

provided, it may be used to verify the current certification for the child(ren) for whom free meal benefits are claimed. Whenever households apply for benefits for children not receiving food stamp, FDPIR, AFDC, or for tier II homes, other qualifying Federal or State program benefits, they must apply in accordance with the requirements set forth in paragraph (e)(1)(ii) of this section.

(v) * * *

(B) The signature of an adult member of the household as provided in paragraph (e)(1)(iii)(F) of this section. In accordance with paragraph (e)(1)(iii)(G) of this section, if a food stamp or FDPIR case number or SSI or Medicaid assistance identification number is provided, it may be used to verify the current food stamp, FDPIR, SSI, or Medicaid certification for the adult(s) for whom free meal benefits are being claimed. Whenever households apply for benefits for adults not receiving food stamp, FDPIR, SSI, or Medicaid benefits, they must apply in accordance with the requirements set forth in paragraph (e)(1)(iii) of this section.

(2) * * *

(vii) * * *

(A) In the case of households of enrolled children that provide a food stamp, FDPIR or AFDC case number to establish a child's eligibility for free meals, any termination in the child's certification to participate in the Food Stamp, FDPIR or AFDC Programs, or

(B) In the case of households of adult participants that provide a food stamp or FDPIR case number or an SSI or Medicaid assistance identification number to establish an adult's eligibility for free meals, any termination in the adult's certification to participate in the Food Stamp, FDPIR, SSI or Medicaid Programs.

* * * * *

(h) * * *

(2) * * *

(i) * * * However,

(A) If a food stamp, FDPIR or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp or FDPIR household or AFDC assistance unit; or

(B) If a food stamp or FDPIR case number or SSI or Medicaid assistance identification number is provided for an adult, verification for such adult shall include only confirmation that the adult is included in a currently certified food stamp or FDPIR household or is currently certified to receive SSI or Medicaid benefits.

* * * * *

(iii) * * *

(A) Section 9 of the National School Lunch Act requires that, unless households provide the child's food stamp, FDPIR or AFDC case number, or the adult participant's food stamp or FDPIR case number or SSI or Medicaid assistance identification number, those selected for verification must provide the social security number of each adult household member;

* * * * *

(iv) Households of enrolled children selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp, FDPIR, or AFDC Program they may submit proof of that certification in lieu of income information. In those cases, such proof shall consist of a current "Notice of Eligibility" for Food Stamp, FDPIR, or AFDC Program benefits or equivalent official documentation issued by a food stamp, Indian Tribal Organization, or welfare office which shows that the children are members of households or assistance units currently certified to participate in the Food Stamp, FDPIR, or AFDC Programs. An identification card for any of these programs is not acceptable as verification unless it contains an expiration date. Households of enrolled adults selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp Program or FDPIR or SSI or Medicaid Programs, they may submit proof of that certification in lieu of income information. In those cases, such proof shall consist of:

(A) A current "Notice of Eligibility" for Food Stamp or FDPIR benefits or equivalent official documentation issued by a food stamp, Indian Tribal Organization, or welfare office which shows that the adult participant is a member of a household currently certified to participate in the Food Stamp Program or FDPIR. An identification card is not acceptable as verification unless it contains an expiration date; or

(B) Official documentation issued by an appropriate SSI or Medicaid office which shows that the adult participant currently receives SSI or Medicaid assistance. An identification card is not acceptable as verification unless it contains an expiration date. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in a termination of benefits.

(v) * * *

(A) *Written evidence* shall be used as the primary source of information for verification. Written evidence includes

written confirmation of a household's circumstances, such as wage stubs, award letters, letters from employers, and, for enrolled children, current certification to participate in the Food Stamp, FDPIR or AFDC Programs, or, for adult participants, current certification to participate in the Food Stamp, FDPIR, SSI or Medicaid Programs. Whenever written evidence is insufficient to confirm eligibility, the State agency may use collateral contacts.

* * * * *

(C) * * * Information concerning income, family size, or food stamp/FDPIR/AFDC certification for enrolled children, or food stamp/FDPIR/SSI/Medicaid certification for enrolled adults, which is maintained by other government agencies and to which a State agency can legally gain access may be used to confirm a household's eligibility for Program meal benefits. * * *

* * * * *

Dated: April 10, 1997.

Mary Ann Keeffe,

Acting Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 97-11350 Filed 4-30-97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96-016-19]

RIN 0579-AA83

Karnal Bunt Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations to modify the criteria for classifying regulated areas by including in those criteria a requirement that a bunted wheat kernel be found in or associated with a field within an area before that area will be designated as a regulated area. We are also modifying the classification of restricted areas by establishing separate restricted areas for seed and for regulated articles other than seed. We are taking this action because tests currently available for use in identifying spores do not allow us to differentiate between small numbers of Karnal bunt spores and the spores of an as yet unnamed, but widely distributed, ryegrass smut. This action will have the effect of removing some areas in

Arizona and California from the list of regulated areas and will relieve restrictions on the movement of grain and other regulated articles from additional areas in Arizona, California, New Mexico, and Texas.

DATES: Interim rule effective April 25, 1997. Consideration will be given only to comments received on or before June 2, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96-016-19, 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. 96-016-19. 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. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247.

