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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 96-016-24]

RIN 0579-AA83

#### Karnal Bunt Regulated Areas

**AGENCY:** 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 Karnal bunt regulations by modifying the criteria for classifying regulated areas and by modifying the classification of restricted areas. The interim rule required that a bunted wheat kernel be found in or associated with a field within an area before that area would be designated as a regulated area. The interim rule also established separate restricted areas for seed and for regulated articles other than seed. The actions taken in the interim rule were necessary 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. The interim rule had the effect of removing some areas in Arizona and California from the list of regulated areas and relieving restrictions on the movement of grain and other regulated articles from additional areas in Arizona, California, New Mexico, and Texas.

**EFFECTIVE DATE:** June 2, 1999.

**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, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89-1 through 301.89-14.

In an interim rule effective on April 25, 1997, and published in the **Federal Register** on May 1, 1997 (62 FR 23620-23628, Docket No. 96-016-19), we amended the Karnal bunt regulations by modifying the criteria for classifying regulated areas. We required that a bunted wheat kernel be found in or associated with a field within an area before that area would be designated as a regulated area. In that interim rule, we also modified the classification of restricted areas by establishing separate restricted areas for seed and for regulated articles other than seed.

We solicited comments concerning the interim rule for 60 days ending June 2, 1997. We received 13 comments by that date. They were from five State agricultural agencies, three associations representing grain growers and processors, a food corporation, a grain handler, a wheat grower, and a scientific society. One of the commenters fully supported the interim rule as written. The remaining 12 commenters expressed concerns or made suggestions regarding certain aspects of the interim rule, although 8 of those commenters did offer their support for the changes contained in the interim rule. The issues raised by those 12 commenters are discussed in detail below.

**Comment:** The definition of *infestation (infected)* in § 301.89-1 of the regulations states that an area is infected if any stage of the fungus *Tilletia indica* (Mitra) Mundkur is present. Section 301.89-3(e) lists several criteria that are used to classify regulated areas, with the classification of regulated areas being based on the discovery of bunted kernels. If the

discovery of bunted kernels is now the criterion on which an area is regulated, rather than the detection of spores, should the definition of *infestation (infected)* be modified to reflect that change?

**Response:** If the discovery of bunted kernels was the sole criterion on which an area's regulatory status was based, it would be appropriate to modify the definition of *infestation (infected)* as suggested by the commenter. However, § 301.89-3(e) still provides for the designation of regulated areas based on the detection of spores in a field when that field is found to be associated with grain at a handling facility containing a bunted wheat kernel. Therefore, it would be inaccurate to base the definition of *infestation (infected)* only on the detection of bunted kernels.

**Comment:** Is the designation of regulated areas in § 301.89-3(f) valid only for the 1996-1997 crop production year? Since those regulated areas differ from those regulated in the 1995-1996 crop year, will the 1996-1997 regulated areas be modified for the 1997-1998 crop year? If so, what criteria will be used to define those areas?

**Response:** We do not intend to update the list of regulated areas in § 301.89-3(f) on a "crop year" basis as envisioned by the commenter. Rather, we will continue to amend the list of regulated areas when the situation warrants, removing areas from the list when we determine that it is no longer necessary to regulate them to prevent the spread of Karnal bunt and adding new areas to the list based upon the detection of Karnal bunt. The criteria used to define regulated areas are found in § 301.89-3.

**Comment:** In § 301.89-3(d), we would suggest that State plant regulatory officials be included in the written notification of the designation of an area as a regulated area. It is vital that State and Federal agencies interact closely with industry on this issue.

**Response:** Paragraph (d) of § 301.89-3 deals with the temporary designation of a nonregulated area as a regulated area. Because the movement of regulated articles from the temporarily designated regulated area will be subject to the regulations, the written notification is directed to the person most immediately affected by the designation of an area as a regulated area, i.e., the owner or person in possession of the land or, in the case of

publicly owned land, the person responsible for the management of the land. The notification of State plant regulatory officials in such cases is handled by the Animal and Plant Health Inspection Service (APHIS) State Plant Health Director in each State and through updates to the National Agricultural Pest Information Service database that is maintained by the joint APHIS/State Cooperative Agricultural Pest Survey. We do not, therefore, believe that it is necessary to include State officials in the notification provisions of § 301.89-3(d) to ensure that they receive timely notice of the temporary designation of nonregulated areas as regulated areas.

*Comment:* Intensive surveys should be conducted to ensure continued confidence in the freedom of areas released from regulation and areas outside the regulated area. It would be scientifically invalid to assume that the bunted kernel fields now regulated will be the only fields in which viable Karnal bunt spores may exist. The needs of the wheat industry in the Southwest should be considered in APHIS' regulatory decisionmaking, but the credibility of the U.S. export certification program must be maintained for the benefit of the entire nation. A thorough survey program will validate the regulatory program and ensure continued confidence in our exports.

*Response:* We agree with the commenter's position regarding the need for maintaining adequate delimiting surveys and detection programs. Our work in that respect continues on two fronts. First, there are the survey and detection activities that are carried out as part of the regulatory program within those areas of Arizona, California, New Mexico, and Texas that have been designated as regulated areas. In addition to the regulatory program, we are also conducting an ongoing National Survey of all wheat production areas in the United States in order to gather information about the presence or absence of Karnal bunt. The phytosanitary requirements of some of our trading partners necessitate the collection of documentable evidence that production areas are not infested at detectable levels. Without that documentation, we cannot provide the certifications that allow wheat to be sold into certain foreign markets. The intensity of this survey will provide a high level of confidence that Karnal bunt is not detectable in those parts of our wheat production system that contribute to the export trade. As well as identifying areas that are free of Karnal bunt infestations, the National

Survey will provide information about potential infections in new areas. By the end of 1997, the National Survey had covered all wheat growing areas of the United States where Karnal bunt had not previously been detected. In the National Survey, composite wheat samples are collected at county elevators, feed mills, seed laboratories, and seed trade and research locations. During 1996, the first year Karnal bunt was known to be present in the United States, 15,000 samples were collected and processed. By the end of 1997, over 11,000 additional composite samples had been collected, in proportion to wheat production, from wheat-producing areas where Karnal bunt had not been detected. We believe that our ongoing regulatory program and National Survey activities provide the assurances sought by the commenter and by our trading partners regarding the Karnal bunt status of areas released from regulation and areas outside the regulated areas.

*Comment:* APHIS should use the selective sieve technique, rather than a bunted kernel search technique, to check samples from the pre-release survey. The selective sieve technique can be used to eliminate samples that do not require further inspection so that efforts can be concentrated on those samples that do. In addition, all samples should be processed in a timely manner, rather than being processed as time allows.

