

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 96-016-3]

#### Karnal Bunt Infestations in Arizona et al.; Quarantining

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are quarantining the State of Arizona and a total of six counties in the States of New Mexico and Texas because of infestations of Karnal bunt and are restricting the movement of regulated articles from the quarantined areas. This action is necessary on an emergency basis to prevent the artificial spread of Karnal bunt, a serious fungal disease of wheat, durum wheat, and triticale, into noninfected areas of the United States.

**DATES:** Interim rule effective March 25, 1996. Consideration will be given only to comments received on or before May 28, 1996.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 96-016-3, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale MD 20737-1238. Please state that your comments refer to Docket No. 96-016-3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Poe, Operations Officer,

Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20732, (301) 734-8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart 301.89, "Karnal Bunt" (referred to below as the regulations). These regulations quarantine all of Arizona and portions of New Mexico and Texas because of Karnal bunt. They also restrict the interstate movement of regulated articles from the quarantined areas.

On March 8, 1996, Karnal bunt, a serious fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Seale cereals*), a hybrid of wheat and rye, was detected in Arizona during a seed certification inspection done by the Arizona Department of Agriculture (ADA). The disease was found in three seedlots that had been grown in Arizona and shipped within Arizona as well as to New Mexico and Texas. Immediately after the Karnal bunt was detected, emergency action was taken by ADA and the Animal and Plant Health Inspection Service (APHIS) to control the artificial spread of this disease, and APHIS began working with other plant protection agencies to determine the extent of the infection.

On March 20, 1996, the Secretary of Agriculture signed a "Declaration of Extraordinary Emergency" authorizing the Secretary to take emergency action under 7 U.S.C. 150dd with regard to Karnal bunt within the States of Arizona, New Mexico, and Texas.

Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores. Infection occurs during the flowering stage of the plant when the developing ovary of a host plant comes into contact with infectious sporidia. The spores can be carried on a variety of surfaces, including plants and plant parts, seeds, soil, elevators, buildings, farm equipment, tools, and even vehicles. Spores and the sporidia they produce also can be windborne. Although the sporidia are fragile and may be able to move only short distances, spores have been known to move longer distances.

Karnal bunt is a serious disease that affects both yield and grain quality. It

adversely affects the color, odor, and palatability of flour and other foodstuffs made from wheat. Wheat containing any amount of bunted kernels is reduced in quality. Karnal bunt does not present a risk to human health.

Karnal bunt is difficult to manage because of the biology of the pathogen and the susceptibility of the host. Teliospores can remain viable for 4 to 5 years in the soil. Chemical seed treatments may reduce infection by controlling seedborne inoculum, but do little to eliminate soilborne inoculum. Use of resistant varieties of wheat would be the most effective means of control. However, no commercial cultivars are known to be established.

For this reason, Federal and State quarantines are needed on an emergency basis to retard the artificial spread of Karnal bunt and to protect noninfected areas. Therefore, this interim rule establishes a quarantine and regulations, which are described below by section, to prevent the artificial spread of Karnal bunt.

#### Definitions

Section 301.89-1 contains definitions of the following terms: *Administrator*, *Animal and Plant Health Inspection Service*, *certificate*, *compliance agreement*, *conveyances*, *farm tools*, *infestation (infected)*, *inspector*, *interstate*, *Karnal bunt*, *limited permit*, *mechanized cultivating equipment* and *mechanized harvesting equipment*, *milling products and byproducts*, *movement (moved)*, *person*, *soil*, *soil-moving equipment*, and *State*. *Regulated articles*.

The regulations impose conditions on the interstate movement of those articles that present a significant risk of spreading Karnal bunt if moved without restriction from quarantined areas into or through noninfected areas. The articles, which are designated as regulated articles, may not be moved interstate from quarantined areas except in accordance with the conditions specified in §§ 301.89-4 through 301.89-11.

Paragraphs (a) through (m) of § 301.89-2 designate the following as regulated articles: Conveyances, including trucks, railroad cars and other containers used to move wheat, durum wheat, or triticale; grain elevators/equipment/structures used for storing and handling wheat, durum wheat, and triticale; manure from animals that have

fed on wheat, durum wheat, or triticale; milling products or byproducts, except flour; plants or plant parts, including grain, seed, or straw of all varieties of the species of *Triticum aestivum* (wheat), *Triticum durum* (durum wheat); and *Triticum aestivum* X *Seale cereals* (triticale); root crops with soil; soil from areas where field crops are produced; used bags, sacks and containers; used farm tools; used mechanized cultivating equipment; used mechanized harvesting equipment; used seed conditioning equipment; and used mechanized soil-moving equipment.

