Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–134–1]

Karnal Bunt; Criteria for Releasing Fields From Regulation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Karnal bunt regulations regarding the requirements that must be met in order for a field or area to be removed from the list of regulated areas. The proposed changes would allow a field to qualify for release after 5 cumulative years of specified management practices, rather than 5 consecutive years as the current regulations provide, and reorganize the manner in which those management practices are described. These proposed changes would clarify the existing regulations and provide growers in regulated areas with greater flexibility in their planting decisions.

DATES: We will consider all comments that we receive on or before December 5, 2005.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2005–0080 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–134–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–134–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal Malik, Agriculturalist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6774.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the planting of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS) 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 domestic quarantine and other regulations regarding Karnal bunt are set forth in §§ 301.89–1 through 301.89–16 (referred to below as the regulations) and are designed to prevent the spread of Karnal bunt. Paragraph (f) of § 301.89–3 describes the criteria under which a field and any surrounding non-infected acreage may be released from regulation for Karnal bunt. Currently, the regulations provide two ways for a field to be released from regulation, which are described in paragraphs (f)(1) and (f)(2). We are proposing to make modifications to each of those paragraphs in order to update and clarify the regulations.

Paragraph (f)(1) of the regulations currently provides that a field will be released from regulation for Karnal bunt when it is ''no longer being used for crop production.'' This criterion has normally applied when land is removed from agricultural use, *e.g.*, the land is sold and subdivided for home construction. To make it clear that this criterion applies to land permanently removed from agricultural use, rather than land that may have been only temporarily taken out of production, we would amend the regulations to specifically state that the field must have been permanently removed from crop production in order to be released from regulation for Karnal bunt.

Paragraph (f)(2) of the regulations currently states that a field will be released from regulation for Karnal bunt if each year for a period of 5 consecutive years, the field is subjected to any one of the following management practices (the practice used may vary from year to year):

- Planted with a cultivated non-host crop;
- Tilled once annually; or
- Planted with a host crop that tests negative, through the absence of bunted kernels, for Karnal bunt.

We are proposing to revise paragraph (f)(2) to state that a field will be released from regulation for Karnal bunt if the field is tilled at least once per year for a total of 5 years (the years need not be consecutive). After tilling, the field may be planted with a crop or left fallow. If the field is planted with a host crop, the crop must test negative, through the absence of bunted kernels, for Karnal bunt.

The main difference between the proposed text and the text in the current regulations is that the revised paragraph would not require the specific management practices to be carried out for 5 consecutive years. The current consecutive years requirement means that if a producer skipped a year or more—*i.e.*, did not plant or till the field in a given year—the producer would have to begin the 5-year time period again. However, no scientific basis exists to require producers to start over, as there is no effect, positive or negative,

on the Karnal bunt status of the field if the management practices are not used. If a field was left untilled and fallow, or planted using no-till techniques, there may not be the reduction in the spore load in the soil that is realized with tilling, but there would also not be any increase in the spore load. Thus, if a farmer chose not to apply one of the management practices during a given year, we do not believe that it is necessary to restart the counting of years, thus negating any progress that may have been made toward the 5-year goal. Therefore, we would amend the regulations to remove the current requirement that the management practices be applied over 5 consecutive years.

Our additional proposed changes to the text of paragraph (f)(2) involve rewording the description of the management practices to make the requirements clearer. Each of the management practices listed in the current regulations involves tilling, but ''tilled once annually'' is listed as a discrete practice. As the other two management practices involve planting the field with a crop—either a cultivated non-host crop or a host crop that tests negative for Karnal bunt—it stands to reason that a field meeting the ''tilled once annually'' criterion would have been left fallow. Therefore, we are proposing to revise the description of management practices to provide that, for each year counted toward the 5 cumulative years, the field is tilled and either: (1) Planted with a non-host crop, (2) left fallow, or (3) planted with a host crop that tests negative, through the absence of bunted kernels, for Karnal bunt. While this proposed change to our description of the management practices would not alter the substance of the current regulations, we believe that it would serve to clarify the criteria that must be met in order for a field to be released from regulation for Karnal bunt.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the Karnal bunt regulations regarding the requirements that must be met in order for a field or area to be removed from the list of regulated areas. The proposed changes would allow a field to qualify for release after 5 cumulative years of specified management practices, rather than 5 consecutive years as the current regulations provide. These proposed changes would clarify the existing regulations and provide growers in regulated areas with greater flexibility in their planting decisions.