*Response:* We have not limited ourselves to using any one method of examining samples, and we do not believe it is necessary to do so. In order to make the best use of our resources, we use the methodology best suited to the situation and operational circumstances at hand. Currently, the bunted kernel search technique is used in our survey activities in the regulated areas. The selective sieve technique, which involves the washing of grain samples and the subsequent examination of only those samples from which spores were collected, cannot be performed in the field. The bunted kernel search technique can be performed expeditiously in the field. Therefore, while the selective sieve technique may meet our operational needs in other situations, it does not meet the need for quick results in the field test situation.

*Comment:* The current seed treatment requirement is a costly procedure that could be a marketing problem within California and abroad if it is determined that excess chemicals were used in the production of California wheat. APHIS should review the efficacy of the required seed treatments, their adverse

effects on germination, and whether the prescribed use of carboxin thiram and pentachloronitrobenzene is consistent with the labeling of those chemicals.

*Response:* We are satisfied that the use of carboxin thiram and pentachloronitrobenzene as a double-fungicide treatment under § 301.89-13(d) is consistent with the labeling of those chemicals. With regard to their effects on germination, preliminary data from research gathered by APHIS' Karnal bunt regulatory program staff and the Arizona Department of Agriculture suggested that the double-fungicide treatment may negatively affect germination in some varieties of seed. Specifically, this research data indicated that for the seed varieties tested, double-treated seed may germinate at a lower rate than untreated seed in some cases. However, as a result of our continuing efficacy research, three single-fungicide treatment options have been made available for seed originating in a regulated area that will be planted within a regulated area.

Those single-fungicide treatments were added to § 301.89-13(d) by an interim rule that was effective on November 28, 1997, and published in the **Federal Register** on December 5, 1997 (62 FR 64263-64265, Docket No. 96-016-27). In answer to the commenter's concerns, the single-fungicide treatments now available will reduce the cost of seed treatment and lessen the level of chemicals used in the production of wheat. Further, we anticipate that single-treated seeds may in some cases have germination rates slightly higher than double-treated seeds. It should be noted, however, that many factors affect germination, and it is not possible to attribute increase or decrease in germination only to seed treatments.

*Comment:* The presence of regulated areas within California has resulted in Mexico placing restrictions on the importation of wheat from all wheat-producing areas of California. APHIS should ensure that California wheat produced outside the regulated areas receives the same consideration by our trading partners as wheat produced elsewhere in the United States.

*Response:* APHIS routinely seeks to answer any concerns raised by our trading partners regarding the phytosanitary status of U.S.-grown agricultural commodities. Addressing concerns related to Karnal bunt has been a part of our activities since the disease was first detected in this country. Since that initial detection, APHIS has been able to maintain export markets for U.S. wheat in more than three dozen countries with concerns about Karnal bunt. In an instance such

as that brought up by the commenter, APHIS will act to address the concerns of our trading partners and will seek the removal of any unjustifiable phytosanitary restrictions.

*Comment:* The move by APHIS to regulate areas based on their association with bunted kernels was a good one. However, the restrictions placed on wheat grown as seed in the regulated area is not consistent with that approach. If wheat seed grown in a regulated area was found to contain spores (and is thus ineligible for planting), the seed could be designated as grain and moved out of the regulated area without restriction if it was grown in the area outside the surveillance area. On the other hand, if grain to be moved from within a surveillance area is found to have spores, it must move under a limited permit. If testing cannot positively determine the presence of Karnal bunt on the basis of spores alone, then none of this seed or grain can be considered infected.

*Response:* We explained in the interim rule that grain from a surveillance area found to contain spores must be moved under a limited permit because it originated in an area that includes at least one field in which a bunted wheat kernel had been detected, and that the link to bunted wheat kernels gave us reason to believe that grain containing spores was at greater risk for being infected with Karnal bunt. We agree with the commenter's observation that current testing methods cannot be used to determine the presence of Karnal bunt on the basis of spores alone. It was that fact that led to the interim rule's amendments to the Karnal bunt regulations to require that an area or regulated article be associated with a bunted kernel before regulatory restrictions would be applied. Following the publication of the interim rule, we further amended the regulations (63 FR 50747-50752, Docket No. 96-016-32, published September 23, 1998) to allow the certified movement of grain for uses other than seed if the grain was tested prior to movement from the field, or before being commingled with other grain, and found free of bunted kernels only, rather than Karnal bunt spores and bunted kernels.

*Comment:* APHIS should recognize that Karnal bunt is a minor disease—it is more a quality or grading issue than it is a quarantine pest issue—and should remove its importation and interstate movement restrictions and encourage our trading partners to adopt the same view.

*Response:* Given the continuing international perception of Karnal bunt as a quarantine pest issue, we do not believe that it would serve the interests of American agriculture to unilaterally remove our regulatory restrictions through which we seek to prevent the introduction and dissemination of Karnal bunt. The position that Karnal bunt is a grading issue rather than a quarantine issue is one that has been discussed in international trade and scientific circles, but until such time as our trading partners view the disease as a grading issue, we believe that it will be necessary to continue our Karnal bunt-related regulatory activities and restrictions in order to protect our international agricultural standing.

*Comment:* The Palo Verde Valley of California should not be a surveillance area. The bunted kernels found in storage there were found in facilities that were not cleaned prior to the storage of the 1996 crop, and no bunted kernels were found in any trucks hauling the valley's 1996 crop. Given the low spore counts, it is unlikely any bunted kernels could now be found.

*Response:* As we stated in the interim rule, the regulatory status of the Palo Verde Valley is based on the presence of fields within the valley that are considered to be positive for Karnal bunt. Those fields had not been examined individually for bunted wheat kernels during the 1996 surveys, but they were found to contain spores. Further, grain from those fields was part of a commingled lot of grain at a storage facility that was found to contain bunted wheat kernels. However, because the grain in that commingled lot came from several sources, the bunted kernels could not be traced back to any individual field or fields. It is the combination of spores in the fields and bunted wheat kernels in grain associated with the fields that gives us reason to believe that those fields are affected with Karnal bunt. At the present time, we believe that regulatory restrictions on the Palo Verde Valley should remain in place because we do not possess sufficient data that would allow us to change our conclusion that those fields, and the areas that surround them, are associated with Karnal bunt. Although the programmatic classification of "surveillance area" was removed in a final rule effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749-23754, Docket No. 96-016-36), we retained the Palo Verde Valley as a regulated area for the same reasons that the area was designated as a surveillance area in the interim rule. However, we will continue to reevaluate the regulatory status of areas, including

the Palo Verde Valley, as additional information becomes available.

