

## DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection  
Service

## 7 CFR Part 301

[Docket No. 96-016-17]

RIN 0579-AA83

Karnal Bunt; Compensation for the  
1995-1996 Crop SeasonAGENCY: Animal and Plant Health  
Inspection Service, USDA.

ACTION: Final rule.

**SUMMARY:** We are adopting as a final rule, with changes, an interim rule that amended the regulations to provide compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of Karnal bunt in the 1995-1996 crop season. In this final rule, we are adding compensation provisions for handlers of wheat that was tested and found negative for Karnal bunt, handlers and growers with wheat inventories for past crop seasons, and participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found positive for Karnal bunt. The payment of compensation is necessary in order to reduce the economic impact of the Karnal bunt quarantine on affected wheat growers and other individuals, and to help obtain cooperation from affected individuals in Karnal bunt eradication efforts.

**EFFECTIVE DATE:** April 30, 1997.

**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:****Background**

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. 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 would have significant consequences with regard to the export of wheat to international markets. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89-1 through 301.89-14.

In an interim rule effective on June 27, 1996, and published in the **Federal Register** on July 5, 1996 (61 FR 35102-35107, Docket No. 96-016-7), we amended the regulations to provide compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of actions taken by the Secretary to prevent the spread of Karnal bunt (§ 301.89-12, redesignated as § 301.89-14 in a final rule published on October 4, 1996 (61 FR 52189-52213, Docket No. 96-016-14)).

We solicited comments concerning the interim rule for 60 days ending September 3, 1996. We received 15 comments by that date. They were from wheat growers, handlers, harvesters, railroad companies, seed producers, a member of Congress, and a State department of agriculture. We have carefully considered all of the comments we received. The comments generally supported the interim rule offering compensation to certain groups affected by the Karnal bunt quarantine and emergency actions. However, all the comments recommended additions or revisions to the compensation provisions. Each of these recommendations is discussed below by topic.

The Karnal bunt regulations that were initially established were necessarily broad due to the lack of data available at the time as to the extent of the infestation. The discovery of Karnal bunt and subsequent quarantine and emergency actions occurred after production and marketing decisions had been made. Producers and other affected individuals had little time or ability to avoid the unexpected costs or pass those costs on to others in the marketing chain. The impact was particularly severe on the wheat industry in the regulated area because much of the crop is grown under contract at specified amounts and prices.

In order to alleviate some of these hardships and to ensure full and effective compliance with the Karnal bunt regulatory program, compensation to mitigate certain losses was offered to producers and other affected parties in a regulated area. The payment of compensation is in recognition of the fact that while benefits from regulation accrue to a large portion of the wheat industry outside the regulated areas, the regulatory burden falls predominantly on a small segment of the affected wheat industry within the regulated area.

The Agency has identified three principles for deciding whether to provide compensation. First, compensation may be appropriate

where quarantine and emergency actions cause losses over and above those that would result from the normal operation of market forces. Payment of compensation would reflect the incremental burdens of complying with regulatory requirements insofar as market forces would not otherwise impose similar or analogous costs. Second, compensation may be appropriate where parties undertake actions that confer significant benefits on others. Under this principle, payment of compensation would be intended to overcome the usual disincentives to produce such benefits. Third, compensation may be appropriate where a small number of parties necessarily bears a disproportionate share of the burden of providing such benefits. This principle rests on the widely shared belief that burden-sharing is a fundamental principle of equity.

Individual decisions regarding what specific losses to compensate and how much compensation to offer in each case were made in line with the above basic principles which describe the goals of compensation. A top equity priority was compensation for costs of plowing down fields, and for wheat and other articles the Agency ordered destroyed or prohibited movement. Compensation amounts took into account the need to mitigate real losses caused by the regulations, so that regulated parties would not have a strong economic incentive to avoid compliance. At the same time, amounts were not set at a high enough rate to establish a "bounty" that would encourage fraudulent claims or behavior that would result in increases in contaminated wheat or other articles eligible for compensation.

The interim rule establishing compensation for the Karnal bunt program provided compensation in the 1995-1996 crop season for the plow-down of infected fields in New Mexico and Texas; the loss in value of nonpropagative wheat grown in the regulated area (this was provided for producers and handlers); decontamination of grain storage facilities; and the cost of heat-treating millfeed made from wheat produced in the quarantined area. Several commenters requested compensation for costs that were not provided for in the interim rule. These comments are discussed below.

The interim rule provided compensation for handlers who sell nonpropagative wheat only if the wheat is positive for Karnal bunt, and under the following circumstances: (1) Handlers who honor contracts by paying

the grower full contract price on nonpropagative wheat grown in the quarantined area that was tested by the Animal and Plant Health Inspection Service (APHIS) and found positive for Karnal bunt; or (2) handlers who purchase contracted or noncontracted nonpropagative wheat grown in the quarantined area that was tested by APHIS and found negative for Karnal bunt prior to purchase but that was tested by APHIS and found positive for Karnal bunt after purchase. As explained in the interim rule, we expected that handlers who purchase negative wheat that continues to test negative after purchase would not experience a loss in value for the wheat compared to the price they paid for it.