Further, § 301.89(2)(n) allows designation of any other product, article or means of conveyance as a regulated article if an inspector determines that it presents a risk of spreading Karnal bunt due to its proximity to an infestation of Karnal bunt and notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions in the regulations.

#### Quarantined areas

As stated in § 301.89–3(a), the Administrator will quarantine each State or each portion of a State that is infected. Section 301.89(b) provides that less than an entire State will be listed as a quarantined area only under certain conditions. Such a listing may be made if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.89–2 that are equivalent to the interstate movement restrictions imposed by the regulations in § 301.89–1 through § 301.89–11; and (2) designating less than the entire State as a quarantined area will prevent the artificial spread of Karnal bunt. Alternatively, less than an entire State may be listed as a quarantined area if the Administrator exercises his or her extraordinary emergency authority under 7 U.S.C. 150dd.

In accordance with these criteria, we are designating the State of Arizona, four counties in New Mexico, and two counties in Texas as quarantined areas. These quarantined areas are listed in § 301.89–3(e).

Section 301.89–3(c) provides that the Administrator may include uninfected acreage within a quarantined area due to its proximity to an infestation or inseparability from the infected locality for quarantine purposes, as determined by: (1) Projections of the spread of Karnal bunt along the periphery of the infestation; (2) the availability of natural habitats and host materials within the uninfected acreage that are suitable for establishment and survival of Karnal

bunt; and (3) the necessity of including uninfected acreage within the quarantined area in order to establish readily identifiable boundaries.

Section 301.89–3(d) provides that the Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area, without publication in the Federal Register, if there is a basis for listing the area as a quarantined area under § 301.89–3 paragraphs (a), (b), or (c), and if the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, the person responsible for the management of the nonquarantined area, is given written notice of the designation. This is necessary to prevent the spread of Karnal bunt before restrictions can be published in the Federal Register concerning the interstate movement of regulated articles from the designated area.

#### Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas

Section 301.89–4(a)(1) requires regulated articles moved interstate from a quarantined area into or through an area that is not quarantined to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.89–5 and 301.89–9.

Section 301.89–4(a)(2) allows a regulated article that originates outside the quarantined area to be moved interstate through a quarantined area without a certificate or limited permit under the following conditions: (1) The regulated article was moved into the quarantined area from an area that is not quarantined; (2) the point of origin is indicated on a waybill accompanying the regulated article; (3) the regulated article is moved through the quarantined area without stopping, or has been stored, packed, or handled at locations approved by an inspector, or has been treated in accordance with the methods and procedures prescribed in § 301.89–11 while in or moving through any quarantined area; and (4) the article has not been combined or commingled with other articles so as to lose its individual identity.

Section 301.89–4(a)(3) allows soil to be moved interstate from a quarantined area, provided the soil is being moved to a laboratory approved by the Administrator to process, test, or analyze soil samples.

Section 301.89–4(b) references the authority of an inspector who has probable cause to believe a person or means of conveyance is moving regulated articles in interstate commerce

to stop the person or means of conveyance to determine whether regulated articles are present and to inspect the regulated articles. Further, § 301.89–4(b) provides that articles found to be infected by an inspector, and articles not in compliance with the regulations, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of.

#### Issuance of Certificates and Limited Permits

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (e.g., the article is free of Karnal bunt), there is an absence of a pest or disease risk prior to movement. Regulated articles accompanied by a certificate may be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when an inspector has determined that, because of possible pest or disease risk, such articles may be safely moved interstate only subject to further restrictions, such as movement to specified areas and movement for specified purposes. Section § 301.89–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.89–5(a) provides that an inspector or person operating under a compliance agreement (discussed below) will issue a certificate for the interstate movement of a regulated article if the inspector determines that the regulated article: (1) Is eligible for unrestricted movement under all other applicable Federal domestic plant quarantines and regulations; (2) is to be moved in compliance with any emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the artificial spread of Karnal bunt; and (3) meets one of the following conditions: The article is free of Karnal bunt infection, based on laboratory results of testing, and history of previous infestation; the article has been grown, produced, manufactured, stored, or handled in a manner that would prevent infestation or destroy all life stages of Karnal bunt; or the article has been treated in accordance with methods and procedures prescribed in § 301.89–11.