*Comment:* If seed treatment is truly effective and significantly reduces the possibility of spreading Karnal bunt, then seed treatment should be required for all seed planted in the United States. Similarly, if the treatment is effective, then treated seed from a regulated area should be approved for planting outside the regulated areas.

*Response:* With regard to requiring treatment for all seed planted in the United States, we believe that it would be an unjustifiable burden from a risk standpoint to require the treatment of seed that has no association with Karnal bunt. As for the commenter's suggestion about allowing treated seed from a regulated area to be planted outside the regulated areas, we did amend our regulations on September 23, 1998 (63 FR 50747-50752, Docket No. 96-016-32) to allow, among other things, commercial lots of treated seed from that portion of the restricted area for seed lying outside the surveillance area to be moved outside the regulated area for planting. However, that provision was rendered unnecessary, and was therefore removed, by a subsequent final rule effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749-23754, Docket No. 96-016-36). The May 1999 final rule removed the programmatic classification of "restricted area for seed" and released nearly all of the areas that had been designated as such from regulation, thus making it possible for seed to be moved from those areas without restriction.

*Comment:* Paragraph (f) of § 301.89-3 of the interim rule states that the areas listed in the section are designated as "regulated areas," and that those regulated areas are designated as either "restricted areas" or "surveillance areas." Paragraph (a) of § 301.89-5 of the interim rule states that any regulated article (i.e., certain articles from a regulated area) may be moved into or through an area that is not regulated only if moved under certain conditions. That restriction on the movement of regulated articles would seem to apply to the movement of grain from any part of the regulated area, but it appears that this is not the intent of the interim rule. As explained in the interim rule, grain is a regulated article, but its movement is restricted only from a surveillance area and not from the entire regulated area, which includes the restricted area for seed that extends beyond the surveillance area.

*Response:* The commenter is correct. The intent of the interim rule was that:

- Grain (wheat, durum wheat, and triticale) may not be grown in a

restricted area for regulated articles other than seed. Because grain may not be grown in such an area, there was no need to provide for the movement of grain from a restricted area for regulated articles other than seed. This was spelled out in the interim rule.

- Grain may be grown in a surveillance area, and may be eligible for movement from a surveillance area with a certificate under the conditions set forth in § 301.89-6(b). This, too, was spelled out in the interim rule.

- Outside the surveillance area, grain may be grown in the restricted area for seed and may be moved from that area without a certificate or limited permit. This was not made clear in the interim rule and, as noted by the commenter, § 301.89-5(a) does not provide for the movement of grain from a restricted area for seed.

Although the commenter was correct in noting that the interim rule did not provide for the movement of grain from a restricted area for seed, we are not making any changes to the regulations as a result of that comment. Such a change is now unnecessary due to the changes made in a final rule that was effective on April 28, 1999, and published in the **Federal Register** on May 5, 1999 (64 FR 23749-23754, Docket No. 96-016-36), which removed the restricted area for seed classification.

*Comment:* APHIS' move to require only a single test for grain moved from a surveillance area was a good one, but the single test that is required should be for bunted kernels and not spores. It is illogical to have a bunted kernel standard for establishing regulated areas and a "one spore and you're out" standard for moving grain and other regulated articles. Placing restrictions on the movement of grain based on the presence of spores that are assumed—but not proven—to be associated with Karnal bunt holds growers to standards that are stricter than the disease demands. In that same vein, there is no explanation in the interim rule as to why double testing is still required for the movement of grain out of a restricted area.

*Response:* As we noted in the response to another comment, our September 23, 1998, final rule amended the regulations to allow the certified movement of grain for uses other than seed if the grain is tested prior to movement from the field, or before being commingled with other grain, and found free of bunted kernels only, rather than Karnal bunt spores and bunted kernels. Regarding the commenter's reference to double-testing for the movement of grain from a restricted

area, that requirement, which had been found in § 301.89-6(d), was removed by the interim rule.

*Comment:* The interim rule contains an open-ended prohibition on the planting of wheat in restricted areas for regulated articles other than seed, i.e., the prohibition is not limited to a single crop season. Although it may not have been the intent of the interim rule, it appears that a significant amount of farm acreage could be permanently barred from growing wheat. APHIS should adopt a timetable for the release of those areas from regulation.

*Response:* In a final rule effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749-23754, Docket No. 96-016-36), we removed the prohibition on the planting of Karnal bunt host material in those fields that had been designated as restricted areas for regulated articles other than seed, thus answering this commenter's concerns.

*Comment:* If APHIS is considering Mexico's request that the Mexicali Valley be declared free from Karnal bunt, then APHIS should also consider the adjacent areas in Yuma County, AZ, as free from Karnal bunt, since the two areas can be viewed as comprising a single "distinct, definable area" as that term is defined in § 301.89-1.

*Response:* Given that an international border lies between Mexico's Mexicali Valley and the adjacent areas of Yuma County, AZ, and given that restrictions are in place regarding the movement of Karnal bunt host material between the United States and Mexico, we do not believe that it is appropriate to consider the Mexicali Valley and Yuma County, AZ, as a single "distinct, definable area." Rather, Mexico's request regarding the Karnal bunt status of the Mexicali Valley was evaluated on its own merits, as should any decision regarding the regulatory status of Yuma County, AZ.

#### Other Comments

In addition to the issues discussed above, several commenters questioned the continuing regulatory status of areas in New Mexico. Two commenters noted that Karnal bunt has been linked to New Mexico only through the 106 fields identified as having been planted with potentially contaminated seed. One of those commenters stated that those 106 fields should be the only regulated areas in New Mexico—i.e., there should be no restricted areas for seed in the State—while the other commenter took the position that even those 106 fields should be released from regulation because the wheat in those fields was destroyed before heading out and no

bunted kernels have been detected in New Mexico in the course of subsequent testing. Other commenters asked that specific fields in New Mexico be removed from regulation due to their isolation from other farm areas and the lack of evidence—other than the contaminated seed that was planted there—pointing to the presence of Karnal bunt in New Mexico.

Even though the wheat in those 106 fields was plowed down and destroyed before heading out, available information regarding Karnal bunt indicates that viable *T. indica* inoculum could persist in the soil for several years. Therefore, we believe that it is necessary for those fields to continue to be designated as regulated areas. We have, however, removed the regulatory restrictions that applied to the areas surrounding those fields, which had been designated as restricted areas for seed. As noted elsewhere in this document, the "restricted area for seed" classification was eliminated by a final rule that was effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749-23754, Docket No. 96-016-36), so those 106 individual fields are now the only regulated areas in New Mexico. We will continue to reevaluate the regulatory status of those fields in New Mexico, as well as the regulated areas in other States. As we continue to accumulate negative survey data, we will be in a better position to make and defend decisions regarding the further release of areas from regulatory restrictions.