Some commenters, however, said that handlers who purchased negative-testing wheat after the Karnal bunt quarantine was imposed, but purchased it for the price that was contracted before Karnal bunt was discovered (in Arizona in March 1996), did experience a loss in value of the wheat compared to the price they paid for it. Even though the wheat was negative for Karnal bunt, handlers had to sell it for a lower price than anticipated because the wheat was from the quarantined area. Some handlers adjusted their purchase price to account for the loss in value; others honored the prices agreed on in their contracts prior to March 1996. Commenters said that handlers who honored their contracts on negative wheat by paying the price that was agreed on before the discovery of Karnal bunt in March 1996, should be compensated.

We believe that compensating these handlers would be consistent with our compensation to other individuals who experience a loss in value of their wheat because of the regulations for Karnal bunt. Therefore, we are amending the regulations at § 301.89–14(b) to provide compensation to handlers under the following additional circumstance: Except as explained below, handlers who honored contracts by paying the grower or another handler full contract price on nonpropagative wheat grown in the regulated area that was tested by APHIS and found negative for Karnal bunt if a price was determined in the contract before March 1, 1996. The exception to this compensation eligibility is handlers who had contracted to sell the wheat (for example, to another handler, a mill, or a foreign country) at a price determined in the contract before March 1, 1996, and who received the full contract price. Such handlers would not have experienced any loss in value of their wheat due to Karnal bunt. To claim

compensation under this new circumstance, we are requiring that, in addition to the documents already required for handlers (see § 301.89–14(b)(4)), handlers who had contracted to sell the wheat at a price determined in the contract before March 1, 1996, must submit to FSA a copy of the contract the handler has for the sale of the wheat.

Handlers who honored contracts on negative wheat will be eligible for compensation using the same calculation provided in the interim rule for growers of negative wheat not grown under contract—the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the higher of either the salvage value or the actual price received by the handler (see § 301.89–14(b)(1)(iii)). We explained in the interim rule that the estimated market price is intended to represent what the market price would have been if there were no quarantine for Karnal bunt, and will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs.

For the 1995–1996 crop season, estimated market prices were calculated for durum wheat and hard red winter wheat. The estimated market prices for durum wheat were calculated based on the following: the daily closing cash prices for choice milling durum wheat traded on the Minneapolis Grain Exchange during the period of May 1 to June 30, 1996, adjusted to account for the handling and transportation charges incurred in getting the wheat from the regulated area in California and Arizona to the central market in Minneapolis. These adjustments were based on the average difference between the Minneapolis cash price and the cash prices within the regulated area for 1995. Estimated market prices for hard red winter wheat were calculated in a similar manner, based on the daily closing futures prices for the July hard red winter wheat contract traded on the Kansas City Board of Trade during the period of May 1 to June 30, 1996, adjusted to account for the handling and transportation charges incurred in getting the wheat from a central point in the regulated area to the market in Kansas City. These adjustments were based on the average difference between the Kansas City futures price and the cash prices within the regulated area for 1995.

The estimated market prices used to calculate compensation for handlers who honored their contracts on negative wheat will be determined in the same manner. However, if the salvage value is used in the calculation, the rate of compensation will be different than the rate that has been paid to other handlers under the interim rule, because the salvage value appropriate for negative wheat will be used in the calculation. Compensation payments will be issued by the Farm Service Agency (FSA).

One commenter requested that we provide compensation for lost income due to the quarantine on wheat straw. Many growers sell wheat straw to supplement their wheat grain income. Straw is sold for use at places such as racetracks, highway shoulders, feed yards, and parks for erosion control and to minimize muddy conditions. Wheat straw is listed in the Karnal bunt regulations as a regulated article and is prohibited from being moved outside of the regulated area. This has prevented many wheat straw producers from shipping their 1995–1996 crop season straw to the intended markets. Some wheat straw was sold to alternative markets within the regulated area for a lower price; other wheat straw was not able to be sold.

We are considering what, if any, compensation should be provided for lost income due to the restrictions that have been placed on the movement of 1995–1996 crop season wheat straw. We will publish any proposed compensation for wheat straw producers in a future edition of the **Federal Register**.

The interim rule did not provide compensation for any losses concerning wheat grown outside the area regulated for Karnal bunt. APHIS is conducting a National Karnal Bunt Survey to demonstrate to our trading partners that areas producing wheat for export are free of the disease. APHIS is receiving voluntary cooperation from many grain storage facilities in wheat producing areas both within and outside the States in which the Secretary of Agriculture has declared an extraordinary emergency.

