

# 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. 96-016-10]

#### Karnal Bunt

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to establish criteria for levels of risk for areas with regard to Karnal bunt, and to establish criteria for seed planting and movement of regulated articles based on those risk levels. We believe this action is warranted because it would relieve unnecessary restrictions on areas unregulated because of Karnal bunt, while guarding against the artificial spread of that disease.

**DATES:** Consideration will be given only to comments received on or before September 3, 1996.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 96-016-10, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 96-016-10. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

Karnal bunt is a serious 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. The spores can be carried on a variety of surfaces, including plants and plant parts, seeds, soil, elevators, buildings, farm equipment, tools, and even vehicles. Spores and the sporidia they produce also can be windborne. Although the sporidia are fragile and may be able to move only short distances, teliospores are thought to move longer distances.

Karnal bunt is a serious disease that can affect both yield and grain quality when present at levels over 3 to 5 percent. It adversely affects the color, odor, and palatability of flour and other foodstuffs made from heavily infested wheat. Wheat containing a significant amount of bunted kernels is reduced in quality. Karnal bunt does not present a risk to human or animal health.

On March 8, 1996, Karnal bunt was detected in Arizona during a seed certification inspection done by the Arizona Department of Agriculture. On March 20, 1996, the Secretary of Agriculture signed a "Declaration of Extraordinary Emergency" authorizing the Secretary to take emergency action under 7 U.S.C. 150dd with regard to Karnal bunt within the States of Arizona, New Mexico, and Texas. In an interim rule effective on March 25, 1996, and published in the Federal Register on March 28, 1996 (61 FR 13649-13655, Docket No. 96-016-3), the Animal and Plant Health Inspection Service (APHIS) established the Karnal bunt regulations (7 CFR 301.89-1 through 301.89-11), and quarantined all of Arizona and portions of New Mexico and Texas because of Karnal bunt. The regulations define regulated articles and restrict the interstate movement of these regulated articles from the quarantined areas.

After the establishment of the regulations, Karnal bunt was detected in lots of seed that were either planted or stored in certain areas in California. On April 12, 1996, the Secretary of Agriculture signed a "Declaration of Extraordinary Emergency" authorizing the Secretary to take emergency action

under 7 U.S.C. 150dd with regard to Karnal bunt within California. In an interim rule effective on April 19, 1996, and published in the Federal Register on April 25, 1996, APHIS also quarantined portions of California because of Karnal bunt (61 FR 18233-18235, Docket No. 96-016-5). In an interim rule effective on June 27, 1996, and published in the Federal Register on July 5, 1996, APHIS removed certain areas in Arizona, New Mexico, and Texas from the list of areas quarantined because of Karnal bunt (61 FR 35107-35109, Docket No. 96-016-6). That list was amended in a technical amendment effective on July 9, 1996, and published in the Federal Register on July 15, 1996 (61 FR 36812-36813, Docket No. 96-016-8). In an interim rule effective June 27, 1996, and published in the Federal Register on July 5, 1996, APHIS amended the regulations to provide compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of Karnal bunt (61 FR 35102-35107, Docket No. 96-016-7). Comments on each of the interim rules must be received on or before September 3, 1996.

On July 17, 1996, APHIS conducted a public forum in Washington, D.C., to accept public comment on the Karnal bunt regulations, and, in a separate notice in today's Federal Register, gives notice of three additional public forums on Karnal Bunt to be held in mid-August. Members of the public are invited to comment on this proposed rule and the interim rules at the three remaining public forums.

APHIS developed the provisions of this proposed rule in consultation with State regulatory officials. The purpose of this proposal is to relieve unnecessary restrictions on the movement of articles regulated because of Karnal bunt, while at the same time maintaining restrictions on movement that are adequate to guard against the spread of the disease.