Compared to the current regulations, the proposed change to 5 cumulative years using the specified management practices would afford regulated wheat producers greater flexibility in the planting cycle; they can elect not to till in a particular year without having to start over to satisfy the 5 consecutive years requirement for deregulation. However, as a practical matter, the proposed change should have little or no impact, as the ''consecutive years'' criterion has been in effect only since March 2004, near the end of the 2003–2004 crop season, and has not prevented any fields from being released that APHIS field personnel and managers determined were otherwise eligible for release from regulation.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. The Karnal bunt regulations have the potential to have the most impact on wheat producers. At the present time, parts of Texas, Arizona, and California are regulated for Karnal bunt. In Texas, there are approximately 285,000 agricultural acres and about 550 wheat producers under regulation. The equivalent figures for Arizona and California are, respectively, 278,000 acres (120 producers) and 56,000 acres (18 producers).

As determined by the Small Business Administration (SBA), the small entity size standard for wheat farming, which is defined as farms ''primarily engaged in growing wheat and/or producing wheat seeds'' (North American Industry Classification System code 11114), is $750,000 or less in annual receipts. Although the size of regulated wheat producers is unknown, they are likely to be small in size under SBA standards. This assumption is based on composite data for providers of the same and similar services. In 2002, Arizona had a total of 7,294 farms of all types. Of those farms, 91 percent had annual sales that year of less than $500,000, well below the SBA's small entity threshold. Similarly, the comparable percentages for Texas (228,926 total farms) and California (79,631 total farms) were 99 percent and 90 percent, respectively. (Source: SBA and NASS, 2002 Census of Agriculture.) Although many of these businesses are considered small under SBA standards, given the reason cited above, the proposed change should have little or no economic impact on small entities, wheat producers or otherwise.

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

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

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

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.89–3, paragraph (f) would be revised to read as follows:

§ 301.89–3 Regulated areas.

* * * * *

(f) A field known to have been infected with Karnal bunt, as well as any non-infected acreage surrounding the field, will be released from regulation if:

(1) The field has been permanently removed from crop production; or

(2) The field is tilled at least once per year for a total of 5 years (the years need not be consecutive). After tilling, the field may be planted with a crop or left fallow. If the field is planted with a host crop, the crop must test negative, through the absence of bunted kernels, for Karnal bunt.

* * * * *

Done in Washington, DC, this 29th day of September 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–19943 Filed 10–4–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO–361–A39; DA–04–03A]

Milk in the Upper Midwest Marketing Area; Final Partial Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to adopt as a final rule, order language contained in the interim final rule published in the **Federal Register** on June 1, 2005, concerning pooling standards and transportation credit provisions of the Upper Midwest (UMW) milk marketing order. This document also sets forth the final decision of the Department and is subject to approval by producers. A separate decision will be issued that will address proposals concerning pooling and repooling of milk, temporary loss of Grade A status, and increasing the maximum administrative assessment.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231-Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: gino.tosi@usda.gov.

SUPPLEMENTARY INFORMATION: This final partial decision permanently adopts amendments to Pool plant provisions to ensure that producer milk originating outside the states that comprise the UMW order (Illinois, Iowa, Minnesota, North Dakota, South Dakota, Wisconsin, and the Upper Peninsula of Michigan) is providing consistent service to the order's Class I market, and to Producer milk provisions to eliminate the ability to pool, as producer milk, diversions to nonpool plants outside of the states that comprise the UMW marketing area. Additionally, this final partial decision permanently adopts a proposal to limit the transportation credit received by handlers to the first 400 miles of applicable milk movements.

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (the Act), as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees.

For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During August 2004, the month during which the hearing occurred, there were 15,608 dairy producers pooled on, and 60 handlers regulated by, the UMW order. Approximately 15,082 producers, or 97 percent, were considered small businesses based on the above criteria. Of the 60 handlers regulated by the UMW order during August 2004, approximately 49 handlers, or 82 percent, were considered ''small businesses.''

The adoption of the proposed pooling standards serve to revise established criteria that determine those producers, producer milk and plants that have a reasonable association with and are consistently serving the fluid needs of the UMW milk marketing area. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid milk needs of the market and by doing so, determine those producers who are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. The criteria established for transportation credits are also applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would