Some commenters asked that we clarify what compensation we plan to offer to participants in the National Karnal Bunt Survey who are found to have positive grain or whose grain storage facility outside of the regulated area is found to have Karnal bunt. We have every intention of making sure that all participants in the survey whose wheat or grain storage facilities are found to be positive for Karnal bunt will be compensated for the loss in value of their wheat and for the costs for part of

decontaminating their grain storage facilities.

The declarations of extraordinary emergency authorize the Secretary of Agriculture to take emergency action in those States with regard to Karnal bunt, and authorize the Secretary to compensate growers and other persons in those States for economic losses incurred by them as a result of those emergency actions. USDA is not authorized to pay compensation to individuals who are not in States for which an extraordinary emergency has been declared. If a grain storage facility participating in the National Survey in one of the States for which an extraordinary emergency has been declared tests positive for Karnal bunt, USDA will regulate the facility under an Emergency Action Notification (PPQ Form 523), and will compensate the owner of the grain storage facility for the loss in value of the wheat and for up to 50 percent of the direct cost of decontaminating the facility (not to exceed \$20,000) on a one time only basis for wheat harvested in 1996, if the facility is required to be decontaminated. In the event that a grain storage facility participating in the National Survey that is in a State not covered by a declaration of extraordinary emergency should test positive for Karnal bunt, the State may offer to compensate the owner of the facility for the loss in value of the positive wheat and for the cost of decontamination. If the State is unwilling or unable to offer compensation at a level equal to that offered by USDA, USDA will consider, after consultation with the State Department of Agriculture, declaring an extraordinary emergency in that State. USDA could then compensate the owner of the facility.

We completed the National Survey for the 1995–1996 crop season in the fall of 1996. In this final rule, we are adding a new paragraph § 301.89–14(f) to the 1995–1996 crop season compensation regulations stating that if a grain storage facility participating in the National Karnal Bunt Survey tests positive for Karnal bunt, the facility will be regulated under an Emergency Action Notification (PPQ Form 523), and the owner may be required to decontaminate the facility to remove the quarantine. If a Declaration of Extraordinary Emergency has been declared in the State in which the grain storage facility is located, the owner of the facility will be compensated for the loss in value of the wheat. Compensation will equal the estimated market price for the relevant class of wheat minus the salvage value (as

described in § 301.89–14(b)(3)). The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between October 1 and November 30, 1996, with adjustments for transportation and other handling costs. However, compensation will not exceed \$2.50 per bushel under any circumstances. Compensation payments for loss in value of wheat will be issued by FSA. To claim compensation, the owner of the facility must submit to the local FSA office a copy of the Emergency Action Notification under which the facility is or was quarantined. The owner must also submit to the FSA office verification as to the actual (not estimated) weight of the wheat (such as a copy of the limited permit under which the wheat was moved to a mill or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification).

The owner of the facility will also be compensated for the direct cost of decontamination at the same rate provided by the interim rule for decontamination of grain storage facilities (a maximum of \$20,000 per facility, paid on a one time only basis for wheat harvested in 1996). Compensation payments for decontamination of grain storage facilities will be issued by APHIS.

A few commenters requested compensation for damage to harvesting equipment caused by disinfection in accordance with the Karnal bunt regulations. We are still considering what compensation would be appropriate for grain harvesters and are continuing to gather information to help us make that determination. If we determine to take regulatory action to compensate grain harvesters, we will publish proposed compensation regulations in a future edition of the **Federal Register**.

Commenters also requested compensation for loss in value of 1995–1996 crop season seed. We stated in the interim rule that we do intend to compensate seed producers for the loss in value of their seed. That intention has not changed, and we plan to publish proposed compensation regulations for seed producers in a future edition of the **Federal Register**.

Several commenters requested that we add compensation provisions to cover numerous circumstances other than those provided for in the interim rule and those discussed previously in this document. These include requested compensation for demurrage charges on railcars; the cost of cleaning and

sanitizing railcars prior to loading; declines in transporter operations due to delays caused by the Karnal bunt regulations; extra labor to clean and disinfect combines; loss in customers for harvesters due to delays in waiting for field test results; loss in wheat income and soil nutrients due to a 5-year quarantine on wheat production; and loan interest on funds borrowed to see producers through delays in selling 1996 wheat. Commenters also requested several other changes to the compensation provisions in the interim rule. Two commenters requested that we lower the \$3.60 minimum salvage value because they do not believe it adequately reflects the costs to handlers of freight charges and railcar cleaning. One commenter said that the maximum \$20,000 per premises compensation for decontamination of grain storage facilities is inadequate. Another commenter said that the same compensation offered to flour millers for heat-treating millfeed should be available to all producers, grain handlers, and millers regardless of whether or not the wheat originated in the quarantined area.