In § 301.89-3 of the existing regulations, criteria for quarantining areas because of Karnal bunt are set forth, along with a list of quarantined areas. Under the existing regulations, regulated articles from all quarantined areas are subject to the same restrictions, regardless of the relative

risks posed by different fields within the quarantined areas.

We considered such broad restrictions necessary immediately following the detection of Karnal bunt, in order to guard against the artificial spread of the disease. However, based on subsequent information, including preharvest survey data, investigations of the source and destination of contaminated seed, and our experience enforcing the regulations, we believe that establishing levels of risk for fields and regulated articles is warranted, and would be adequate in protecting against the artificial spread of Karnal bunt.

In the existing Karnal bunt regulations, areas regulated because of Karnal bunt are referred to as quarantined areas. Under this proposal, however, the type of restrictions imposed on regulated articles would in some cases differ depending on the risk level of individual areas within the currently quarantined areas. Therefore, we believe it would clarify the proposed regulations to use the term "regulated areas" rather than "quarantined areas." Regulated areas would then be classified according to specific risk categories. We are proposing to make this terminology change throughout the Karnal bunt regulations.

The current regulations in § 301.89–3 set forth criteria for quarantining all or part of State due to Karnal bunt, and list those areas that are quarantined because of the disease. In addition to retaining the general criteria in the current regulations for regulating a State or part of a State, we are proposing to add a new paragraph (f) to § 301.89–3 that would set forth criteria for classifying regulated fields according to the following risk categories:

1. Fields in which preharvest samples tested positive for Karnal bunt;
2. Fields known to be planted in the past 5 years with seed contaminated with Karnal bunt;
3. Fields adjacent to fields in which preharvest samples tested positive;
4. Fields associated only through ownership, management, the movement of equipment, or proximity within a distinct definable area with fields in which preharvest samples tested positive; and
5. Fields within a regulated area that are not fields described in "2" or "4" above, and that are part of a distinct definable area that includes no fields in which preharvest samples tested positive for Karnal bunt.

A definition of *distinct definable area* would be added to § 301.89–1 to mean "a commercial wheat production area of contiguous fields that is separated from other wheat production areas by desert,

mountains, or other nonagricultural terrain as determined by an inspector." Additionally, a definition of *contaminated seed* would be added to mean "seed from sources in which the Karnal bunt pathogen (*Tilletia indica* (Mitra) Mundkur) has been determined to exist."

Fields for which notification of classification has not been given to the owner or the person in possession of the field shall be considered to be in the same category as fields associated through ownership, management, the movement of equipment, or proximity within a distinct definable area with fields in which preharvest samples tested positive.

#### Planting

We are proposing to establish restrictions on the planting of wheat, durum wheat, and triticale seed in certain fields within a regulated area. Because the pathogen of Karnal bunt can remain viable in soil for extended periods of time, it is important in the control of the disease to restrict the planting of wheat, durum wheat, and triticale in fields that present a high risk of containing the Karnal bunt pathogen. Therefore, we are proposing to add a new § 301.59–4 to the regulations that would provide that for the 1996–1997 crop season<sup>1</sup> (1) wheat, durum wheat, and triticale may not be planted in fields in which preharvest samples conducted by Federal or State official tested positive for Karnal bunt, and (2) wheat, durum wheat, and triticale may not be planted in fields known to have been planted in the past 5 years with seed contaminated with Karnal bunt. Additionally, proposed § 301.89–4 would require that, prior to planting, the seed of wheat, durum wheat, and triticale to be planted within a regulated area must have been treated with a fungicide that is registered with the Environmental Protection Agency and be sampled and tested negative for Karnal bunt.

#### Cleaning and Disinfection

In § 301.89–12 of this proposed rule, we are proposing to establish cleaning and disinfection requirements for farm equipment and soil-moving equipment according to the risk category of the field from which the equipment will be moved. Cleaning would be required for that equipment moved within the regulated area from fields considered to pose a significant risk of containing the causal agent of Karnal bunt.

<sup>1</sup> The 1996–1997 crop season is that season in which wheat is harvested in 1997.