Three of the commenters raised the issue of compensation. The issue of compensation was not raised in the interim rule and is, therefore, outside the scope of this final rule. Rather, compensation has been, and will continue to be, addressed in separate rulemakings that focus exclusively on that issue.

#### Changes Made in This Document

In the interim rule, we amended the regulations by redesignating footnotes 2 through 6 as footnotes 1 through 5, respectively. When we redesignated footnote 3 as footnote 2, we should have amended the text of what is now footnote 5, which refers the reader to footnote 3, to reflect the redesignation of footnote 3. We are correcting that omission in this document.

Since the interim rule that is the subject of this document became effective, we have published two other rulemakings in the **Federal Register** that amended the provisions established in the interim rule. This document does not affect those rulemakings. The provisions of those rulemakings are:

- In the interim rule, we revised paragraphs (e) and (f) of § 301.89–3. Those two paragraphs were revised again by a final rule effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749–23754, Docket No. 96–016–36).

- In the interim rule, we revised § 301.89–4. That section was revised again by the May 1999 final rule.

- In the interim rule, we revised paragraph (b) of § 301.89–6. That paragraph was revised again by a final rule published and effective on September 23, 1998 (63 FR 50747–50752, Docket No. 96–016–32), and that September 1998 revision was further amended by the May 1999 final rule.

- In the interim rule, we amended § 301.89–6 by removing and reserving paragraph (d). In the September 1998 final rule, we added a new paragraph (d) to § 301.89–6. Then, in the May 1999 final rule, we removed the paragraph (d) that had been added by the September 1998 final rule and redesignated paragraph (e) as paragraph (d).

Therefore, for the reasons 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 change discussed in this document.

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

#### **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 document adopts as a final rule, with one change, an interim rule that amended the Karnal bunt regulations by modifying the criteria for classifying regulated areas and by modifying the classification of restricted areas. The interim rule required that a bunted wheat kernel be found in or associated with a field within an area before that area would be designated as a regulated area. The interim rule also established separate restricted areas for seed and for regulated articles other than seed. The actions taken in the interim rule had the effect of removing some areas in Arizona and California from the list of regulated areas and relieving restrictions on the movement of grain and other regulated articles from additional areas in Arizona, California, New Mexico, and Texas.

In the interim rule, we stated that we were taking those actions on an

expedited basis in order for the amended regulations to be in place prior to the spring wheat harvest in the affected States, and that the need to publish the interim rule on an expedited basis made compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable.

The interim rule substantially reduced the amount of acreage regulated for Karnal bunt, which meant that regulated articles like grain, seed, and straw from the areas released from regulation could be moved without restriction. The interim rule also eased restrictions on the movement of grain and other regulated articles from those areas that remained under regulation. Given those changes, we stated our expectation that the interim rule would have a significant deregulatory impact on affected entities. We further stated that, because the majority of the affected entities in the regulated areas have been determined to be small entities, we would discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Act Analysis. That Final Regulatory Flexibility Act Analysis, which also serves as our cost-benefit analysis, is set forth below.

#### *Entities Affected*

The Regulatory Flexibility Act requires that agencies assess the impact of regulations on small businesses, organizations, and governments. We have assumed that the majority of the wheat producers in the regulated area would be classified as small entities, based on criteria established by the Small Business Administration (SBA) that defines a “small” wheat producer as one having annual sales of less than \$500,000. We have also assumed that the economic impacts on all wheat producers would tend to be lower over time, especially if wheat production and marketings increase in the regulated area in response to the deregulatory effects of the interim rule. The economic impact of the interim rule on seed producers, however, depends largely on the degree to which foreign and domestic markets are willing to accept seed produced in areas that had been regulated for Karnal bunt.

The interim rule greatly reduced the number of nonpropagative wheat (i.e., grain) growers operating under regulatory constraints. Prior to the effective date of the interim rule, there were an estimated 598 growers affected by the regulations (236 in California, 310 in Arizona, 40 in New Mexico, and 12 in Texas). Once the interim rule became effective, the number of affected

growers dropped to 93, a decline of 84.4 percent. Of those remaining affected growers, 56 were located in restricted areas for seed (29 in Arizona, 2 in California, 23 in New Mexico, and 2 in Texas) and 37 were located in surveillance areas (20 in Arizona, 17 in California, and none in New Mexico and Texas).

Although nonpropagative wheat (grain) growers are the entities primarily affected by the interim rule, there are other businesses that provide supplies and that harvest, transport, and process wheat grown in the regulated areas that were also affected by the interim rule. These entities include harvesters and grain trucks, grain storage and load-out facilities, railroad companies, grain handlers and marketers, seed producers and seed companies, seed research firms and universities, millers and other users of milling grain and millfeed, straw producers and users, and other entities involved in providing supplies to wheat growers and services to market and process their production.

#### *Rationale for and Benefits of Regulation*

Upon detection of Karnal bunt in the southwestern United States in the spring of 1996, quarantine and emergency actions were immediately imposed by APHIS in order to prevent the interstate spread of the disease to noninfected wheat producing areas in the country, which would have had serious economic impact on the \$4 billion wheat export market,<sup>1</sup> given that 50 percent of exports were to countries that maintain restrictions against wheat imports from countries where Karnal bunt is known to occur. These actions included designating areas where Karnal bunt had been detected as regulated areas from which the movement of Karnal bunt host material was restricted or prohibited.

In addition to the quarantine, the Karnal bunt program consisted of a National Survey component in which samples of wheat from fields throughout the United States were collected and tested for Karnal bunt. The National Survey program provided assurances to wheat importing countries that fields outside the regulated areas were monitored for the disease. Countries that are willing to accept wheat from the regulated areas are assured that grain grown in those areas has been tested and found negative for the disease. Through these means, the Federal Karnal bunt program served to maintain and preserve the economic viability of

<sup>1</sup> About 1.2 billion bushels of wheat was exported from the United States in 1995, at a value of \$4 billion.

the U.S. wheat export market. The main benefit of the regulatory program, therefore, can be viewed as the avoidance of the potentially significant losses to the wheat export market that would likely have occurred in the absence of regulation. Without Federal regulation, it is conceivable that farm income both within and outside the regulated areas could have been further jeopardized.

As additional information from sampling and testing became available, the Agency was able to ease the initial quarantine, which was necessarily broad due to the lack of data available at the time as to the extent of the infestation. Our subsequent modifications to the classification criteria for regulated areas and the classification of restricted areas, and the relief from restrictions that accompanied those changes, are the focus of this analysis. As a result of those modifications to the program, the Agency has been able to continue to assure importing countries that U.S. grain exports are coming from areas where Karnal bunt is not known to exist, but at a lower cost to producers and handlers than had been possible under the initial quarantine.