We have considered all of these comments very carefully, but we are not making any changes to the compensation regulations in response to these comments. We recognize that the compensations we have offered do not fully account for every loss or expense due to the Karnal bunt quarantine and emergency actions. However, we believe the compensation provisions in this final rule do significantly mitigate losses and expenses due to the actions taken to control Karnal bunt. We are continuing to consider the effects of the Karnal bunt quarantine and emergency actions on all affected individuals. If we make any further determinations as to additional compensations, we will publish another document in the **Federal Register**.

#### **Miscellaneous Changes**

We are making a number of miscellaneous changes to the interim rule. Many of these changes are necessary to clarify the intent of the regulations and to deal with circumstances identified during implementation of the interim rule.

The compensation regulations established by the interim rule were intended to apply to the 1995–1996 crop season. Therefore, we are revising the heading and introductory text for the compensation regulations in this rule to make it clear that they apply only to the 1995–1996 crop season. For the same reason, we are revising § 301.89–14(d) to clarify that compensation for

decontamination of grain storage facilities under this rule will be made on a one time only basis for each covered crop year wheat.

This final rule will add a requirement to § 301.89-14 that all claims for compensation for the 1995-1996 crop season must be made by May 31, 1997. In addition, we are adding a provision that the Administrator may extend this deadline upon request in specific cases when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997.

The term "contract price" is used several times in § 301.89-14. In some cases, the contract price is a determining factor in the amount of compensation received by a claimant. Some contracts provide for adjustments in the contract price contingent on grain quality or other factors. To ensure that growers or handlers are not paid compensation for quality issues not related to Karnal bunt, and to clarify what we intended to mean by the term "contract price," we are adding a definition to § 301.89-1 of the regulations, to read as follows:

*Contract price.* The net price after adjustment for any premiums or discounts stated in the contract.

Paragraph (b)(1) of § 301.89-14 contains compensation calculations for growers who sell nonpropagative wheat; one for wheat grown under contract, and one for wheat not grown under contract. In implementing the interim rule, it became apparent that different calculations were needed to account for other contracting circumstances. For example, not all contracted wheat had a price in the contract prior to the discovery of Karnal bunt in March 1996. Therefore, even though the wheat was contracted prior to the discovery of Karnal bunt, the price eventually agreed on may have reflected the loss-in-value of wheat due to Karnal bunt.

Contracts without prices set before March 1996 normally stipulated that the price was to be determined at harvest. The 1996 harvest began in April 1996 and was not complete in all regulated areas until August 1996. Compensation regulations were not in effect until June 27, 1996 (see Docket No. 96-016-7, published in the **Federal Register** on July 5, 1996), mid-way through the 1996 harvest, and claims for compensation could not be processed for several more weeks. Because growers and handlers did not know what compensation APHIS would offer, some contract prices set at harvest reflected the loss-in-value of wheat due to the Karnal bunt regulations, while some contract prices

set at harvest were based on what market prices would have been without the presence of Karnal bunt. This situation warranted calculating compensation using the higher of either the contract price or the estimated market price. This procedure for calculating compensation would not unfairly disadvantage growers whose contract prices set at harvest reflected the loss-in-value of wheat due to the Karnal bunt regulations. Contract prices settled after August 1996 may have reflected the compensation offered by APHIS, and would not have been consistent with the original intent of the contract that the price be determined at harvest. For these reasons, we are changing the compensation calculations for growers who sell nonpropagative wheat to accommodate three circumstances, as follows:

If the wheat was grown under contract and a price was determined in the contract before March 1, 1996, compensation will equal the contracted price minus the higher of either the salvage value or the actual price received by the grower. If the wheat was grown under contract and a price was determined in the contract on or after March 1, 1996, and on or before August 1, 1996, compensation will equal the higher of either the contract price or the estimated market price minus the higher of either the salvage value or the actual price received by the grower. If the wheat was not grown under contract or the price was determined in the contract after August 1, 1996, compensation will equal the estimated market price for the relevant class of wheat minus the higher of either the salvage value or the actual price received by the grower.

We are also revising the requirements for growers and handlers for claiming compensation to ensure that growers and handlers supply all the information necessary to determine the amount of compensation for which they are eligible. In addition to the documentation already required by § 301.89-14(b), growers will have to submit a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold, total bushels sold, and the total amount paid to the grower by the handler. Handlers will have to submit a copy of the receipt for the purchase of the wheat from the grower, showing the total bushels purchased and the amount the handler paid to the grower, and a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold. Both growers and handlers must submit a copy of the Karnal bunt certificate issued by APHIS that shows Karnal bunt test results.

At the time that Karnal bunt was discovered in Arizona in March 1996, some handlers and growers in the regulated area had wheat inventories on hand from past crop seasons. These inventories became subject to the same restrictions as 1995-1996 crop season wheat from the regulated area, and handlers and growers with such inventories experienced a loss in value of that wheat. For this reason, we are revising § 301.89-14(b)(2) to clarify that handlers and growers in the regulated area are eligible to be compensated for 1995-1996 crop season wheat and for wheat inventories in their possession that were unsold as of March 1, 1996.