Specifically, these would include the following categories of fields:

1. Fields in which preharvest samples tested positive for Karnal bunt;
2. Fields known to be planted in the past 5 years with seed contaminated with Karnal bunt; and
3. Fields adjacent to fields in which preharvest samples tested positive.

Under § 301.89–12(b) of this proposal, equipment only from the above described fields would need to be disinfected before being moved from a regulated area.

#### Movement Within a Regulated Area

In the current regulations, conditions are set forth in § 301.89–4 for the interstate movement of regulated articles from regulated areas. In some cases, articles moved from a regulated area must be accompanied by certificate or limited permit. In other cases, because of mitigating measures, a certificate or limited permit is not required. In this proposed rule, we are proposing to establish conditions for certain movements of regulated articles within a regulated area. In § 301.89–5(a)(3) of this proposal, we are proposing that a regulated article need not be moved with a certificate or limited permit if it is moved within a regulated area, and if the regulated article has been cleaned as provided in § 301.89–12 and 301.89–13 of the proposed rule.

#### Vegetables

Under § 301.89–12(b) of this proposal, vegetable crops would need to be cleaned free of soil and plant debris prior to movement, or be moved under limited permit to processing facilities approved by the Administrator when moving from any of the following types of fields:

1. Fields in which preharvest samples tested positive for Karnal bunt;
2. Fields known to be planted in the past 5 years with seed contaminated with Karnal bunt; or
3. Fields adjacent to fields in which preharvest samples tested positive.

#### Treatment of Millfeed

Millfeed, a byproduct of the process of milling grain, is used as feed for livestock. Teliospores of *Tilletia indica* in millfeed are not destroyed in the milling process, nor in the process of being digested by livestock. Therefore, manure from animals that have been fed millfeed contaminated with the pathogen of Karnal bunt is considered capable of introducing that agent to a field. Protocols developed for the control of Karnal bunt have required that millfeed from grain moved

interstate from a quarantined area be treated with heat to destroy any Karnal bunt pathogen that might be present. However, we believe that millfeed from grain from certain fields in regulated area poses such an insignificant risk of spreading Karnal bunt that it need not be heat treated. Therefore, § 301.89–13(c) requires that millfeed be treated with heat only if it is milled from grain from one of the following types of fields:

- (1) Fields in which preharvest samples tested positive for Karnal bunt;
- (2) Fields known to be planted in the past 5 years with seed contaminated with Karnal bunt;
- (3) Fields adjacent to fields in which preharvest samples tested positive; or
- (4) Fields associated only through ownership, management, the movement of equipment, or proximity within a distinct definable area with fields in which preharvest samples tested positive.

We are proposing millfeed treated with heat be treated with a moist heat treatment of 170 °F for at least 1 minute. This treatment is considered effective based on the information currently available to us. The public would be notified in the Federal Register of any changes to this treatment that are developed through additional research.

#### Executive Order 12866 and Regulatory Flexibility Act

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

This action amends the regulations to establish criteria for levels of risk for areas with regard to Karnal bunt, and to establish criteria for seed planting and movement of regulated articles based on those risk levels. This proposed rule is being published on an emergency basis in order to give affected growers the opportunity to make planting decisions for the 1996–1997 crop season on a timely basis. This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires

intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This 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 new 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.

### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR part 301 would be amended as follows:

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

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

2. Part 301 would be amended by revising “Subpart—Karnal Bunt,” §§ 301.89–1 through 301.89–11, to read as follows

#### Subpart—Karnal Bunt

##### Sec.

- 301.89–1 Definitions.
- 301.89–2 Regulated articles.
- 301.89–3 Regulated areas.
- 301.89–4 Planting.
- 301.89–5 Movement of regulated articles from or within regulated areas.
- 301.89–6 Issuance of a certificate or limited permit.
- 301.89–7 Compliance agreements.
- 301.89–8 Cancellation of a certificate, limited permit, or compliance agreement.
- 301.89–9 Assembly and inspection of regulated articles.
- 301.89–10 Attachment and disposition of certificates and limited permits.
- 301.89–11 Costs and charges.
- 301.89–12 Cleaning and disinfection.
- 301.89–13 Treatments.
- 301.89–14 Compensation.