*Changes in Planted Acreage*

When Karnal bunt was first detected in the United States in March 1996, APHIS responded by placing nearly 1.7 million acres of agricultural land, including approximately 330,149 acres of wheat, under regulation through a series of interim rules in order to prevent the further spread of the disease. After gathering additional information through sampling, testing, and research, we published a final rule in the **Federal Register** on October 4, 1996 (61 FR 52189–52213, Docket No. 96–016–14), that amended the Karnal bunt regulations that had been established in that series of interim rules.

The October 1996 final rule established criteria for levels of risk, the

movement of regulated articles, and the planting of seed from Karnal bunt host crops, and divided the regulated areas into surveillance areas and restricted areas. Under the October 1996 final rule, wheat could not be grown within the restricted areas (which amounted to about 16,859 acres), but grain could be grown in and moved from the surveillance areas (which amounted to about 207,670 acres of wheat grown for grain) if the grain was tested for spores and found negative. The final rule also prohibited the movement of commercial wheat seed from anywhere in a regulated area (i.e., both restricted areas and surveillance areas). On April 3, 1997, we published in the **Federal Register** (62 FR 15809–15819, Docket No. 96–016–18) the regulatory flexibility analysis prepared for the October 1996 final rule. While the October 1996 final rule did not reduce the size of the regulated area, it did ease restrictions on the movement of grain grown in regulated areas.

The May 1997 interim rule (Docket No. 96–016–19) that is the subject of this final rule reduced the size of the area regulated for Karnal bunt and further eased restrictions on the movement of grain and other regulated articles from those areas that remained under regulation, so its long-term economic effect is expected to be positive. The changes contained May 1997 interim rule were made possible in large part by research that led the Agency to conclude the detection of a bunted wheat kernel—and not spores alone—was necessary to confirm the presence of Karnal bunt in an area or article. The shift to this bunted kernel standard had an immediate positive 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. Because no

bunted kernels were detected in those storage facilities or the seed lot, it was not necessary to place those areas under regulation.

Under both the October 1996 final rule and the May 1997 interim rule, the movement of grain from a surveillance area is subject to restrictions. However, in the interim rule, the size of the surveillance areas was greatly reduced by limiting the size of the surveillance area to an approximately 3-square-mile buffer around restricted fields, with the remainder of the former surveillance area being designated as a restricted area for seed from which grain could move without a certificate or limited permit. Thus, the interim rule reduced the size of the areas from which the movement of grain was subject to restrictions by about 95 percent, from 207,670 acres to 9,806 acres. By requiring that an area or article be associated with a bunted kernel (and not just spores), the interim rule eliminated the need to expand the regulated area into the five southeastern States where Karnal bunt-like spores had found and into any other area of the United States where such spores might have been found in the future. The interim rule also allowed grain grown in restricted areas for seed lying outside surveillance areas (which amounted to 91,924 acres of grain in the 1996–1997 crop season) to be moved without a certificate or limited permit. This represented an increase of more than 44 percent in the amount of grain eligible for unrestricted movement.

Additional positive impacts are expected to occur as a result of the reduction in the size of the areas in which the growing of wheat is prohibited. The restricted area acreage fell from 16,859 acres under the October 1996 final rule to 13,519 acres under the May 1997 interim rule, a reduction of nearly 20 percent. Table 1 summarizes the changes in regulatory designations and regulated acreage in the 1995–1996 and 1996–1997 crop seasons.

TABLE 1.—ACREAGE IN REGULATED AREAS UNDER 1995–96 REGULATIONS AND UNDER THE MAY 1997 INTERIM RULE

| Year                                                                                          | Regulatory designation                                         | Regulated acreage by state |         |         |        | Total     |
|-----------------------------------------------------------------------------------------------|----------------------------------------------------------------|----------------------------|---------|---------|--------|-----------|
|                                                                                               |                                                                | AZ                         | CA      | NM      | TX     |           |
| 1995–96 ...                                                                                   | Total planted wheat acreage in regulated areas .....           | 181,339                    | 137,870 | 10,235  | 705    | 330,149   |
|                                                                                               | Total agricultural acreage in regulated areas .....            | 928,542                    | 500,000 | 215,000 | 35,000 | 1,678,542 |
| <b>1996–97 Acreage Regulated Under the October 4, 1996, Final Rule (Docket No. 96–016–14)</b> |                                                                |                            |         |         |        |           |
| 1996–97 ...                                                                                   | Acreage in which wheat planting prohibited (restricted areas). | 9,200                      | 3,200   | 3,990   | 469    | 16,859    |
|                                                                                               | Total planted wheat acreage in regulated areas .....           | 105,800                    | 98,010  | 3,327   | 533    | 207,670   |
|                                                                                               | Total agricultural acreage in regulated areas .....            | 928,542                    | 500,000 | 215,000 | 35,000 | 1,678,542 |

TABLE 1.—ACREAGE IN REGULATED AREAS UNDER 1995–96 REGULATIONS AND UNDER THE MAY 1997 INTERIM RULE.—  
Continued

| Year                                                                                        | Regulatory designation                                                                                | Regulated acreage by state |         |         |        | Total     |
|---------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|----------------------------|---------|---------|--------|-----------|
|                                                                                             |                                                                                                       | AZ                         | CA      | NM      | TX     |           |
| <b>1996–97 Acreage Regulated Under the May 1, 1997, Interim Rule (Docket No. 96–016–19)</b> |                                                                                                       |                            |         |         |        |           |
| 1996–97 ...                                                                                 | Acreage in which wheat planting prohibited (restricted areas for regulated articles other than seed). | 5,947                      | 3,113   | 3,990   | 469    | 13,519    |
|                                                                                             | Planted wheat acreage in surveillance areas .....                                                     | 7,023                      | 2,783   | 0       | 0      | 9,806     |
|                                                                                             | Planted wheat acreage in restricted areas for seed .....                                              | 81,977                     | 6,087   | 3,327   | 533    | 91,924    |
|                                                                                             | Total planted wheat acreage in regulated areas .....                                                  | 89,000                     | 8,870   | 3,327   | 533    | 101,730   |
|                                                                                             | Total agricultural acreage in regulated areas .....                                                   | 875,000                    | 301,772 | 215,000 | 35,000 | 1,426,772 |

Although the May 1997 interim rule further reduced the size of the area regulated for Karnal bunt, there was an observed reduction in 1996–1997 wheat plantings. While those reductions were likely due in part to planting decisions influenced by the continuing Karnal bunt regulatory program, we do not believe that the reductions can be attributed entirely to Karnal bunt regulations. Accordingly, the analysis of impacts addresses certain factors that could explain the observed changes in plantings in the affected areas.