We are revising the provision in § 301.89-14(c) of the regulations for growers and handlers who do not sell their wheat. The interim rule stated that compensation will only be paid to growers and handlers on wheat that is not sold if the wheat has been buried in a sanitary landfill. In implementing the regulations, APHIS has approved sites for burying wheat other than a sanitary landfill. These sites were determined to be acceptable because they were in areas where burying the wheat would not pose a risk of spreading Karnal bunt (for example, the desert). To accommodate these situations, we are amending paragraph (c) to state that unsold wheat must be buried in a landfill or other site that has been approved by APHIS. To claim compensation, the interim rule required that a grower or handler must submit verification of how much wheat was buried, in the form of a receipt from the landfill. We are adding that the verification may also be in the form of a document signed by an APHIS inspector.

The interim rule stated at § 301.89-14(d) that compensation for decontamination of grain storage facilities will not exceed \$20,000 per premises. The term premises has proven to be confusing to both affected entities and inspectors in determining the amount of compensation for which an owner is eligible. We believe the term "facility" would be more clear. To clarify our intent, we are revising paragraph (d) to state that compensation will not exceed \$20,000 per grain storage facility. We are also removing the definition of *premises* from § 301.89-1 of the regulations and adding a definition for *grain storage facility*, to mean "That part of a grain handling operation or unit of a grain handling operation, consisting of structures, conveyances, and equipment that receive, unload, and store grain, and that is able to operate as an independent unit from other units of the grain handling operation. A grain handling

operation may be one grain storage facility or may be comprised of many grain storage facilities on a single premises."

We are revising the provisions at § 301.89-14(e) by which flour millers must claim compensation. The interim rule provided that, to claim compensation, flour millers must submit verification that the millfeed was heat-treated, in the form of a copy of the limited permit under which the wheat was moved to a treatment facility. However, some flour millers have purchased their own heat treating equipment and do not need to move the wheat under a limited permit to a treatment facility. To accommodate this, we are stating that verification of treatment may also be provided in the form of a copy of PPQ Form 700, which includes a certification of processing, signed by the inspector who monitors the mill.

We are adding sentences to § 301.89-14(a), (b)(4), and (c), concerning growers and handlers, to clarify that these compensation payments will be issued by FSA. We are also adding sentences to § 301.89-14(d) and (e), concerning grain storage facilities and flour millers, to clarify that these compensation payments will be issued by APHIS.

The interim rule requires certain claimants to file three forms: ASCS Form 574, ASCS Form 578, and FCI Form 73. The correct names for ASCS Form 574 and ASCS Form 578 are FSA Form 574 and FSA Form 578, respectively. We are making this change in this final rule.

A final rule published in the **Federal Register** on October 4, 1996, and effective on November 4, 1996 (61 FR 52189-52213, Docket No. 96-016-14), established "regulated areas" to replace the areas previously called "quarantined areas." To reflect this change, we are removing the term "quarantined area" each time it appears in § 301.89-14 and replacing it with the term "regulated area."

Further, the interim rule provided that growers and handlers will be compensated for wheat "grown in the quarantined area." In addition to changing the term to "regulated area," we would add a provision that growers and handlers in States where the Secretary has declared an extraordinary emergency would also be compensated for wheat grown in an area for which an Emergency Action Notification (PPQ Form 523) has been issued by an inspector, in accordance with § 301.89-3(d) of the regulations. Section 301.89-3(d) of the regulations allows the Administrator or an inspector to temporarily designate any nonregulated

area as a regulated area. When this occurs, an inspector provides written notice of this action to the owner or person responsible for the management of the area, in the form of an Emergency Action Notification. Areas temporarily regulated under an Emergency Action Notification will not necessarily be listed in the regulations as "regulated areas," but are subject to the same restrictions (and potential losses or expenses) as areas that are listed in the regulations.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988.

#### **Effective Date**

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This rule provides compensation to individuals who were and are required to take emergency actions to eliminate the spread of Karnal bunt or who experience economic losses because of the quarantine for Karnal bunt. Immediate action is necessary to compensate these losses and expenses. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon signature.

#### **Executive Order 12866 and Regulatory Flexibility Act**

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

This action makes final with certain changes an interim rule that amended the regulations to provide compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred in the 1995-1996 crop season because of the Karnal bunt quarantine and emergency actions. The quarantine and regulations for Karnal bunt were established by a series of interim rules and a final rule published in the **Federal Register** on October 4, 1996. The interim rules and the final rule were published on an emergency basis. We stated in those rules that the emergency situation made timely

compliance with section 6, subsections (3)(B)(ii) and (3)(C), of Executive Order 12866 impracticable. We also stated that we would complete the required cost-benefit analysis for those rules as soon as possible and make the information available to the public. Elsewhere in the "Rules" section of this issue of the **Federal Register**, we are publishing a companion docket (Docket No. 96-016-20) to this final rule that includes a Regulatory Impact Analysis that analyzes the costs and benefits of the interim rules and the final rule we have already published, as well as those of the provisions of this final rule.