#### § 301.89–1 Definitions.

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

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

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

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

**Contaminated seed.** Seed from sources in which the Karnal bunt pathogen (*Tilletia indica* (Mitra) Mundkur) has been determined to exist.

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

**Distinct definable area.** A commercial wheat production area of contiguous fields that is separated from other wheat production areas by desert, mountains, or other nonagricultural terrain as determined by an inspector.

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

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

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

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

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

**Mechanized cultivating equipment and mechanized harvesting equipment.** Mechanized equipment used for soil tillage, including tillage attachments for farm tractors—e.g., tractors, disks, plows, harrows, planters, and subsoilers; mechanized equipment used for harvesting purposes—e.g., combines, cotton harvesters, and hay balers.

**Milling products and byproducts.** Products resulting from processing wheat, durum wheat, or triticale,

including animal feed, and waste and debris.

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

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

**Premises.** All structures, conveyances, or materials associated with a grain storage facility at a single location.

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

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

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

#### **§ 301.89-2 Regulated articles.**

The following are regulated articles:

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

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

(c) Milling products or byproducts, except flour;

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

Wheat: *Triticum aestivum*;

Durum wheat: *Triticum durum*; and

Triticale: *Triticum aestivum* X *Secale cereale*;

(e) *Tilletia indica* (Mitra) Mundkur;

(f) Root crops with soil;

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

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

(i) Used bags, sacks and containers;

(j) Used farm tools;

(k) Used mechanized cultivating equipment;

(l) Used mechanized harvesting equipment;

(m) Used seed conditioning equipment;

(n) Used mechanized soil-moving equipment; and

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

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

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

#### **§ 301.89-3 Regulated areas.**

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

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

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

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

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

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

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

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

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

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

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

#### **Arizona**

*Cochise County.* The entire county.

*Graham County.* The entire county.

*LaPaz County.* The entire county.

*Maricopa County.* The entire county.

*Mohave County.* Beginning at the intersection of Arizona/Nevada State line and State Route 68; then east along State Route 68 to U.S. Highway 93; then southeast along U.S. Highway 93 to Interstate 40; then east along Interstate 40 to U.S. Highway 93; then south along U.S. Highway 93 to the Mohave/Yavapai County line; then south along the Mohave County line to the Mohave/La Paz County line; then west along the Mohave County line to the Arizona/California State line; then north along the State line to the point of beginning.

*Pima County.* Beginning at the intersection of the Pima County line, the Pinal County line, and the Papago Indian Reservation boundary; then east along the Pima County line to its easternmost point; then south along the Pima County line to the Cochise and Santa Cruz County lines; then west along the Pima County line to the United States/Mexico boundary; then west along the United States/Mexico boundary to the Papago Indian Reservation boundary; then north along the Papago Indian Reservation boundary to the point of beginning.

*Pinal County.* The entire county.

*Yuma County.* The entire county.

#### **California**

*Imperial County.* The entire county.

*Riverside County.* That portion of Riverside County in the Blythe and Ripley areas bounded by a line drawn as follows: Beginning at the intersection of State Highway 62 and the Riverside-San Bernardino County line, then east along the Riverside-San Bernardino County line to its intersection with the California-Arizona State line; then south along the California-Arizona State line to its intersection with the Riverside-Imperial County line; then west along the Riverside-Imperial County line to its intersection with Graham Pass Road; then northeast along Graham Pass Road to its intersection with Chuckwalla Valley Road; then west and northwest along Chuckwalla Valley Road to its intersection with Interstate Highway 10; then west along Interstate Highway 10 to its intersection with State Highway 177; then northeast and north along State Highway 177 to its intersection with State Highway 62; then northeast along State Highway 62 to the point of beginning.