SUPPLEMENTARY INFORMATION: 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 by spores. 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 301.89-14.

On October 4, 1996, we published in the **Federal Register** (61 FR 52190-52213, Docket No. 96-116-14) a final rule that, in part, established criteria for levels of risk for areas with regard to Karnal bunt and for the movement of regulated articles based on those criteria. In that final rule, levels of risk were assigned to areas based on their proximity to fields in which Karnal bunt spores were detected during preharvest samples or in which contaminated seed was planted.

In November 1996, a sample of a forage mixture containing wheat seed and seed of a number of grass species was tested and found to contain Karnal

bunt-like teliospores. By a process of elimination, it was eventually determined that the source of the teliospores was the annual ryegrass in the forage mixture. Subsequent research showed that the teliospores associated with the ryegrass seed were produced by a disease different from Karnal bunt, but with teliospores that are so similar as to be indistinguishable by tests currently available. As a result of the survey, testing, and research activities carried out by the Animal and Plant Health Inspection Service (APHIS), Agricultural Research Service, and several State agricultural agencies, we believe that:

- A substantial portion of the ryegrass seed produced in the United States contains teliospores produced by an as yet unnamed smut affecting ryegrass;
- This seed has been widely distributed in the United States and to at least 26 foreign countries, and it is likely that this wide distribution has contributed to the ryegrass smut disease becoming well established;
- Ryegrass is one of the most common weeds occurring in wheat fields, and is frequently planted with wheat in forage and pasture mixes;
- Information currently available indicates that it is impossible to make a definitive determination as to the identity of teliospores when only small numbers are present. In most surveys in which Karnal bunt teliospores were found, the number of spores detected in the sample were five or fewer. Previous methods of identifying teliospores included size, morphology, and the results of DNA/PCR tests. None of these methods are practical for determining whether small numbers of teliospores detected are Karnal bunt or the ryegrass smut; and
- Scientists consulted by APHIS have concluded that a positive determination as to the presence of Karnal bunt can now be made only when bunted wheat kernels are present.

Based on the considerations listed above, we concluded that the detection of spores alone does not now allow us to make a conclusive determination that Karnal bunt disease is present in an area or article. That conclusion had an immediate effect on the States of Alabama, Florida, Georgia, and Tennessee, where grain in a number of storage facilities had been found to be contaminated with spores that appeared to be Karnal bunt spores, and on South Carolina, where seed from a seed lot contaminated with those spores had been planted. Specifically, we announced on March 17, 1997, that we were lifting all emergency action notifications affecting those States due

to the fact that no bunted wheat kernels had been detected in those areas, only the Karnal bunt-like spores. In that same announcement, we stated our intention to develop a new regulatory standard for determining the presence of Karnal bunt that would apply to all parts of the United States. Therefore, we are amending the Karnal bunt regulations to make them consistent with our determination that the detection of a bunted wheat kernel is necessary to confirm the presence of Karnal bunt.

Classification of Regulated Areas

In § 301.89-3(e), we have revised the criteria for classifying regulated areas. Those criteria had been based on a finding that a field contained spores or had been planted with seed that tested positive for the presence of spores; we are now requiring that a bunted wheat kernel be found in or associated with a field within an area before that area will be designated as a regulated area.

In revising the classification criteria, we have retained the categories of restricted areas and surveillance areas, but we have split the category of restricted area to establish restricted areas for seed, which is the regulated article that presents the greatest risk of spreading Karnal bunt, and restricted areas for regulated articles other than seed. Because of the higher risk presented by seed, restricted areas for seed cover a larger area than do the restricted areas for regulated articles other than seed.

Under the new classification criteria, a restricted area for seed is a distinct definable area that includes at least one field that has been associated with a bunted wheat kernel. A field's association with a bunted wheat kernel will be established when it has been determined that:

- A bunted wheat kernel was found in the field during surveys;
- Seed from a lot contaminated with a bunted wheat kernel was planted in the field; or
- The field was found during surveys to contain spores and was traced back from a handling facility in which grain containing a bunted wheat kernel is stored.

The boundaries of a restricted area for seed—i.e., how much of an area surrounding the field or fields found to be associated with a bunted wheat kernel will be included within the restricted area for seed—will be determined in accordance with the existing criteria in paragraphs (b) through (d) of § 301.89-3, which provide for regulating less than an entire State, the inclusion of noninfected acreage in a regulated area, and the

temporary designation of nonregulated areas as regulated areas.

The individual fields that are determined to be associated with a bunted wheat kernel are also designated as restricted areas for regulated articles other than seed. The identity of those fields is determined using the same criteria discussed above with regard to restricted areas for seed, but it is the field itself, without any adjacent areas, that is designated as the restricted area for regulated articles other than seed.

Surveillance areas are those areas that include at least one field in which a bunted wheat kernel was found during surveys or one field in which spores were found during survey and that field was traced back from a handling facility in which grain containing a bunted wheat kernel was stored. These classification criteria are similar to those used to classify fields in the two restricted area categories, the difference being that the restricted area categories include fields planted with contaminated seed. Because a surveillance area will, in all cases, fall within the boundaries of a restricted area for seed, a surveillance area designation will only have an effect, for the purposes of movement, on the movement of regulated articles other than seed. The boundaries of a surveillance area will be determined using the criteria in paragraphs (b) through (d) of § 301.89-3, which provide for regulating less than an entire State, the inclusion of noninfected acreage in a regulated area, and the temporary designation of nonregulated areas as regulated areas.