Section 301.50–5(b) provides for the issuance of a limited permit (in lieu of a certificate), by an inspector or a person operating under a compliance agreement, for movement of a regulated

article if the inspector determines that the regulated article: (1) Is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit and/or compliance agreement), and this interstate movement will not result in the artificial spread of Karnal bunt because Karnal bunt will be destroyed or the risk mitigated by the specified handling, utilization, or processing; (2) is to be moved interstate in compliance with any additional emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the spread of Karnal bunt; and (3) is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

Section 301.89-5(c) provides that an inspector will issue blank certificates and limited permits to a person operating under a compliance agreement or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates or limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of § 301.89-5(a) or § 301.89-5(b), respectively.

#### Compliance Agreements

Section 301.89-6 provides for the use of compliance agreements. Specifically, compliance agreements may be entered into by any person engaged in the growing, handling, or movement of regulated articles interstate if such persons review with an inspector each stipulation of the compliance agreement, have facilities and equipment to carry out disinfection procedures or application of chemical materials in accordance with § 301.89-11, and meet applicable State training and certification standards under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136b). Any person who enters into a compliance agreement with APHIS must agree to comply with the regulations.

#### Cancellation of a Certificate, Limited Permit, or Compliance Agreement

Section 301.89-7 provides that an inspector may cancel a certificate, limited permit, or compliance agreement, orally or in writing, whenever the inspector determines that the holder of the certificate or limited permit, or the person who has entered into the compliance agreement, has not complied with the regulations. If the

cancellation is oral, the cancellation will become effective upon notification by the inspector. The cancellation and the reasons for the cancellation will then be confirmed in writing as soon as circumstances allow within 20 days after oral notification of the cancellation. Any person whose certificate, limited permit, or compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

#### Assembly and Inspection of Regulated Articles

Section 301.89-8(a) provides that any person who requires certification or other services from an inspector must request the services at least 48 hours before they are needed. Section 301.89-7(b) provides that regulated articles must be assembled at the place and in the manner an inspector designates as necessary to comply with the regulations.

#### Attachment and Disposition of Certificates and Limited Permits

Section 301.89(a) requires the consignor of a regulated article to ensure that the certificate or limited permit authorizing interstate movement of a regulated article is, at all times during interstate movement, attached to the regulated article, or to the outside of the container encasing the regulated article, or to the accompanying waybill. This section also provides that the certificate or limited permit may be attached to the consignee's copy of the waybill only if the certificate and limited permit, and the waybill, contain a sufficient description of the regulated article to identify the regulated article. This provision is necessary for enforcement purposes.

Section 301.89-9(b) requires the carrier of the article to furnish the certificate or limited permit to the consignee at the shipment's destination.

#### Costs and Charges

Section 301.89-10 explains the APHIS policy that the services of an inspector during normal business hours will be furnished without cost to persons requiring the services. The user

will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

#### Treatments

Treatments of regulated articles for Karnal bunt are set forth in § 301.89-11. These treatments are known to be efficacious in destroying Karnal bunt teliospores. To meet the requirements of the regulations for treatments, all conveyances, mechanized farm equipment, seed-conditioning equipment, soil-moving equipment, grain elevators and structures used for storing and handling wheat must be cleaned and disinfected by first removing all soil and plant debris, then treated in one of the following ways: (1) Wetting all surfaces to the point of runoff with a solution of sodium hypochlorite mixed with water applied at the rate of one gallon of a commercial chlorine bleach (5.2 percent sodium hypochlorite) mixed with 2.5 gallons of water (thoroughly washing the equipment or site after 15 minutes is recommended to minimize corrosion); (2) applying steam to all surfaces until the point of runoff; (3) cleaning with a solution of hot water and detergent, under high pressure (at least 30 pounds per square inch), at a minimum temperature of 180 °F.; or (4) fumigating with methyl bromide at the dosage of 15 pounds/1000 cubic feet for 96 hours. Soil and straw/stalks/seed heads for decorative purposes must be fumigated with methyl bromide at the dosage of 15 pounds/1000 cubic feet for 96 hours.

#### Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent Karnal bunt from spreading to noninfected areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action quarantines the State of Arizona and six counties in New Mexico and Texas because of Karnal bunt and restricts the interstate movement of regulated articles from areas quarantined because of infestation with Karnal bunt. This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Act Analysis.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which required intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This rule has been reviewed under Executive Order 12778, 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) only requires administrative proceedings before parties may file suit in court challenging this rule upon the cancellation of a certificate, limited permit, or compliance agreement.