#### **New Mexico**

*Dona Ana County.* The entire county.

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

*Luna County.* Beginning at the intersection of the Grant/Luna County line and Interstate 10; then east along Interstate 10 to U.S. Highway 180; then north along U.S. Highway

180 to State Route 26; then north along State Route 26 to State Route 27; then northeast along State Route 27 to the Luna/Sierra County line; then east along the Luna County line to the Dona County line; then south along the Luna County line to the United States/Mexico boundary; then west along the United States/Mexico boundary to the Hidalgo County line; then north along the Luna County line to the point of beginning.

*Sierra County.* Beginning at intersection of the Luna/Sierra County line and State Route 27; then north along State Route 27 to State Route 152; then east along State Route 152 to Interstate 25; then north along Interstate 25 to State Route 52; then northwest along State Route 52 to the Sierra/Socorro County line; then east along the Sierra County line to the Lincoln County line; then south along the Sierra County line to the Dona County line; then west along the Sierra County line to the point of beginning.

#### Texas

*El Paso County.* The entire county.

*Hudspeth County.* Beginning at the intersection of the El Paso/Hudspeth County line and U.S. Highway 62/U.S. Highway 180; then east along U.S. Highway 62/U.S. Highway 180 to County Road 1111; then south along County Road 1111 to its terminus; then west along an imaginary line to the United States/Mexico boundary; then northwest along the United States/Mexico boundary to the El Paso/Hudspeth County line; then north along the El Paso/Hudspeth County line to the point of beginning.

(f) The Administrator will classify fields in regulated areas according to the following categories, and will notify the owner or person in possession of the field of the field's classification:

(1) Fields in which preharvest samples tested positive for Karnal bunt;

(2) Fields known to be planted in the past 5 years with seed contaminated with Karnal bunt;

(3) Fields adjacent to fields in which preharvest samples tested positive;

(4) Fields associated only through ownership, management, the movement of equipment, or proximity within a distinct definable area with fields in which preharvest samples tested positive; and

(5) Fields within a regulated area that are not fields described in paragraphs (f)(2) and (f)(4) of this section, and that are part of a distinct definable area that includes no fields in which preharvest samples tested positive.

(g) Fields for which the Administrator has given no notification of classification to the owner or the person in possession of the field shall be considered to be fields as described in paragraph (f)(4) of this section.

#### § 301.89-4 Planting.

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

(1) For the 1996-1997 crop season<sup>1</sup>, wheat, durum wheat, and triticale may not be planted in fields in which preharvest samples conducted by Federal or State official tested positive for Karnal bunt;

(2) For the 1996-1997 crop season<sup>1</sup>, wheat, durum wheat, and triticale may not be planted in fields known to have been planted in the past 5 years with seed contaminated with Karnal bunt.

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

(1) Have been treated with a fungicide that is registered with the Environmental Protection Agency; and

(2) Be sampled and test negative for Karnal bunt.

#### § 301.89-5 Movement of regulated articles from or within regulated areas.

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

(1) With a certificate or limited permit issued and attached in accordance with §§ 301.89-6 and 301.89-10;

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

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

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

(iii) The regulated article is moved through the regulated area without stopping, or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of contamination with Karnal bunt, or has been treated in accordance with the methods and procedures prescribed in § 301.89-13 while in or moving through any regulated area; and

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

(3) Without a certificate or limited permit, for movement within the regulated area, if the regulated articles has been cleaned as provided in § 301.89-12 and 301.89-13 of this subpart; or

(4) Without a certificate or limited permit, provided the regulated article is a soil sample being moved to a laboratory approved by the Administrator<sup>2</sup> to process, test, or analyze soil samples.

<sup>1</sup> The 1996-1997 crop season is that season in which wheat is harvested in 1997.