On April 3, 1997, we published in the **Federal Register** a Regulatory Flexibility Analysis for the interim rules and the final rule we have already published regarding the Karnal bunt quarantine and regulations (62 FR 15809-15819, Docket No. 96-016-18).

In accordance with 5 USC 604, we have performed a Final Regulatory Flexibility Analysis regarding the impact of this final rule on small entities, and are publishing that analysis in a companion docket (Docket No. 96-016-20) to this final rule elsewhere in the "Rules" section of this issue of the **Federal Register**.

#### **Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121, USC 801-808)**

This rule has been designated by the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, as a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (Act). The Administrator of the Animal and Plant Health Inspection Service has determined, however, that there is good cause for making this rule effective less than 60 days after submission of the rule to each House of Congress and to the Comptroller General because a delay in the implementation of this rule would be contrary to the public interest. This final rule adds handlers of negative grain, handlers with past crop season wheat inventories, and participants in the National Karnal Bunt Survey to the list of individuals eligible for compensation. It is necessary to make this rule effective upon publication in the **Federal Register** in order that these individuals can be compensated for economic losses and expenses in the 1995-1996 crop season resulting from the quarantine and emergency actions taken by the Department because of Karnal bunt. Section 808 of the Act provides that rules which would be exempted from the notice and comment provisions of the Administrative Procedure Act may be excepted from

section 801(a)(1)(A), and the delay in the effective date for major rules under section 801(a)(3). Such rules may be made effective as the agency promulgating the rule determines. A 60-day or longer delay of the effective date for this final rule would clearly be contrary to the public interest, since it would delay compensation for affected handlers and National Survey participants.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control numbers or, if approval is denied, providing notice of what action we plan to take.

The information collection or recordkeeping requirements included in the interim rule that preceded this final rule were approved by OMB. However, this final rule contains an information collection requirement that was not included in the interim rule. Specifically, this final rule requires a claimant to make a request in order to be granted an extension of the deadline for filing compensation claims.

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average .166 hours per response.

*Respondents:* 10.

*Estimated number of responses per respondent:* 1.

*Estimated total annual burden on respondents:* 2 hours.

#### List of Subjects in 7 CFR Part 301

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

Accordingly, the interim rule amending 7 CFR part 301 which was published at 61 FR 35102-35107 on July 5, 1996, is adopted as a final rule with the following changes:

#### PART 301—DOMESTIC QUARANTINE NOTICES

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

**Authority:** 7 USC 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.89-1, the definition for *Premises* is removed and definitions for *Contract price* and *Grain storage facility*

are added in alphabetical order to read as follows:

#### § 301.89-1 Definitions.

\* \* \* \* \*

*Contract price.* The net price after adjustment for any premiums or discounts stated in the contract.

\* \* \* \* \*

*Grain storage facility.* That part of a grain handling operation or unit of a grain handling operation, consisting of structures, conveyances, and equipment that receive, unload, and store grain, and that is able to operate as an independent unit from other units of the grain handling operation. A grain handling operation may be one grain storage facility or may be comprised of many grain storage facilities on a single premises.

\* \* \* \* \*

3. Section 301.89-14 is revised to read as set forth below.

#### § 301.89-14 Compensation for the 1995-1996 crop season.

The following individuals are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1995-1996 crop season to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Growers who have destroyed crops.* Growers in New Mexico and Texas who have destroyed crops of wheat pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector are eligible to be compensated at the rate of \$300 per acre of destroyed crop. Compensation payments will be issued by the Farm Service Agency (FSA). To claim compensation, the grower must complete and submit to a local FSA county office whichever of the following three forms are applicable, as determined by FSA: FSA Form 574, FSA Form 578, and FCI Form 73. The forms will be furnished by FSA. Claims for compensation must be received by FSA on or before May 31, 1997. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997.

(b) *Growers and handlers who sell nonpropagative wheat.* Growers and handlers in a State where the Secretary has declared an extraordinary emergency, and who sell nonpropagative wheat grown in the regulated area or in an area for which an Emergency Action Notification (PPQ Form 523) has been issued in accordance with § 301.89-3(d), are eligible to be compensated for the loss

in value of their wheat due to the Karnal bunt regulations, as follows:

(1) *Growers who sell nonpropagative wheat.* Growers are eligible to be compensated for nonpropagative 1995-1996 crop season wheat and for nonpropagative wheat inventories in their possession that were unsold as of March 1, 1996, as described in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) of this section. However, compensation will not exceed \$2.50 per bushel under any circumstances.

(i) If the wheat was grown under contract and a price was determined in the contract before March 1, 1996, compensation will equal the contracted price minus the higher of either the salvage value, as described in paragraph (b)(3) of this section, or the actual price received by the grower.