**National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the treatment of regulated articles, under the conditions specified in this rule, will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C 4321 *et seq.*), (2)

Regulations on the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

**Paperwork Reduction Act**

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 0579–0121 to the information collection and recordkeeping requirements. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 96–016–3. Please send a copy of your comments to: (1) Docket No. 96–016–3, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

The paperwork associated with the Karnal bunt program will include the completion of compliance agreements, certificates, and limited permits. There will also be requests for inspections. We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us accomplish the following:

(1) Evaluate whether the proposed collection of information 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 proposed collection of information, 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 responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 15 minutes per response.

*Respondents:* State plant regulatory officials, shippers, growers, and representatives of the plant industry.

*Estimated number of respondents:* 1,573.

*Estimated number of responses per respondent:* 4.

*Estimated total annual burden on respondents:* 1,500.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

**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, 7 CFR part 301 is amended as follows:

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart—Karnal Bunt", sections 301.89 through 301.89–11, to read as follows:

**Subpart—Karnal Bunt**

Sec.

301.89–1 Definitions.

301.89–2 Regulated articles.

301.89–3 Quarantined areas.

301.89–4 Interstate movement of regulated articles from quarantined areas.

301.89–5 Issuance of a certificate or limited permit.

- 301.89-6 Compliance agreements.
- 301.89-7 Cancellation of a certificate, limited permit, or compliance agreement.
- 301.89-8 Assembly and inspection of regulated articles.
- 301.89-9 Attachment and disposition of certificates and limited permits.
- 301.89-10 Costs and charges.
- 301.89-11 Treatments.

## Subpart—Karnal Bunt

### § 301.89-1 Definitions.

**Administrator.** The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

**Animal and Plant Health Inspection Service (APHIS).** The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

**Certificate.** A document in which an inspector or a person operating under a compliance agreement affirms that a specified regulated article meets the requirements of this subpart and may be moved interstate to any destination.

**Compliance agreement.** A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles that are moved interstate, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

**Conveyances.** Containers used to move wheat, durum wheat, or triticale, or their products, including trucks, trailers, railroad cars, bins, and hoppers.

**Farm tools.** An instrument worked or used by hand, e.g., hoes, rakes, shovels, and axes.

**Infestation (infected).** The presence of Karnal bunt, or any stage of development of the fungus *Tilletia indica* (Mitra) Mundkur, or the existence of circumstances that make it reasonable to believe that Karnal bunt is present.

**Inspector.** An APHIS employee or designated cooperator/collaborator authorized by the Administrator to enforce the provisions of this subpart.

**Interstate.** From any State into or through any other State.

**Karnal bunt.** A plant disease caused by the fungus *Tilletia indica* (Mitra) Mundkur.

**Limited permit.** A document in which an inspector affirms that a specified regulated article not eligible for a certificate is eligible for interstate movement only to a specified destination and in accordance with conditions specified on the permit.

**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, cotton harvesters, and hay balers.

**Milling products and byproducts.** Products resulting from processing wheat, durum wheat, or triticale, including animal feed, and waste and debris.

**Movement (moved).** The act of shipping, transporting, delivering, or receiving for movement, or otherwise aiding, abetting, inducing or causing to be moved.

**Person.** Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

**Soil.** That part of the upper layer of earth in which plants can grow.

**Soil-moving equipment.** Equipment used for moving or transporting soil, including, but not limited to, bulldozers, dump trucks, or road scrapers.

**State.** The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

### § 301.89-2 Regulated articles.

The following are regulated articles:

(a) Conveyances, including trucks, railroad cars, and other containers used to move wheat, durum wheat, or triticale;

(b) Grain elevators/equipment/structures used for storing and handling wheat, durum wheat, and triticale;

(c) Milling products or byproducts, except flour;

(d) Plants, or plant parts, including grain, seed, or straw of all varieties of the following species:

Wheat: *Triticum aestivum*;

Durum wheat: *Triticum durum*; and

Triticale: *Triticum aestivum* X *Seale cereals*;

(e) Root crops with soil;

(f) Soil from areas where field crops are produced;

(g) Manure from animals that have fed on wheat, durum wheat, or triticale;

(h) Used bags, sacks and containers;

(i) Used farm tools;

(j) Used mechanized cultivating equipment;

(k) Used mechanized harvesting equipment;

(l) Used seed conditioning equipment;

(m) Used mechanized soil-moving equipment; and

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

(i) An inspector determines that it presents a risk of spreading Karnal bunt due to its proximity to an infestation of Karnal bunt; and

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

### § 301.89-3 Quarantined areas.

(a) The Administrator will quarantine each State or each portion of a State that is infected.