List of Regulated Areas

The list of regulated areas in § 301.89-3(f) has been revised to reflect the new area classifications and the new regulated areas that have been identified based on the revised classification criteria discussed above. The regulated areas are still listed alphabetically by State, and each classification—i.e. restricted area for seed, restricted area for regulated articles other than seed, and surveillance area—lists areas or fields by county. Where individual fields are listed, they are designated by specific field numbers that have been assigned by State or local agricultural agencies or by the growers themselves. In all cases, the owners of those fields have already been notified of the regulatory status of their fields.

In Arizona, the counties of La Paz, Maricopa, Pinal, and Yuma are designated as restricted areas for seed due to the detection of bunted wheat kernels or the planting of contaminated seed in fields within those counties. In

all, 21 fields were found with bunted wheat kernels during the 1996 preharvest surveys in those counties, and 103 fields—5 of which are among the 21 fields found to contain bunted wheat kernels—were identified as having been planted with contaminated seed. Those 119 fields found to contain bunted wheat kernels or that were planted with contaminated seed comprise the restricted areas for regulated articles other than seed in Arizona and are listed individually by county. Cochise, Graham, and Pima counties have been removed from the list of regulated areas, and the size of the regulated areas in La Paz, Maricopa, Pinal, and Yuma counties has been reduced.

The surveillance areas in Arizona are located in La Paz, Maricopa, and Pinal counties, where the 21 fields found to contain bunted wheat kernels were located. The borders of the surveillance areas in Arizona extend roughly 3 miles in each direction from each bunted wheat kernels field or cluster of bunted wheat kernel fields; the edges of each surveillance area lie along township and range lines in order that they may be described clearly and consistently. This 3-mile radius around the bunted wheat kernel fields or field clusters was established for Arizona based on the experience gained through our Karnal bunt control efforts and on our knowledge of the epidemiology of plant diseases. The 3-mile radius encompasses, in most cases, fields that share common ownership with the fields in which bunted wheat kernels were detected. Given that the disease may be spread through contaminated farm equipment, we believe that this common ownership factor must be considered. Supporting this consideration is our finding that 56 percent of the spore-positive fields in Arizona fall within the 9 square miles surrounding fields found to contain bunted wheat kernels. Beyond the 3-mile radius, the number of additional spore-positive fields does not increase as quickly: A 5-mile radius (25 square miles) encompasses 73 percent of the spore-positive fields—a 17-percent increase—and a 10-mile radius (100 square miles) takes in 77 percent of the spore-positive fields. We have determined, therefore, that establishing surveillance areas in Arizona that extend approximately 3 miles around the fields found to contain bunted wheat kernels will allow us to concentrate on the areas from which the movement of regulated articles presents the highest risk without unnecessarily

extending restrictions into lower-risk areas.

In California, the Bard-Winterhaven area of Imperial County and the Palo Verde Valley area of Imperial and Riverside counties are designated as restricted areas for seed. The Bard-Winterhaven area is designated as a restricted area for seed because it abuts Yuma County, Arizona, and falls within a distinct definable wheat production area that includes fields in Yuma County that were planted with contaminated seed. The Palo Verde Valley is designated as a restricted area for seed because 55 fields within the valley are considered to be positive for Karnal bunt. The 55 fields had not been examined individually for bunted wheat kernels during the 1996 surveys, but they had been found to contain spores. Grain from those fields that had been commingled at a grain storage facility was found to contain bunted wheat kernels that could not be traced back to any individual field or fields. The combination of spores in the fields and bunted wheat kernels in grain associated with the fields gives us reason to believe that those fields are affected with Karnal bunt. Those 55 fields in the Palo Verde Valley comprise the restricted area for regulated articles other than seed in California; all the fields are located in Riverside County and are listed under the entry for that county. The remaining areas in Imperial and Riverside counties that had been classified as regulated areas have been removed from the list of regulated areas.

In New Mexico, there are 106 fields located in Dona Ana, Hidalgo, Luna, and Sierra counties that were identified as having been planted with contaminated seed. Those 106 fields comprise the restricted areas for regulated articles other than seed in the State, and the areas surrounding those fields, which are the same as the regulated areas of New Mexico described in the October 4, 1996, final rule, are designated as restricted areas for seed. Because there were no fields found to contain bunted wheat kernels in New Mexico—only fields planted with contaminated seed—there are no surveillance areas in the State.

There are 24 fields located in El Paso and Hudspeth counties, Texas, that were identified as having been planted with contaminated seed. Those 24 fields comprise the restricted areas for regulated articles other than seed in the State, and the areas surrounding those fields, which are the same as the regulated areas of Texas described in the October 6, 1996, final rule, are designated as restricted areas for seed. Because there were no fields found to

contain bunted wheat kernels in Texas—only fields planted with contaminated seed—there are no surveillance areas in the State.

Maps showing the location of all the regulated areas described above, including the individual fields listed as restricted areas for regulated articles other than seed, 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. Those maps are available for inspection at the APHIS field offices listed below.

