic effect of the interim rule on small entities, as required by the Regulatory Flexibility Act.

The entities most likely to be affected by the interim rule are wheat producers whose fields were added to or removed from the list of regulated areas and who plan to grow wheat in the future. The exact number of such producers is unknown, but no more than about 35 producers are likely to have been affected by the interim rule.

Producers affected by the interim rule are likely to be small in size based on U.S. Small Business Administration (SBA) standards for wheat farmers, as well as data from the 1997 Census of Agriculture (1997 Census), which is the most recent census available. SBA classifies wheat producers with total annual sales of less than \$750,000 as small entities. According to 1997 Census data, there were 6,135 farms in Arizona in 1997. (This total includes, but is not limited to, wheat farms.) Of the total number of farms in Arizona, 89 percent had annual sales that year of less than \$500,000, well below SBA's small entity threshold of \$750,000 for wheat farms. The percentage of farms with annual sales of less than \$500,000 in California (74,126 total farms) was also 89 percent in 1997.

Producers whose fields are deregulated will benefit because they will be able to move wheat or other Karnal bunt host crops without restriction. Prior to this rule, any wheat, durum wheat, or triticale grown in those fields could be moved into or through a non-regulated area without restriction

only if it first tested negative for bunted kernels. In addition, any wheat, durum wheat, or triticale grown in those fields could not be used as seed within or outside a regulated area unless it was tested and found free of bunted kernels and spores. Conversely, producers whose fields were regulated became subject to those movement restrictions.

However, the interim rule's impact on individual producers is not likely to be significant, for several reasons. First, the testing of grain for Karnal bunt is performed free of charge for producers in all regulated areas. Producers in the newly regulated areas will not face an additional financial burden because of this requirement. Second, little or no commercial wheat seed is, or is expected to be, grown in the affected fields. Because of that, the elimination or imposition of restrictions on moving seed is expected to have only a minimal impact on producers.

The elimination or imposition of restrictions will increase or restrict marketing opportunities for producers, with impacts on prices received by individual producers. Those producers in California whose fields were deregulated may enjoy increased market opportunities for any wheat they grow in the future (*e.g.*, the availability of export markets) and receive a higher commodity price. Alternatively, those producers in Arizona whose fields were added to the regulated area may see the market for their wheat become more limited and receive a lower price. For producers in their first regulated crop season, any negative price-received effects will be mitigated by compensation for losses. Therefore, the net effect on producer revenues in the newly regulated areas is not expected to be significant. In subsequent regulated crop seasons, producers will incorporate the risk of Karnal bunt infestation into their planting decisions.

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

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that

was published at 69 FR 245–247 on January 5, 2004.

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).

Done in Washington, DC, this 11th day of August 2004.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–18785 Filed 8–16–04; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–130–3]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Oriental fruit fly regulations by removing portions of Los Angeles and Orange Counties, CA, from the list of quarantined areas and by removing restrictions on the interstate movement of regulated articles from those areas. The interim rule was necessary to relieve restrictions that were no longer needed to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on July 15, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, National Program Manager, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–6553.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through

301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective on July 15, 2003, and published in the **Federal Register** on July 22, 2003 (68 FR 43286–43287, Docket No. 02–130–2), we amended the regulations by removing portions of Los Angeles and Orange Counties, CA from the list of quarantined areas and by removing restrictions on the interstate movement of regulated articles from those areas. That action was based on our determination that the Oriental fruit fly had been eradicated from those portions of Los Angeles and Orange Counties, CA, and that the quarantine and restrictions were no longer necessary.

Comments on the interim rule were required to be received on or before September 22, 2003. We received one comment by that date. The comment was from a representative of a Hispanic growers advisory committee. The commenter supported the interim rule, but posed two questions.

First, the commenter noted that in the interim rule we stated that the Oriental fruit fly “has been eradicated” and “no longer exists” in the quarantined areas. The commenter asked if these were two different types of determinations based on different processes, or part of the same process. Our statements that the Oriental fruit fly “has been eradicated” and “no longer exists” in the quarantined area were simply two ways of referring to the same type of determination based on a single process.

Second, the commenter noted that in the interim rule we stated that our determination that Oriental fruit fly had been eradicated was based on trapping surveys. The commenter asked if trapping surveys were the only method used to determine that the Oriental fruit fly had been eradicated. Trapping surveys conducted by Animal and Plant Health Inspection Service and State inspectors are known to be reliable and effective and, as such, are the only method we employ to determine whether the Oriental fruit fly is present in a particular area.

The commenter also suggested some editorial changes to the text in the interim rule's **SUPPLEMENTARY INFORMATION** section. These suggested changes had no bearing on the basis for or effects of the interim rule, thus there is no need to make any changes to the interim rule in response to the commenter's suggestions.