<sup>2</sup> Criteria that laboratories must meet to become approved to process, test, or analyze soil, and the list of currently approved laboratories, may be

(b) When an inspector has probable cause to believe a person or means of conveyance is moving a regulated article, the inspector is authorized to stop the person or means of conveyance to determine whether a regulated article is present and to inspect the regulated article. Articles found to be infected by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of. Any treatments will be in accordance with the methods and procedures prescribed in § 301.89-13.

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

(a) An inspector<sup>3</sup> or person operating under a compliance agreement will issue a certificate for the movement of a regulated article outside or within a regulated area if he or she determines that the regulated article:

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

(2) Is to be moved in compliance with any emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the artificial spread of Karnal bunt<sup>4</sup>; and

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

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

(iii) Meets the conditions of § 301.89-12(b); or

(iv) Has been treated in accordance with methods and procedures prescribed in § 301.89-13.

(b) An inspector or a person operating under a compliance agreement will issue a limited permit for the movement within or outside the regulated area of a regulated article not eligible for a

obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>3</sup> Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning such local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236, or from Karnal Bunt Project, 1688 W. Adams St. Phoenix, Arizona 85007.

<sup>4</sup> Section 105 of the Federal Plant Pest Act (7 U.S.C. 105dd) authorizes the Secretary of Agriculture to impose emergency measures necessary to prevent the spread of plant pests new to, or not widely prevalent or distributed within and throughout, the United States.

certificate if the inspector determines that the regulated article:

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

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

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

(c) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with § 301.89-7 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the movement of regulated articles that have met all of the requirements of paragraph (a) or (b), respectively, of this section.

#### **§ 301.89-7 Compliance agreements.**

Persons who grow, handle, or move regulated articles may enter into a compliance agreement<sup>5</sup> if such persons review with an inspector each stipulation of the compliance agreement, have facilities and equipment to carry out disinfection procedures or application of chemical materials in accordance with § 301.89-13, and meet applicable State training and certification standards under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136b). Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

<sup>5</sup> Compliance agreements may be initiated by contacting a local office of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices of Plant Protection and Quarantine may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236, or from the Karnal Bunt Project, 1688 W. Adams St., Phoenix, Arizona 85007.

#### **§ 301.89-8 Cancellation of a certificate, limited permit, or compliance agreement.**

Any certificate, limited permit, or compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit, or the person who has entered into the compliance agreement, has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances allow, but within 20 days after oral notification of the cancellation. Any person whose certificate, limited permit, or compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

#### **§ 301.89-9 Assembly and inspection of regulated articles.**

(a) Persons requiring certification or other services must request the services from an inspector<sup>6</sup> at least 48 hours before the services are needed.

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

#### **§ 301.89-10 Attachment and disposition of certificates and limited permits.**

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

- (1) The outside of the container encasing the regulated article;
- (2) The article itself, if it is not in a container; or
- (3) The consignee's copy of the accompanying waybill: Provided, that the descriptions of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

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

<sup>6</sup> See footnote 2.

#### **§ 301.89-11 Costs and charges.**

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services.

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

#### **§ 301.89-12 Cleaning and disinfection.**

(a) Used mechanized cultivating equipment, used mechanized harvesting equipment, used farm tools, and used mechanized soil-moving equipment must be cleaned of all soil and plant debris prior to movement within a regulated area, and cleaned and disinfected prior to movement outside the regulated area from the following fields:

- (1) Fields in which preharvest samples tested positive for Karnal bunt;
- (2) Fields known to have been planted in the past 5 years with seed contaminated with Karnal bunt; and
- (3) Fields adjacent to a field in which preharvest samples tested positive for Karnal bunt.