*Impact of Karnal Bunt Regulations and Other Factors on Wheat Acreage Reductions in 1996–1997*

Propagative (seed) and nonpropagative (grain) wheat acreage in the regulated area in the 1995–1996 crop season had been planted and was

at various preharvest stages when Karnal bunt was first detected in early March 1996. The initial regulatory action, therefore, mainly affected wheat marketings and not wheat production. Production in the regulated areas had increased from the 1994–1995 crop season due to expected higher prices fueled by strong export demand (*California Farmer*, “Scion of the Irrigated West,” mid-March 1996, p. 14). However, by the time the 1995–1996 crop was marketed, wheat prices had dropped nationwide due to a number of reasons, including record increases in planted spring wheat acreage in the Midwest (*Agricultural Outlook*, USDA, Economic Research Service, August 1996). Due to lower prices and the changed regulatory environment, in addition to the risk of being infected with Karnal bunt, planted wheat acreage

in the regulated areas was expected to be lower in the 1996–97 crop season. Assuming an average 25 percent decline in wheat prices in the regulated areas from 1995 to 1996, it is estimated that 1996–1997 planted wheat acreage in the regulated areas should have totaled 280,627 acres, a decline in planted acreage of almost 15 percent based solely on producer reaction to lower prices.<sup>2</sup> The past average ratio of planted propagative to nonpropagative wheat acreage in the regulated area suggests that 14,031 acres of this planted acreage would have been devoted to seed production. Thus, the planted acreage totals for grain and seed production that would have been expected in 1997, based entirely on lower expected prices, are 266,595 and 14,031 acres, respectively (Table 2).

TABLE 2.—1995–96 AND 1996–97 ACTUAL PLANTED WHEAT ACREAGE IN THE REGULATED AREA AND 1997 ACREAGE ESTIMATE AS A RESULT OF LOWER PRICES

| Scenario                                                                      | Estimated acreage in:                                |                    |                   |
|-------------------------------------------------------------------------------|------------------------------------------------------|--------------------|-------------------|
|                                                                               | Total Wheat                                          | Grain              | Seed              |
| Actual 1995–1996 .....                                                        | 330,149                                              | 313,642            | 16,507            |
| 1996–1997 estimated acreage as a result of lower prices .....                 | 280,627                                              | 266,595            | 14,031            |
| Actual 1996–1997 .....                                                        | 101,730                                              | 97,865             | 3,865             |
|                                                                               | Acreage change as compared with actual 1996 acreage: |                    |                   |
| Estimated decrease in 1997 acreage due to lower prices .....                  | –49,522<br>(–15%)                                    | –47,047<br>(–15%)  | –2,476<br>(–15%)  |
| Actual decrease in 1997 acreage .....                                         | –228,419<br>(–70%)                                   | –215,777<br>(–69%) | –12,642<br>(–77%) |
| <b>Difference Between Estimated Lower Price 1997 Acreage and Actual 1997:</b> |                                                      |                    |                   |
| Lower price acreage minus actual 1997 acreage .....                           | –178,897                                             | –168,730           | –10,166           |

The actual total planted wheat acreage in the regulated areas for the 1996–1997 crop season is estimated at 101,730 acres, which is a 70 percent decrease

from the 330,149 planted acres in the 1995–1996 crop season (a far larger decrease than the 15 percent reduction that, as noted above, would have been

expected due solely to lower prices). Planted wheat seed acreage showed a greater decline, falling by 12,642 acres or more than 77 percent. Evidently,

<sup>2</sup>This estimate is produced using a standard planted acreage to price response function for wheat set at 0.6 (a 10 percent decrease in wheat

price elicits a 6 percent decline in planted wheat acreage) multiplied by the estimated average 25

percent decrease in wheat prices in the regulated areas.

grain and seed producers cut back production due to reasons other than lower prices, such as the presence of Federal regulations and the threat of Karnal bunt infection.

Because only 49,522 acres (22 percent) of the actual 228,419-acre decline in total 1996–1997 planted wheat acreage in the regulated area can be explained as occurring in response to lower prices, there is the implication that the remaining 178,897 acres of planted wheat acreage were dropped due to factors unrelated to price.

Attention is now focused on explaining this non-price-generated 178,897-acre (168,730 acres of grain, 10,166 acres of seed) decrease in planted wheat acreage in the regulated area.<sup>3</sup>

Of the 168,730-acre non-price-generated decline in grain acreage, Federal regulations that prohibit wheat planting in restricted areas can explain acreage reductions of 13,519 acres (see Table 1). Assuming that half of this restricted area acreage would have been rotated out of wheat production in 1996–1997 in any case, it is estimated

that Federal planting restrictions reduced grain acreage by about 6,760 acres (Table 3). A certain amount of wheat seed would have been needed to produce wheat on this restricted area acreage; this associated seed acreage is estimated at 125 acres.<sup>4</sup> Deducting the impact of planting restrictions on grain and its associated seed production needs from the total non-price-generated acreage reductions leaves a cutback of 162,095 acres of grain and 10,042 acres of seed left unexplained by lower prices.

TABLE 3.—NON-PRICE-GENERATED ACREAGE SHIFTS IN THE REGULATED AREA, 1996–97 CROP SEASON

| Item                                              | Acreage reductions associated with the Interim Rule in 1996–97: |                |               |
|---------------------------------------------------|-----------------------------------------------------------------|----------------|---------------|
|                                                   | Total                                                           | Grain          | Seed          |
| Total non-price-generated acreage reduction ..... | 178,897                                                         | 168,730        | 10,166        |
| Reduction due to planting restrictions .....      | – 6,760                                                         | – 6,635        | – 125         |
| <b>Total .....</b>                                | <b>172,137</b>                                                  | <b>162,095</b> | <b>10,042</b> |

The estimated 1996–97 grain and seed acreage reductions are assumed to have occurred as a result of several non-price factors, including reduced interest from buyers outside the regulated area and possible Karnal bunt-related production and marketing concerns. This planted wheat acreage cutback may have resulted from a combination of producer reaction to lower demand for wheat—both domestically and in foreign markets—and grower reluctance to plant wheat due to the possibility of becoming infected with Karnal bunt. No attempt is made to estimate the relative influence among these non-price factors on the remaining planted grain and seed wheat acreage reductions.