Regulated Areas in Arizona and California:

Phoenix Karnal Bunt Office, 3658 East Chipman Road, Phoenix, AZ, phone (602) 414-4740;

Buckeye Karnal Bunt Office, 26405 West Highway 85, Buckeye, AZ, phone (602) 386-4514;

Casa Grande Karnal Bunt Office, 884 West Highway 84, Casa Grande, AZ, phone (520) 836-5192; and

Yuma Karnal Bunt Office, 350 West 16th Street, room 305, Yuma, AZ, phone (520) 783-3901.

Regulated areas in New Mexico:

USDA-APHIS-PPQ Karnal Bunt Office, Mike Perry, 270 South 17th Street, Las Cruces, NM, phone (505) 527-6983.

Regulated areas in Texas: USDA-APHIS-PPQ, George Nash, 903 San Jacinto Boulevard, suite 270, Austin, TX, phone (512) 916-5241 or (512) 916-5242.

As noted in previous paragraphs, we have removed several areas in Arizona and California from the list of regulated areas, which means that growers and other persons in those areas will no longer be subject to restrictions on the movement of regulated articles from the areas no longer listed in § 301.89-3(f). APHIS will, however, continue to check for bunted wheat kernels in samples drawn from grain grown in those areas to ensure continued confidence, both nationally and internationally, in APHIS' Karnal bunt control measures and certification. The data gathered could also be used as the basis for releasing specific areas from regulation for the purposes of seed movement.

Planting Within Regulated Areas

We have made three changes to the restrictions of § 301.89-4, "Planting," to make that section consistent with the amended regulations described above. First, we have removed a reference in paragraph (a) to the planting of wheat, durum wheat, and triticale in fields outside of a regulated area because there are no restrictions placed by the

regulations on fields outside of the regulated areas described in § 301.89-3(f).

Second, we have removed paragraphs (a)(1) and (a)(2), which stated that wheat, durum wheat, and triticale may not be planted during the 1996-1997 crop season in fields that tested positive for Karnal bunt during preharvest samples or that had been planted with contaminated seed. Those paragraphs have been replaced with a single paragraph stating that those crops may not be planted in a field listed in § 301.89-3(f) as a restricted area for regulated articles other than seed. The new paragraph has the same effect as the two it replaces in that it prohibits the planting of wheat, durum wheat, and triticale in a field within a restricted area; however, the fields themselves are now the restricted areas and can be referred to as such.

Third, we have revised paragraph (b) of § 301.89-4 to remove the requirement for testing seed that originated outside the regulated area prior to its being planted within the regulated area. We have no reason to believe that seed originating outside the regulated areas poses a risk of spreading Karnal bunt—which is why the regulations place no restrictions on the movement of such seed—so we do not believe it is necessary for that seed to be tested prior to planting in a regulated area.

Movement Restrictions for Grain

We have amended § 301.89-6, "Issuance of a certificate or limited permit," to relax the testing requirements for grain. Grain to be moved from a surveillance area will be required to undergo one test and be found free from spores in order for the grain to qualify for movement under a certificate. Grain from a surveillance area had been required to undergo two tests, with the second one occurring at the means of conveyance or storage facility immediately prior to movement. We have eliminated the requirement for the first test based on two factors: the low confidence in the efficacy of the first test, and our increased confidence in the efficacy of the sampling and testing of grain at the means of conveyance or storage facility.

In the 1995-1996 crop season, the first test was done on a preharvest sample taken in the field. We have determined that testing a preharvest sample in addition to testing grain at the means of conveyance or storage facility does not significantly improve the detection of Karnal bunt. Karnal bunted kernels occur in clusters within fields, so that spores from the clusters are not randomly distributed throughout the

field. This significantly decreases the chances of finding a spore in a preharvest sample taken from a field. In contrast, we have found that the routine handling of grain prior to its being loaded onto a conveyance mixes the grain to the extent that the majority of spores present in the grain will be distributed throughout the grain by the time it is loaded onto a conveyance. That finding led us to conclude that there is a 99 percent probability of finding spores in a 50 gram sample taken at the means of conveyance or storage facility when there is a single bunted wheat kernel in 1.5 million kernels. We found that testing a preharvest sample increases that probability by only .05 percent. Based on the high level of confidence of tests done on samples taken at the means of conveyance or storage facility, and the minimal improvement in the detection levels offered by tests done on preharvest samples, we believe that a single test performed at the means of conveyance immediately prior to movement will enable us to detect the presence of Karnal bunt spores in grain aboard a conveyance.

In view of our finding that the first test formerly required by the regulations should be discontinued because it does not significantly aid the efficacy of our Karnal bunt program, owners and handlers of grain may wish to consider arranging their own tests for their grain before it is commingled with grain from other sources, if they believe such testing would provide them with useful business information about the Karnal bunt status of their grain.

Grain found to contain spores will be ineligible for movement under a certificate due to the fact that the grain will have originated in a surveillance area, i.e., an area that includes at least one field in which a bunted wheat kernel has been detected. That link to bunted wheat kernels gives us reason to believe that grain containing spores presents a greater risk of being infected with Karnal bunt, so we will allow grain found to contain spores to be moved only under a limited permit, which means that the grain will be subject to measures intended to mitigate the risk of the grain spreading Karnal bunt.