(b) Vegetable crops must be cleaned of all soil and plant debris prior to movement, or be moved under limited permit to processing facilities approved by the Administrator, for movement from any fields described in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

#### **§ 301.89-13 Treatments.**

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

- (1) Wetting all surfaces to the point of runoff with a solution of sodium hypochlorite mixed with water applied at the rate of 1 gallon of commercial chlorine bleach (5.2 percent sodium hypochlorite) mixed with 2.5 gallons of water. The equipment or site should be thoroughly washed down after 15 minutes to minimize corrosion; or
- (2) Applying steam to all surfaces until the point of runoff;
- (3) Cleaning with a solution of hot water and detergent, under high pressure (at least 30 pounds per square inch), at a minimum temperature of 180° F.; or

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

(b) Soil, and straw/stalks/seed heads for decorative purposes must be treated

by fumigation with methyl bromide at the dosage of 15 pounds/1000 cubic feet for 96 hours.

(c) Millfeed must be treated with a moist heat treatment of 170 °F for at least 1 minute if the millfeed resulted from the milling of grain from one of the following types of fields:

(1) Fields in which preharvest samples tested positive for Karnal bunt;

(2) Fields known to be planted in the past 5 years with seed contaminated with Karnal bunt;

(3) Fields adjacent to fields in which preharvest samples tested positive; or

(4) Fields associated only through ownership, management, the movement of equipment, or proximity within a distinct definable area with fields in which preharvest samples tested positive.

#### **§ 301.89–14 Compensation.**

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

(a) *Growers who have destroyed crops.* Growers in New Mexico and Texas who have destroyed crops of wheat pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector are eligible to be compensated at the rate of \$300 per acre of destroyed crop. To claim compensation, the grower must complete and submit to an inspector whichever of the following three forms are applicable, as determined by the inspector: ASCS Form 574, ASCS Form 578, and FCI Form 73. The forms will be furnished by USDA.

(b) *Growers and handlers who sell nonpropagative wheat grown in the regulated area.* Growers and handlers who sell nonpropagative wheat grown in the regulated area are eligible to be compensated for the loss in value of their wheat due to the regulation for Karnal bunt, as follows:

(1) *Growers who sell nonpropagative wheat.* For growers who sell wheat grown for nonpropagative purposes, compensation will be as described in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. However, compensation will not exceed \$2.50 per bushel under any circumstances.

(i) If the wheat was grown under contract, compensation will equal the contracted price minus the salvage value, as described in paragraph (b)(3) of this section.

(ii) If the wheat was not grown under contract, compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat,

such as Durum or Hard red winter) minus the salvage value, as described in paragraph (b)(3) of this section. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs.

(2) *Handlers who sell nonpropagative wheat.* Handlers are eligible to be compensated only under the circumstances described in paragraphs (b)(2)(i) and (b)(2)(ii) of this section. Compensation for both circumstances will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as Durum or Hard red winter) minus the salvage value, as described in paragraph (b)(3) of this section. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs. However, compensation will not exceed \$2.50 per bushel under any circumstances.

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

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

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

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

(ii) If the wheat is positive for Karnal bunt and is sold for a use other than animal feed, salvage value equals whichever is higher of the following: The average price paid in the region of the regulated area where the wheat is sold for the relevant class of wheat (meaning type of wheat, such as Durum or Hard red winter) for the period between May 1 and June 30, 1996; or, \$3.60 per bushel.

(iii) If the wheat is negative for Karnal bunt and is sold for any use, salvage value equals whichever is higher of the following: The average price paid in the

region of the regulated area where the wheat is sold for the relevant class of wheat (meaning type of wheat, such as Durum or Hard red winter) for the period between May 1 and June 30, 1996; or, \$3.60 per bushel.

(4) *To claim compensation.* To claim compensation, a grower or handler must complete and submit to an inspector whichever of the following three forms are applicable, as determined by the inspector: ASCS Form 574, ASCS Form 578, and FCI Form 73. The forms will be furnished by USDA. Growers must also submit a copy of the contract the grower has for the wheat, if the wheat was under contract; handlers must also submit a copy of the contract the handler had with the grower for the wheat, if the wheat was under contract. Finally, a grower or handler must submit a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold.