*Potential Economic Losses in 1996–97 Due to Reduced Planted Acreage*

The potential economic losses resulting from lost sales of wheat grain and seed due to the non-price-generated acreage reductions described in the previous paragraphs are presented below. These potential economic losses are broken down into three categories: (1) Losses associated with the prohibition on planting wheat in restricted areas; (2) losses in gross value of grain and associated seed; and (3) losses resulting from reduced seed sales.

*Losses Associated With the Prohibition on Planting Wheat in Restricted Areas*

The gross economic losses resulting from the prohibition on planting wheat on the 6,635 acres in the restricted areas is estimated at \$3 million for the 1996–1997 crop season.<sup>5</sup> This gross loss implies a net wheat income reduction of \$1.5 million.<sup>6</sup> To offset those losses, other crops with historically high returns, such as barley, could be grown as replacement crops in the restricted areas. Assuming the substitution of barley, which yields returns of about 80 percent of that of wheat, gross economic losses to wheat producers are reduced to \$0.6 million, and the associated net loss to producers on these barley sales would be even lower, at \$0.35 million.

*Losses in Gross Value of Grain*

The loss in gross value of the remaining non-price-generated wheat grain acreage reduction of 162,095 acres is estimated at \$72.9 million. Again, if we assume the substitution of barley for wheat on this acreage, gross grower losses are lowered to \$14.6 million and the corresponding net losses to growers would be even lower, estimated at around \$7.3 million.

*Losses Resulting From Reduced Seed Sales*

The entire amount of non-price-generated wheat grain acreage reductions and their associated needed wheat seed production was totally accounted for in the loss calculations above. Some of the additional seed acreage reductions were left unaccounted for because the acreage reductions were proportionately greater for wheat seed than for wheat grain. These remaining wheat seed acreage reductions of 10,042 acres have an associated gross and net grower economic loss of \$7.6 and \$3.7 million, respectively. This planted seed acreage cutback probably was due primarily to seed producers reacting to lower seed demand in export markets.

*Reduced Surveillance Area*

The interim rule reduced the acreage in surveillance areas, which reduces the amount of potential economic losses to growers and handlers of grain. That reduction is based on the assumption that 15 percent of production in a surveillance area will be found to be infected with Karnal bunt, and that the value of such Karnal bunt positive wheat is reduced by \$0.60 per bushel. Thus, under the October 1996 final rule, which included 207,670 acres of

<sup>3</sup> Comparing the expected amount of planted wheat seed acreage (14,031) that would have been expected as a result of lower prices with the actual 1997 planted wheat seed acreage (3,865) gives a total of 10,166 fewer acres of seed left unexplained by lower prices in 1997. Deducting the 10,166 fewer acres of wheat seed from the total wheat acreage

decrease left unexplained by lower prices in 1997 produces a non-price-generated drop of 168,730 acres of grain.

<sup>4</sup> This assumes that 1 acre of wheat seed produces enough clean propagative seed to plant 54 acres.

<sup>5</sup> The calculation of the value of wheat grain is based on the assumption that an acre of wheat

yields 100 bushels of grain, and a bushel of grain is valued at \$4.50 per bushel.

<sup>6</sup> This net income calculation is made using the same net income to gross income proportion used in the Karnal Bunt Regulatory Flexibility Analysis published in the **Federal Register** on April 3, 1997 (62 FR 15809–15819, Docket No. 96–016–18).

surveillance area, there was a potential economic loss, due to the \$0.60 per-bushel decline in market value, of \$1.9 million. With the interim rule's reduction of surveillance areas to 9,806 acres, this potential loss is reduced to under \$100,000.

*Summary of Potential Economic Losses in the Regulated Area in 1996-1997*

Planted wheat acreage in the regulated areas in 1997 showed a drop of over 70 percent from 1996. Growers cut back wheat production due to a host of factors, including expected lower prices, the presence of Federal regulations, and the threat of Karnal bunt. Standard economic models

correlating acreage changes to price changes explain only about 22 percent of the actual acreage reduction from 1995-96 in the regulated area. It is assumed that the remaining 178,897 acres were dropped from wheat production due to nonprice factors. One of these factors was the prohibition on planting wheat in fields designated as restricted areas for regulated articles other than seed. This drop in grain production and its associated seed acreage produced an estimated net income loss to growers of about \$0.35 million in 1996-97.<sup>7</sup> However, much of this loss would have been incurred with or without the interim rule, as the number of fields in which wheat could

not be grown was largely unchanged by the interim rule.

Reductions in grain demand (\$7.3 million) and its associated seed acreage (\$3.7 million) generated net losses to growers of about \$11 million, even with the reduction in the size of the regulated area resulting from the interim rule (see table 4). It should be noted that these losses are estimated annual losses in the 1996-1997 crop season. The amount of losses that may be incurred in the future will be affected by changes in the size of the regulated areas and the presence or absence of regulatory restrictions on the planting and movement of Karnal bunt host crops within the regulated areas.

TABLE 4.—POTENTIAL ECONOMIC LOSSES IN THE 1996-1997 CROP SEASON DUE TO REDUCED PLANTED ACREAGE

| Loss in value associated with:                                                                 | Gross value (\$ million) | Net value (\$ million) |
|------------------------------------------------------------------------------------------------|--------------------------|------------------------|
| Prohibition on wheat planting in restricted areas for regulated articles other than seed ..... | 0.6                      | 0.35                   |
| Reduced wheat grain acreage .....                                                              | 14.6                     | 7.3                    |
| Reduced seed planting and sales .....                                                          | 7.6                      | 3.7                    |
| Total .....                                                                                    | 22.8                     | 11.35                  |

The area in which the interim rule may have reduced losses is in its reduction in the acreage designated as surveillance areas. As explained previously in this analysis, the reduction in the acreage designated as surveillance areas could be expected to lower potential Karnal bunt-positive wheat value losses from \$1.9 million to \$0.1 million.<sup>8</sup> The reduction in the acreage designated as surveillance areas may cause some price strengthening in the short run, but most likely this change will be more beneficial in the future. The same is true for the reduction in the acreage designated as restricted areas for seed—little short-run relief was expected, but future production shifts may significantly reduce the effect of regulations. No quantitative estimate for 1997 is made on either of these two possible market adjustments.

*Federal Compensation To Mitigate Losses*

In order to alleviate some of the economic hardships and to ensure full and effective compliance with the regulatory program, compensation to mitigate certain losses described above was offered to producers and other affected entities in the regulated area. The rationale for the use of

compensation was that the emergency actions taken by the Agency to prevent further spread of Karnal bunt disrupted normal production and marketing activities in regulated areas. 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 was grown under contract at specified amounts and prices.