(ii) If the wheat was grown under contract and a price was determined in the contract on or after March 1, 1996, and on or before August 1, 1996, compensation will equal the higher of either the contract price or the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the higher of either the salvage value, as described in paragraph (b)(3) of this section, or the actual price received by the grower. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs.

(iii) If the wheat was not grown under contract or a price was determined in the contract after August 1, 1996, compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the higher of either the salvage value, as described in paragraph (b)(3) of this section, or the actual price received by the grower. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs.

(2) *Handlers who sell nonpropagative wheat.* Handlers are eligible to be compensated for nonpropagative 1995-1996 crop season wheat and for nonpropagative wheat inventories in their possession that were unsold as of March 1, 1996, only under the circumstances described in paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this section. Compensation for the

circumstances in paragraphs (b)(2)(i) and (b)(2)(ii) will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the salvage value, as described in paragraph (b)(3) of this section. Compensation for the circumstance in paragraph (b)(2)(iii) will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the higher of either the salvage value, as described in paragraph (b)(3) of this section, or the actual price received by the handler. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs. However, compensation will not exceed \$2.50 per bushel under any circumstances.

(i) Handlers who honor contracts by paying the grower full contract price on wheat grown for nonpropagative purposes in the regulated area that was tested by APHIS and found positive for Karnal bunt;

(ii) Handlers who purchase contracted or noncontracted wheat grown for nonpropagative purposes in the regulated area that was tested by APHIS and found negative for Karnal bunt prior to purchase but that was tested by APHIS and found positive for Karnal bunt after purchase; or

(iii) Except as explained in this paragraph, handlers who honor contracts by paying the grower or another handler full contract price on nonpropagative wheat grown in the regulated area that was tested by APHIS and found negative for Karnal bunt if a price was determined in the contract before March 1, 1996. Handlers who had contracted to sell the wheat at a price determined in the contract before March 1, 1996, and who received the full contract price, are not eligible for compensation.

(3) *Salvage value.* Salvage values will be as follows:

(i) If the wheat is positive for Karnal bunt and is sold for use as animal feed, salvage value equals \$6.00 per hundredweight or \$3.60 per bushel for all classes of wheat.

(ii) If the wheat is positive for Karnal bunt and is sold for a use other than animal feed, salvage value equals whichever is higher of the following: the average price paid in the region of the regulated area where the wheat is sold for the relevant class of wheat (meaning type of wheat, such as durum or hard

red winter) for the period between May 1 and June 30, 1996; or, \$3.60 per bushel.

(iii) If the wheat is negative for Karnal bunt and is sold for any use, salvage value equals whichever is higher of the following: the average price paid in the region of the regulated area where the wheat is sold for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) for the period between May 1 and June 30, 1996; or, \$3.60 per bushel.

(4) *To claim compensation.*

Compensation payments will be issued by the Farm Service Agency (FSA). Claims for compensation must be received by FSA on or before May 31, 1997. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997. To claim compensation, a grower or handler must complete and submit to the local FSA county office the following documents:

(i) *Both growers and handlers.* A grower or handler must submit whichever of the following three forms are applicable, as determined by FSA: FSA Form 574, FSA Form 578, and FCI Form 73. A grower or a handler must also submit a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold, and a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results.

(ii) *Growers.* In addition to the documents required in paragraph (b)(4)(i), growers must submit a copy of the contract the grower has for the wheat, if the wheat was under contract; and a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold, total bushels sold, and the total amount paid to the grower by the handler.

(iii) *Handlers.* In addition to the documents required in paragraph (b)(4)(i), handlers must submit a copy of the contract the handler had with the grower for the wheat, if the wheat was under contract; a copy of the receipt for the purchase of the wheat from the grower or handler, showing the total bushels purchased and the amount the handler paid for the wheat; and a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold. Handlers who had contracted to sell the wheat at a price determined in the contract before March 1, 1996, must submit a copy of the contract for the sale of the wheat.

(c) *Nonpropagative wheat that is not sold.* If a grower or handler of nonpropagative wheat grown in the regulated area in a State where the Secretary has declared an extraordinary emergency is not able to or elects not to sell their wheat, they will be eligible to receive compensation at the rate of \$2.50 per bushel. Compensation will only be paid if the grower or handler has destroyed the wheat by burying it in a sanitary landfill or other site that has been approved by APHIS. Compensation claims will be issued by the Farm Service Agency (FSA). To claim compensation, the grower or handler must complete and submit to the local FSA county office whichever of the following three forms are applicable, as determined by FSA: FSA Form 574, FSA Form 578, and FCI Form 73. In addition, the grower or handler must submit verification of how much wheat was buried, in the form of a receipt from the sanitary landfill or verification signed by an APHIS inspector. Claims for compensation must be received by FSA on or before May 31, 1997. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997.