Also in § 301.89-6, we have removed paragraph (d), which sets forth the eligibility requirements for the movement of grain from a restricted area. Grain may not be grown in a field listed in § 301.89-3(f) as a restricted area for regulated articles other than seed, so those eligibility requirements are no longer applicable.

Other Changes

We have amended the definition of *distinct definable area* to make it consistent with the changes to the classification criteria for restricted areas. The definition had stated that an inspector would consider survey results, including the number of positive fields and the relative spore count of fields within an area, when determining the boundaries of a distinct definable area surrounding a restricted area. We have amended that definition to remove the references to the number of positive fields and relative spore counts because the presence of a single positive field in an area—i.e. a field found to contain or to be associated with a bunted wheat kernel—now serves as the basis for the classification of that area as a restricted area, and because spore counts no longer serve as a criterion for determining an area's classification.

As a result of the changes to the criteria for classifying regulated areas and to the movement and planting restrictions for grain, much of the information contained in the chart that comprised "Appendix to Subpart—Karnal Bunt" is no longer applicable. We have, therefore, removed the appendix from the regulations.

In addition to those changes, we have also made two other minor changes to the regulations. First, we have corrected the fourth sentence of § 301.89–3(d), which refers to "the list of designated regulated areas in paragraph (e) of this section." That list is actually in paragraph (f) of § 301.89–3, so we have changed the reference to reflect the correct location of the list. Second, we have redesignated footnotes 3 through 6 as footnotes 2 through 5; this change was necessary because the revision to § 301.89–4 discussed above resulted in the removal of footnote 2.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment in order that the amended regulations are in place prior to the impending spring grain harvest in the affected States. Immediate action is also warranted to relieve restrictions on growers and other persons in certain areas of Arizona and California that will no longer be classified as regulated areas to ease the restrictions on the movement of grain and other regulated articles from additional areas in Arizona, California, New Mexico, and Texas that continue to be classified as regulated areas.

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 30 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. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This action amends the Karnal bunt regulations by including a requirement that a bunted wheat kernel be found in or associated with a field within an area before that area will be designated as a regulated area. This will relieve restrictions on growers and other persons in certain areas of Arizona and California that no longer meet the criteria for classification as regulated areas. This action also eases the restrictions on the movement of grain and other regulated articles from additional areas in Arizona, California, New Mexico, and Texas that continue to be classified as regulated areas. We are taking this action on an expedited basis and are making it effective upon signature in order that the amended regulations published in this document are in place prior to the impending spring grain harvest in the affected States. This 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 substantially reduces the size of the area regulated for Karnal bunt, which means that there will no longer be restrictions imposed upon the movement of regulated articles such as grain, seed, and straw from those areas released from regulation. This rule also eases restrictions on the movement of grain and other regulated articles from those areas that remain under regulation. Given these changes, we anticipate that this rule will have a significant deregulatory impact on affected entities. As discussed in the regulatory flexibility analysis for the October 4, 1996, final rule cited above, the majority of the affected entities in the regulated areas have been

determined to be small entities. (That regulatory flexibility analysis was published in the **Federal Register** on April 3, 1997 [62 FR 15809–15819, Docket No. 96–016–18].) 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 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 the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0121.

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. 147aa, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.89–1 [Amended]

2. In § 301.89–1, the definition of *distinct definable area* is amended by removing the words "including the number of positive fields and the relative spore count of the fields within the area".

3. Section 301.89–3 is amended as follows:

a. In paragraph (d), the fourth sentence is amended by removing the words "paragraph (e)" and adding the words "paragraph (f)" in their place.

b. Paragraphs (e) and (f) are revised to read as follows.

§ 301.89–3 Regulated areas.

* * * * *

(e) The Administrator will classify fields or areas within the regulated boundaries as either restricted areas or

surveillance areas according to the following categories:

(1) *Restricted areas for seed.* A restricted area for seed is a distinct definable area that includes at least one field that has been:

(i) Found during survey to contain a bunted wheat kernel;

(ii) Planted with seed from a lot found to contain a bunted wheat kernel; or

(iii) Found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel.

(2) *Restricted areas for regulated articles other than seed.* Individual fields will be designated as restricted areas for regulated articles other than seed under the following circumstances:

(i) The field was found during survey to contain a bunted wheat kernel;

(ii) The field was planted with seed from a lot found to contain a bunted wheat kernel; or

(iii) The field was found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel.

(3) *Surveillance areas:* A surveillance area will be an area that includes at least one field that was either:

(i) Found during survey to contain a bunted wheat kernel; or

(ii) Found to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel.

(f) The following areas are designated as regulated areas, and those areas are divided into restricted areas or surveillance areas as indicated below. (Maps of the regulated areas may be obtained by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 134, Riverdale, MD 20737-1236.)

Arizona

(1) *Restricted areas for seed.*

La Paz County. The entire county.

Maricopa County. The entire county.

Pinal County. The entire county.

Yuma County. The entire county.

(2) *Restricted areas for regulated articles other than seed.* The following numbered fields are restricted areas for the regulated articles other than seed.