(b) Less than an entire State will be listed as a quarantined area only if the Administrator:

(1) (i) Determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.89-2 that are equivalent to the interstate movement restrictions imposed by this subpart; and

(ii) Determines that designating less than the entire State as a quarantined area will prevent the spread of Karnal bunt; or

(2) Exercises his or her extraordinary emergency authority under 7 U.S.C. 150dd.

(c) The Administrator may include noninfected acreage within a quarantined area due to its proximity to an infestation or inseparability from the infected locality for quarantine purposes, as determined by:

(1) Projections of the spread of Karnal bunt along the periphery of the infestation;

(2) The availability of natural habitats and host materials within the noninfected acreage that are suitable for establishment and survival of Karnal bunt; and

(3) The necessity of including uninfected acreage within the quarantined area in order to establish readily identifiable boundaries.

(d) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraphs (a), (b), and (c) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated quarantined areas in paragraph (e) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is

terminated will be given written notice of the termination as soon as practicable.

(e) The following areas are designated as quarantined areas:

Arizona

The entire State.

New Mexico

*Dona Ana County.* The entire county.

*Hidalgo.* The entire county.

*Luna County.* The entire county.

*Sierra County.* The entire county.

Texas

*El Paso County.* The entire county.

*Hudspeth.* The entire county.

**§ 301.89-4 Interstate movement of regulated articles from quarantined areas.**

(a) Any regulated article may be moved interstate from a quarantined area into or through an area that is not quarantined only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with §§ 301.89-5 and 301.89-9;

(2) Without a certificate or limited permit, provided that each of the following conditions is met:

(i) The regulated article was moved into the quarantined area from an area that is not quarantined;

(ii) The point of origin is indicated on a waybill accompanying the regulated article;

(iii) The regulated article is moved through the quarantined area without stopping, or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of contamination with Karnal bunt, or has been treated in accordance with the methods and procedures prescribed in § 301.89-11 while in or moving through any quarantined area; and

(iv) The article has not been combined or commingled with other articles so as to lose its individual identity; or

(3) Without a certificate or limited permit, provided the regulated article is a soil sample being moved to a laboratory approved by the Administrator<sup>1</sup> to process, test, or analyze soil samples.

(b) When an inspector has probable cause to believe a person or means of conveyance is moving a regulated article in interstate commerce, the inspector is authorized to stop the person or means of conveyance to determine whether a regulated article is present and to

inspect the regulated article. Articles found to be infected by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of. Any treatments will be in accordance with the methods and procedures prescribed in § 301.89-11.

**§ 301.89-5 Issuance of a certificate or limited permit.**

(a) An inspector<sup>2</sup> or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article:

(1) Is eligible for unrestricted movement under all other applicable Federal domestic plant quarantines and regulations;

(2) Is to be moved in compliance with any emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the artificial spread of Karnal bunt<sup>3</sup>; and

(3) (i) Is free of Karnal bunt infestation, based on laboratory results of testing, and history of previous infestation;

(ii) Has been grown, produced, manufactured, stored, or handled in a manner that would prevent infestation or destroy all life stages of Karnal bunt; or

(iii) Has been treated in accordance with methods and procedures prescribed in § 301.89-11.

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

(1) Is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit and/or compliance agreement), and this interstate movement will not result in the artificial spread of Karnal bunt because Karnal bunt will be destroyed

or the risk mitigated by the specified handling, utilization, or processing;

(2) Is to be moved interstate in compliance with any additional emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the artificial spread of Karnal bunt; and

(3) Is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with § 301.89-6 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of paragraph (a) or (b), respectively, of this section.

**§ 301.89-6 Compliance agreements.**

Persons who grow, handle, or move regulated articles interstate may enter into a compliance agreement<sup>4</sup> if such persons review with an inspector each stipulation of the compliance agreement, have facilities and equipment to carry out disinfection procedures or application of chemical materials in accordance with § 301.89-11, and meet applicable State training and certification standards under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136b). Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

**§ 301.89-7 Cancellation of a certificate, limited permit, or compliance agreement.**

Any certificate, limited permit, or compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit, or the person who has entered into the compliance agreement, has not complied with this subpart or any conditions imposed under this subpart.

<sup>4</sup> 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, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236, or from the Karnal Bunt Project, 1688 W. Adams St., Phoenix, Arizona 85007.