The Agency compensation plan reflected the fact that while significant benefits of regulation (in terms of the avoidance of greater losses in the export market) accrue to producers outside the regulated areas, the regulatory burden fell disproportionately on those within the regulated area. Compensation would therefore be appropriate where a small number of parties necessarily bear a disproportionate share of the burden of providing such benefits.

For comparison purposes, when Karnal bunt was first detected in the 1995-1996 crop season, compensation was paid for the plow-down of fields in New Mexico and Texas that were planted with seed containing bunted wheat kernels, loss in value of wheat testing positive for Karnal bunt to

producers and handlers, loss in value of wheat testing negative for Karnal bunt to producers and handlers, cost of millfeed treatment, cleaning and disinfecting of grain storage facilities, and wheat inventories from past crop season (for further details, see docket No. 96-016-20, published in the **Federal Register** on May 6, 1997, 62 FR 24753-24765). Compensation funding of nearly \$40 million was made available to the Agency through budget apportionment for losses suffered in the 1995-96 crop year. As of December 31, 1998, about \$33 million has been paid in compensation: \$18.5 million to producers and handlers who suffered losses from the sale of their 1996 wheat crop, \$8.5 million to seed and straw producers and handlers, and \$3 million in claims for custom harvesters, millfeed treatment, storage facility decontamination).<sup>9</sup>

For the 1996-97 crop season, the crop year pertinent to the regulatory changes addressed in this final rule, compensation was limited to certain growers and handlers within the regulated area for grain that tested positive for bunted wheat kernels, flour millers who choose to handle positive wheat, and growers and handlers of grain or seed in areas where Karnal bunt was discovered outside the regulated

<sup>7</sup>These losses assume that a large part of the reduced wheat acreage was planted into barley in 1997 so that barley receipts offset gross and net wheat income losses by almost 80 percent.

<sup>8</sup>Compensation in these areas could further reduce the economic effect on producers and handlers.

<sup>9</sup>The remaining \$3 million of the \$33 million total is accounted for by outstanding claims that

have been reviewed and approved by the Farm Service Agency, but that are not reflected in the three subtotals.

area (63 FR 31593-31601, Docket No. 96-016-29, published June 10, 1998). Of the \$3.6 million apportioned for compensation for 1997 crop losses, less than \$50,000 in compensation has been paid. Due to the small number of positive finds, total losses are not expected to exceed \$200,000.

In conclusion, the lifting of certain restrictions as a result of the interim rule was expected to only marginally reduce the 1997 economic effect on production and marketing for most wheat in the regulated areas. Planting for the May/June 1997 harvest was already complete when the interim rule was published, so growers could not react to the change in regulations by making different planting decisions. However, the reduction in the acreage designated as surveillance areas could be expected to lower potential Karnal bunt-positive wheat value losses from \$1.9 million to \$0.1 million. Thus, benefits of \$1.8 million in 1997 could be realized as a result of the interim rule, based on a lower incidence of Karnal bunt-positive grain, which reduces the losses associated with the lower value of Karnal bunt-positive grain. Compensation in these areas could further reduce the economic effect on producers and handlers. Payments for the 1996-1997 crop season are not expected to exceed \$200,000 due to the small number of positive finds.

#### *Alternatives Considered*

The only significant alternative to the interim rule would have been to retain the classification criteria provided by the Karnal bunt regulations established in the October 1996 final rule. 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. Under those criteria, it is unlikely that any of the significant reductions in the size of the regulated areas and the number of affected growers achieved by the May 1997 interim rule could have been accomplished. In addition, maintaining those criteria would likely have resulted in the placement of regulatory restrictions in 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 in South Carolina, where seed from a seed lot contaminated with those Karnal bunt-like spores had been planted. However, given our conclusion that the detection of spores alone does not allow us to make a conclusive determination that Karnal bunt disease

is present in an area or article, that alternative was rejected. By rejecting that alternative, APHIS was able to prevent the enormous cost impacts on producers and eliminate the need for large compensation payments while continuing to assure importing countries that U.S. wheat exports are coming from areas where Karnal bunt is not known to exist.

#### **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 that was published at 62 FR 23620-23628 on May 1, 1997, is adopted as a final rule with the following change:

#### **PART 301—DOMESTIC QUARANTINE NOTICES**

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

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).

#### **§ 301.89-9 [Amended]**

2. In § 301.89-9, in paragraph (a), the text of footnote 5 is amended by removing the words "footnote 3" and adding the words "footnote 2" in their place.

Done in Washington, DC, this 25th day of May 1999.

**Joan M. Arnoldi,**

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

[FR Doc. 99-13793 Filed 6-1-99; 8:45 am]

BILLING CODE 3410-34-P

#### **SECURITIES AND EXCHANGE COMMISSION**

#### **17 CFR Part 240**

[Release No. 34-41453, International Series Release No. 1198, File No. S7-4-99]

RIN 3235-AH68

#### **Exemption of the Securities of the Kingdom of Sweden Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is adopting an amendment to Rule 3a12-8 that would designate debt obligations issued by the Kingdom

of Sweden as "exempted securities" for the purpose of marketing and trading futures contracts on those securities in the United States. The amendment is intended to permit futures trading on the sovereign debt of Sweden.

**EFFECTIVE DATE:** June 2, 1999.

**FOR FURTHER INFORMATION CONTACT:** Joshua Kans, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-1001, at 202/942-0079.

**SUPPLEMENTARY INFORMATION:**

#### **I. Introduction**

Under the Commodity Exchange Act ("CEA"), it is unlawful to trade a futures contract on any individual security unless the security in question is an exempted security (other than a municipal security) under the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act"). Debt obligations of foreign governments are not exempted securities under either of these statutes. The Securities and Exchange Commission ("SEC" or "Commission"), however, has adopted Rule 3a12-8<sup>1</sup> ("Rule") under the Exchange Act to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States. As amended, the foreign governments currently designated in the Rule are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, Spain, Mexico, Brazil, Argentina, Venezuela and Belgium (the "Designated Foreign Governments"). As a result, futures contracts on the debt obligations of these countries may be sold in the United States, as long as the other terms of the Rule are satisfied.

On February 23, 1999, the Commission issued a release proposing to amend Rule 3a12-8 to designate the debt obligations of the Kingdom of Sweden ("Sweden") as exempted securities, solely for the purpose of futures trading.<sup>2</sup> No comment letters were received in response to the proposal.

The Commission today is adopting this amendment to the Rule, adding Sweden to the list of countries whose debt obligations are exempted by Rule

<sup>1</sup> 17 CFR 240.3a12-8.

<sup>2</sup> See Securities Exchange Act Release No. 41090 (February 23, 1999), 64 FR 9948 (March 1, 1999) ("Proposing Release").