La Paz County

319050508

319072200

319072212

Maricopa County

301060505

301060506

301060601

301060602

301060603

301060604

301092503

301102505

301102506

301103502

302063605

302071004

302071005

302071007

302071012

302071101

302071102

302071105

302071402

302071405

302071410

302071412

302071504

302071507

302071509

302072205

302072802

302073306

302073307

302073310

302073403

302073404

302073406

302073409

302110403

302110405

302110406

302131311

303102206

303111502

303111503

303113002

303112502

303112505

304023202

304031904

304031906

304073004

304073005

304073010

304081410

304081413

304081415

304081417

304081505

304081506

304082202

304082302

304082303

304082607

304082703

305031601

305031603

305050105

305050309

306013222

306013231

306020404

306020501

306020601

306020623

316123301

316123302

316123303

316131801

316131901

316131904

316132302

316132604

316152306

316152315

Pinal County

307011701

307011709

307012008

307012207

308102604

308102605

315220501

315220701

315220904

Yuma County

321010208

321010210E

321010301

32101SEC11

321033501

321033502

321033503

321040405

321040911

321040912

321040915

321040917

321041903

321041904

321041908

321041918

321042903

323030401

323030501

323030504

323030505

323030507

323030508

323030605A

323030608A

323030608B

(3) *Surveillance areas.*

La Paz County. The area beginning at the point where the Colorado River intersects the north side of Section 6, Township 7 North, Range 21 West, then east to the northeast corner of Section 1, Township 7 North, Range 21 West, then south to the southeast corner of Section 36, Township 7 North, range 21 West, then west to the northeast corner of Section 3, Township 6 North, range 21 West, then south to the southeast corner of Section 15, Township 5 North, Range 21 West, then west to the Colorado River, then north up the Colorado River to the point of beginning.

Maricopa County. The area beginning at the northwest corner of Section 7, Township 1 South, Range 6 East, then east to the northeast corner of Section 12, Township 1 South, Range 6 East, then south to the southeast corner of Section 1, Township 2 South, Range 6 East, then west to the northwest corner of Section 9, Township 2 South, Range 6 East, then south to the southeast corner of Section 32, Township 2 South, Range 6 East, then west to the southwest corner of Section 33, Township 2 South, Range 5 East, then north to the northwest corner of Section 4, Township 2 South, Range 5 East, then east to the southeast corner of Section 36, Township 1 South, Range 5 East, then north to the southeast corner of Section 25, Township 1 South, Range 5 East, then west to the southwest corner of Section 25, Township 1

South, Range 5 East, then north to the northwest corner of Section 25, Township 1 South, Range 5 East, then east to the northeast corner of Section 25, Township 1 South, Range 5 East, then north to the point of beginning;

The area beginning at the northwest corner of Section 19, Township 4 North, Range 2 West, then east to the northeast corner of Section 24, Township 4 North, Range 1 West, then south to the northwest corner of Section 6, Township 3 North, Range 1 East, then east to the northeast corner of Section 1, Township 3 North, Range 1 East, then south to the southeast corner of Section 36, Township 1 North, Range 1 East, then east to the southwest corner of Section 31, Township 1 North, Range 1 East, then north to the northwest corner of Section 6, Township 1 North, Range 1 East, then west to the southwest corner of Section 31, Township 2 North, Range 3 West, then north to the point of beginning; and

The area beginning at the northwest corner of Section 10, Township 1 North, Range 5 West, then east to the northeast corner of Section 9, Township 1 North, Range 4 West, then south to the southeast corner of Section 4, Township 1 South, Range 4 West, then west to the southwest corner of Section 3, Township 1 South, Range 5 West, then north to the point of beginning.

Pinal County. The area beginning at the northwest corner of Section 23, Township 4 South, Range 2 East, then east to the northeast corner of Section 23, Township 4 South, Range 3 East, then south to the southeast corner of Section 26, Township 5 South, Range 3 East, then west to the southwest corner of Section 26, Township 5 South, Range 2 East, then north to the point of beginning.

California

(1) *Restricted areas for seed.*

Imperial County. That portion of Imperial County known as the Bard-Winterhaven area bounded by a line drawn as follows: Beginning at the intersection of the west boundary line of Range 22 East and the California-Arizona State line; then, north along this boundary line to its intersection with the All American Canal; then northeasterly along this canal to its intersection with the south boundary line of Section 25, Township 15 South, Range 23 East; then east along this line to its intersection with the California-Arizona State line; then southerly and westerly along this State line to the point of beginning; and

That portion of Imperial County known as the Palo Verde Valley (in part) bounded by a line drawn as follows: Beginning at the intersection of the Riverside-Imperial County line and the California-Arizona State line; then, westerly and southerly along this State line to its intersection with the north boundary line of Township 10 South; then west along this boundary line to its intersection with the west boundary line of Range 21 East; then north along this boundary line to its intersection with the Riverside-Imperial County line; then easterly along this County line to the point of beginning.

Riverside County. That portion of Riverside County known as the Palo Verde Valley (in

part) bounded by a line drawn as follows: Beginning at the intersection of the north boundary line of Township 2 South and the California-Arizona State line; then southerly and southwesterly along this State line to its intersection with the Riverside-Imperial County line; then westerly along this county line to its intersection with the west boundary line of Range 21 East; then north along this boundary line to its intersection with the north boundary line of Township 2 South; then east along this boundary line to the point of beginning.