(d) *Decontamination of grain storage facilities.* Owners of grain storage facilities that are in States where the Secretary has declared an extraordinary emergency, and who have decontaminated their grain storage facilities pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector, are eligible to be compensated, on a one time only basis for each facility and each covered crop year wheat, for up to 50 percent of the cost of decontamination. However, compensation will not exceed \$20,000 per grain storage facility (as defined in § 301.89-1). General clean-up, repair, and refurbishment costs are excluded from compensation. Compensation payments will be issued by APHIS. To claim compensation, the owner of the grain storage facility must submit to an inspector records demonstrating that decontamination was performed on all structures, conveyances, or materials ordered to be decontaminated by the Emergency Action Notification on the facility. The records must include a copy of the Emergency Action Notification, contracts with individuals or companies hired to perform the decontamination, receipts for equipment and materials purchased to perform the decontamination, time



sheets for employees of the grain storage facility who performed activities connected to the decontamination, and any other documentation that helps show the cost to the owner and that decontamination has been completed. Claims for compensation must be received by APHIS on or before May 31, 1997. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997.

(e) *Flour millers.* Flour millers who, in accordance with a compliance agreement with APHIS, heat-treat millfeed made from wheat produced in regulated areas that require such treatment are eligible to be compensated at the rate of \$35.00 per short ton of millfeed. The amount of millfeed compensated will be calculated by multiplying the weight of wheat from the regulated area received by the miller by 25 percent (the average percent of millfeed derived from a short ton of grain). Compensation payments will be issued by APHIS. To claim compensation, the miller must submit to an inspector verification as to the actual (not estimated) weight of the wheat (such as a copy of the limited permit under which the wheat was moved to the mill or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification). Flour millers must also submit verification that the millfeed was heat treated (such as a copy of the limited permit under which the wheat was moved to a treatment facility and a copy of the bill of lading accompanying that movement; or a copy of PPQ Form 700 (which includes certification of processing) signed by the inspector who monitors the mill). Claims for compensation must be received by APHIS on or before May 31, 1997. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997.

(f) *National Karnal Bunt Survey participants.* If a grain storage facility participating in the National Karnal Bunt Survey tests positive for Karnal bunt spores, the facility will be regulated and may be ordered decontaminated pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector. If a Declaration of Extraordinary Emergency has been declared for the State in which the grain storage facility is located, the

owner of the grain storage facility will be eligible for compensation as follows:

(1) *Loss in value of positive wheat.* The owner of the grain storage facility will be compensated for the loss in value of positive wheat. Compensation will equal the estimated market price for the relevant class of wheat minus the salvage value, as described in paragraph (b)(3) of this section. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between October 1 and November 30, 1996, with adjustments for transportation and other handling costs. However, compensation will not exceed \$2.50 per bushel under any circumstances. Compensation payments for loss in value of wheat will be issued by the Farm Service Agency (FSA). To claim compensation, the owner of the facility must submit to the local FSA office a copy of the Emergency Action Notification under which the facility is or was quarantined and verification as to the actual (not estimated) weight of the wheat (such as a copy of the limited permit under which the wheat was moved to a mill or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification). Claims for compensation must be received by FSA on or before May 31, 1997. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997.

(2) *Decontamination of grain storage facilities.* The owner of the facility will be compensated on a one time only basis for each grain storage facility and each covered crop year wheat for the direct costs of decontamination of the facility at the same rate described under paragraph (d) of this section (up to 50 percent of the direct costs of decontamination, not to exceed \$20,000 per grain storage facility). Compensation payments for decontamination of grain storage facilities will be issued by APHIS, and claims for compensation must be submitted in accordance with the provisions in paragraph (d) of this section. Claims for compensation must be received by APHIS on or before May 31, 1997. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997.

Done in Washington, DC, this 30th day of April 1997.

**Donald W. Luchsinger,**

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

[FR Doc. 97-11719 Filed 5-1-97; 11:27 am]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 96-016-20]

RIN 0579-AA83

#### Karnal Bunt Regulatory Flexibility Analysis and Regulatory Impact Analysis

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

**ACTION:** Final rule; regulatory flexibility analysis and regulatory impact analysis.

**SUMMARY:** We are publishing in this document the regulatory flexibility analysis prepared for a final rule, which is published elsewhere in this issue of the **Federal Register**, that adopts, with changes, an interim rule that provided compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of Karnal bunt in the 1995-1996 crop season. The final rule also adds compensation provisions for handlers of wheat that was tested and found negative for Karnal bunt, for handlers and growers with wheat inventories for past crop seasons, and for participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found positive for Karnal bunt. We are also publishing in this document a regulatory impact analysis for the interim rules and final rules that established the Karnal bunt quarantine, regulations, and compensation provisions, including a final rule on compensation published elsewhere in this issue of the **Federal Register**.

**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