<sup>1</sup> Criteria that laboratories must meet to become approved to process, test, or analyze soil, and the list of currently approved laboratories, may be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>2</sup> Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning such local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236, or from Karnal Bunt Project, 1688 W. Adams St., Phoenix, Arizona 85007.

<sup>3</sup> Section 105 of the Federal Plant Pest Act (7 U.S.C. 105dd) authorizes the Secretary of Agriculture to impose emergency measures necessary to prevent the spread of plant pests new to, or not widely prevalent or distributed within and throughout, the United States.

If the cancellation is oral, the cancellation will become effective immediately and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances allow, but within 20 days after oral notification of the cancellation. Any person whose certificate, limited permit, or compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

#### **§ 301.89-8 Assembly and inspection of regulated articles.**

(a) Persons requiring certification or other services must request the services from an inspector<sup>5</sup> at least 48 hours before the services are needed.

(b) The regulated articles must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

#### **§ 301.89-9 Attachment and disposition of certificates and limited permits.**

(a) The consignor must ensure that the certificate or limited permit authorizing interstate movement of a regulated article is, at all times during interstate movement, attached to:

(1) The outside of the container encasing the regulated article;

(2) The article itself, if it is not in a container; or

(3) The consignee's copy of the accompanying waybill: Provided, that the descriptions of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing interstate movement of a regulated article to the consignee at the shipment's destination.

#### **§ 301.89-10 Costs and charges.**

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

#### **§ 301.89-11 Treatments.**

(a) All conveyances, mechanized farm equipment, seed-conditioning equipment, soil-moving equipment, grain elevators and structures used for storing and handling wheat, durum wheat, or triticale must be cleaned and disinfected by removing all soil and plant debris and:

(1) Wetting all surfaces to the point of runoff with a solution of sodium hypochlorite mixed with water applied at the rate of 1 gallon of commercial chlorine bleach (5.2 percent sodium hypochlorite) mixed with 2.5 gallons of water. The equipment or site should be thoroughly washed down after 15 minutes to minimize corrosion; or

(2) Applying steam to all surfaces until the point of runoff;

(3) Cleaning with a solution of hot water and detergent, under high pressure (at least 30 pounds per square inch), at a minimum temperature of 180 °F.; or

(4) Fumigating with methyl bromide at the dosage of 15 pounds/1000 cubic feet for 96 hours.

(b) Soil, and straw/stalks/seed heads for decorative purposes must be treated by fumigation with methyl bromide at the dosage of 15 pounds/1000 cubic feet for 96 hours.

Done in Washington, DC, this 25th day of March, 1996.

Lonnie J. King,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 96-7545 Filed 3-27-96; 8:45 am]

BILLING CODE 3410-34-P

## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 2**

#### **Policy and Procedure for Enforcement Actions; Removal; Correction**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement: Correction.

**SUMMARY:** This document corrects a notice appearing in the Federal Register on June 30, 1995 (60 FR 34380), that announced the removal of the Nuclear Regulatory Commission's (NRC's) Enforcement Policy from the Code of Federal Regulations. This action is necessary to correct an inadvertent indication in the Paperwork Reduction Act Statement section that the policy statement did not include any information collection requirements. Because this notice and a second notice announcing the revision of the NRC's Enforcement Policy (60 FR 34381; June

30, 1995) were subsequently issued in their entirety as NUREG-1600, NUREG-1600 also includes this inadvertent indication. An errata for NUREG-1600 is being issued to address this issue.

**FOR FURTHER INFORMATION CONTACT:** James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-2741.

On page 34380, in the third full paragraph in the third column, the correct Paperwork Reduction Act Statement for the NRC's Enforcement Policy should read: "This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C."

Dated at Rockville, Maryland, this 22nd day of March 1996.

For the Nuclear Regulatory Commission.  
John C. Hoyle,

*Secretary of the Commission.*

[FR Doc. 96-7532 Filed 3-27-96; 8:45 am]

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. 95-SW-04-AD; Amendment 39-9552; AD 96-07-03]

**Airworthiness Directives; Societe Nationale Industrielle Aerospatiale and Eurocopter France Model AS 350B, BA, B1, B2, and D, and Model AS 355E, F, F1, F2, and N Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Societe Nationale Industrielle Aerospatiale and Eurocopter France (Eurocopter France) Model AS 350B, BA, B1, B2, and D, and Model AS 355E, F, F1, F2, and N helicopters, without an autopilot installed, that requires a visual inspection to determine whether the cyclic pitch change control rod (rod) end fittings were safetied, and removal

<sup>5</sup> See footnote 2.