(2) *Restricted areas for regulated articles other than seed.* The following numbered fields are restricted areas for the regulated articles other than seed.

Riverside County

01 Desert
05 Desert
09 Desert
11 Desert
12 Desert
23 Desert
28 Desert
44 Desert
55 Desert
56 Desert
57 Desert
N08 Desert
N09 Desert
N10 Desert
N11 Desert
N14 Desert
N15 Desert
N16 Desert
N17 Desert
N18 Desert
N19 Desert
N26 Desert
N27 Desert
N28 Desert
N29 Desert
N30 Desert
N31 Desert
N32 Desert
N33 Desert
N37 Desert
N42 Desert
N43 Desert
N44 Desert
N45 Desert
N46 Desert
N47 Desert
N48 Desert
N49 Desert
N50 Desert
N51 Desert
N52 Desert
N55 Desert
N56 Desert
N57 Desert
N58 Desert
N59 Desert
N117 Desert
N118 Desert
N119 Desert
N120 Desert
N121 Desert
N128 Desert
N129 Desert
N130 Desert
N136 Desert

(3) *Surveillance areas.*

Imperial County. That portion of Imperial County known as the Palo Verde Valley (in

part) bounded by a line drawn as follows: Beginning at the intersection of the Riverside-Imperial County line and the California-Arizona State line; then, westerly and southerly along this State line to its intersection with the north boundary line of Township 10 South; then west along this boundary line to its intersection with the west boundary line of Range 21 East; then north along this boundary line to its intersection with the Riverside-Imperial County line; then easterly along this County line to the point of beginning.

Riverside County. That portion of Riverside County known as the Palo Verde Valley (in part) bounded by a line drawn as follows: Beginning at the intersection of the north boundary line of Township 2 South and the California-Arizona State line; then southerly and southwesterly along this State line to its intersection with the Riverside-Imperial County line; then westerly along this county line to its intersection with the west boundary line of Range 21 East; then north along this boundary line to its intersection with the north boundary line of Township 2 South; then east along this boundary line to the point of beginning.

New Mexico

(1) *Restricted areas for seed.*

Dona Ana County. Beginning at the intersection of the Sierra-Dona Ana County line and Interstate 25; then south along Interstate 25 to the Texas State line; then west and south along the New Mexico-Texas State line to the United States-Mexico boundary; then west along the United States-Mexico boundary to the Luna-Dona Ana County line; then north and east along the Dona Ana County line to the point of beginning.

Hidalgo County. Beginning at the intersection of the Arizona-New Mexico State line and Interstate 10; then east along Interstate 10 to the Hidalgo-Grant County line; then south and east along the Hidalgo County line to the Luna County line; then south along the Hidalgo County line to its southernmost point; then west and north along the Hidalgo county line to point of beginning.

Luna County. Beginning at the intersection of the Grant-Luna County line and Interstate 10; then east along Interstate 10 to U.S. Highway 180; then north along U.S. Highway 180 to State Route 26; then north along State Route 26 to State Route 27; then north along State Route 27 to the Luna-Sierra County line; then east along the Luna County line to the Dona Ana County line; then south along the Luna County line to the United States-Mexico boundary; then west along the United States-Mexico boundary to the Hidalgo County line; then north along the Luna County line to the point of beginning.

Sierra County. Beginning at intersection of the Luna-Sierra County line and State Route 27; then north along State Route 27 to State Route 152; then east along State Route 152 to Interstate 25; then south along Interstate 25 to the Dona Ana County line; then west and south to the Luna County line; then west along the Luna-Sierra County line to the point of beginning; and

Beginning at the intersection of the Socorro-Sierra County line and State Route

142; then southeast along State Route 142 to State Route 52; then south along State Route 52 to Interstate 25; then north along Interstate 25 to the Socorro-Sierra County line; then west along the Socorro-Sierra County line to the point of beginning.

(2) *Restricted areas for regulated articles other than seed.* The following numbered fields are restricted areas for the regulated articles other than seed.

Dona Ana County

02-01
02-02
02-03
02-04
08-01
08-02
08-03
08-04
11-01
11-02
13-01
13-02
13-03
13-13
13-04
13-05
13-06
13-08
13-09
13-10
13-11
25-01
25-02
27-01
28-01
29-01
29-02
29-03
29-04
33-01
33-02
33-03
33-04
33-10
37-01
37-02
37-03
37-04
41-01

Hidalgo County

43-01
44-01

Luna County

46-01
46-02
49-01
49-02
49-03
49-04
49-05
49-06
49-07
49-08
49-09
49-10
49-11
49-12
49-13
62-01
62-02
62-03
65-01
65-02

65-03
65-04
69-01
69-02
71-01
71-02
71-03
71-04
71-05
71-06
71-07

Sierra County

29-05
29-06
33-05
33-06
33-07
33-08
33-09
33-11
79-01
79-02
81-01
81-02
81-03
81-04
81-05
81-06
81-07
81-08
81-09
81-10
81-11
81-12
81-13
81-14
81-15
81-16
81-17
81-18
81-19
81-20
81-21
81-22
85-01
94-01

(3) *Surveillance areas.* None.

Texas

(1) *Restricted areas for seed.*

El Paso County. Beginning at a point on the Rio Grande River due east from the intersection of County Route 659 and County Route 375; then due east along an imaginary line to County Route 659; then north along County Route 659 to Interstate 10; then southeast along Interstate 10 to the El Paso County line; then southwest along the El Paso County line to the Rio Grande River; then north along the Rio Grande River to the point of beginning.

Hudspeth County. Beginning at the intersection of the El Paso-Hudspeth County line and Interstate 10; then southeast along Interstate 10 to County Route 34; then south along County Route 34 to County Route 192; then due south along an imaginary line to the Rio Grande River; then northwest along the Rio Grande River to the El Paso-Hudspeth County line; then north along the El Paso-Hudspeth County line to the point of beginning.

(2) *Restricted areas for regulated articles other than seed.* The following numbered fields are restricted areas for the regulated articles other than seed.

El Paso County

IB-1
IB-2
IB-3
IB-4
IB-4A
IB-5
IB-6
IB-7
IB-8
IB-9
IB-10
IB-11
IB-12
IB-13
IB-14
IB-15
TD-20
TD-21
TD-22
TD-23

Hudspeth County

TD-16
TD-17
TD-18
TD-19

(3) *Surveillance areas.* None.

4. Section 301.89-4 is revised to read as follows:

§ 301.89-4 Planting.

Wheat, durum wheat, and triticale may be planted in all fields within a regulated area, except as follows:

(a) Wheat, durum wheat, and triticale may not be planted in a field listed in § 301.89-3(f) as a restricted area for regulated articles other than seed.

(b) Prior to planting, wheat seed, durum wheat seed, and triticale seed that originated within a regulated area must be:

(1) Tested and found free from spores and bunted wheat kernels; then

(2) Treated with a fungicide in accordance with § 301.89-13(d).

§ 301.89-5 [Amended]

5. In § 301.89-5, paragraph (a)(3), footnote 2 and its reference in the text are redesignated as footnote 1.

6. Section 301.89-6 is amended as follows:

a. In paragraph (a) introductory text and (a)(2), footnotes 3 and 4 and their references in the text are redesignated as footnotes 2 and 3, respectively.

b. Paragraph (b) is revised to read as set forth below.

c. Paragraph (d) is removed and reserved.

§ 301.89-6 Issuance of a certificate or limited permit.

* * * * *

(b) To be eligible for movement under a certificate, grain from a surveillance area must be tested upon being loaded into a means of conveyance immediately prior to movement and

found free from spores. If spores are found, the grain will be eligible for movement only under a limited permit issued in accordance with paragraph (c) of this section.

* * * * *

§§ 301.89–7 and 301.89–9 [Amended]

6. In §§ 301.89–7 and 301.89–9, footnotes 5 and 6 and their references in the text are redesignated as footnotes 4 and 5, respectively.

Appendix to Subpart—Karnal Bunt [Removed]

8. The “Appendix to Subpart—Karnal Bunt” is removed.

Done in Washington, DC, this 25th day of April 1997.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–11357 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 340

[Docket No. 95–040–4]

RIN 0579–AA73

Genetically Engineered Organisms and Products; Simplification of Requirements and Procedures for Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; withdrawal.

SUMMARY: This document withdraws the final rule pertaining to genetically engineered plants introduced under notification and to the petition process for the determination of nonregulated status that was published in the **Federal Register** on April 24, 1997, and that was scheduled to become effective on May 27, 1997. The published document was an incorrect version of the final rule and contained errors in the text. The correct version of the final rule will be published in the **Federal Register** as soon as possible.

DATES: This withdrawal is effective May 1, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. John Payne, Director, Biotechnology and Scientific Services, PPQ, APHIS, 4700 River Road Unit 98, Riverdale, MD 20737–1237; (301) 734–7602. For technical information, contact Dr. Michael Schechtman, Domestic

Programs Leader, Biotechnology and Scientific Services, PPQ, APHIS; (301) 734–7601.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340 (referred to below as the regulations) pertain to the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are derived from known plant pests (regulated articles). Before introducing a regulated article, a person is required under § 340.0 of the regulations to either (1) notify the Animal and Plant Health Inspection Service (APHIS) in accordance with § 340.3 or (2) obtain a permit in accordance with § 340.4. Introductions under notification must meet specified eligibility criteria and performance standards. Under § 340.4, a permit is granted when APHIS has determined that the conduct of the trial, under the conditions specified by the applicant or stipulated by APHIS, does not pose a plant pest risk. The regulations also provide that petitions may be submitted to APHIS seeking a determination that an article should not be regulated under 7 CFR 340.

On April 24, 1997 (62 FR 19903–19917, Docket No. 95–040–2), APHIS published in the **Federal Register** a final rule to amend, and thereby simplify, the notification and petition provisions of the regulations. The final rule was scheduled to become effective on May 27, 1997. The published document was an incorrect version of the final rule and contained errors in the text. Therefore, we are withdrawing the final rule and will publish the correct version of the final rule in the **Federal Register** as soon as possible.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 28th day of April 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–11358 Filed 4–30–97; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 454 and 457

Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations; Common Crop Insurance Regulations, Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of fresh market tomatoes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations to the 1997 and prior crop years.

EFFECTIVE DATE: June 2, 1997.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit comments, data, and opinions on information collection requirements previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public