(c) *Nonpropagative wheat that is not sold.* If a grower or handler of nonpropagative wheat in the regulated area is not able to or elects not to sell their wheat, they will be eligible to receive compensation at the rate of \$2.50 per bushel. Compensation will only be paid if the grower or handler has destroyed the wheat by burying it in a sanitary landfill. To claim compensation, the grower or handler must complete and submit to an inspector whichever of the following three forms are applicable, as determined by the inspector: ASCS Form 574, ASCS form 578, and FCI Form 73. The forms will be furnished by USDA. In addition, the grower or handler must submit a receipt from the sanitary landfill verifying how much wheat was buried.

(d) *Decontamination of grain storage facilities.* Owners of grain storage facilities that have been decontaminated pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector are eligible to be compensated, on a one time only basis, for up to 50 percent of the cost of decontamination. However, compensation will not exceed \$20,000 per premises (as defined in § 301.89–1). Compensation is limited to the direct costs of decontaminating facilities. General clean-up, repair, and refurbishment costs are excluded from compensation. To claim compensation, the owner of the grain storage facility must submit to an inspector records demonstrating that decontamination was performed on all structures, conveyances, or materials ordered to be decontaminated by the Emergency Action Notification on the facility premises. The records must include a

copy of the Emergency Action Notification, contracts with individuals or companies hired to perform the decontamination, receipts for equipment and materials purchased to perform the decontamination, time sheets for employees of the grain storage facility who performed activities connected to the decontamination, and any other documentation that helps show decontamination has been completed.

(e) *Flour millers.* Flour millers who, in accordance with a compliance agreement with APHIS, heat-treat millfeed made from wheat produced in the regulated area are eligible to be compensated at the rate of \$35.00 per short ton of millfeed. The amount of millfeed compensated will be calculated by multiplying the weight of wheat from the regulated area received by the miller by 25 percent (the average percent of millfeed derived from a short ton of grain). To claim compensation, the miller must submit to an inspector a copy of the limited permit under which the wheat was moved to the mill and a copy of the bill of lading for the wheat (showing the weight of the wheat in short tons). Flour millers must also submit verification that the millfeed was heat treated, in the form of a copy of the limited permit under which the wheat was moved to a treatment facility and a copy of the bill of lading accompanying that movement.

Done in Washington, DC, this 30th day of July 1996.

Terry L. Medley,  
*Administrator, Animal and Plant Health  
Inspection Service.*

[FR Doc. 96-19757 Filed 8-1-96; 8:45 am]

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## 7 CFR Part 301

[Docket 96-016-11]

### Karnal Bunt; Public Forums

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

**ACTION:** Notice of public forums.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service is hosting three additional public forums on the Agency's program to control and eradicate Karnal bunt. One forum has already been held in Washington, DC. The forums will provide an additional opportunity for the public to comment on the regulations established and amended by a series of interim rules published in the Federal Register since March, 1996. Additionally, the forums

will provide the public an opportunity to comment on proposed changes to the regulations contained in a proposed rule published elsewhere in this issue of the Federal Register. The regulations quarantine portions of Arizona, California, New Mexico, and Texas because of infestations of Karnal bunt, restrict the movement of regulated articles from the quarantined areas, and provide compensation for certain individuals in order to mitigate losses and expenses incurred because of Karnal bunt. Comments will also be accepted addressing any aspect of the Karnal bunt program not included in the regulations, including control and survey activities conducted in the quarantined areas, the national Karnal bunt survey program, and the certification of wheat for export. Information gathered at the public forums will be considered by the Department in developing guidelines and procedures for conducting the Karnal bunt program for the 1996-97 wheat growing season.

**DATES:** The public forums will be held in Kansas City, MO, on August 13; in Phoenix, AZ, on August 14; and in Imperial, CA, on August 15. Each public forum will begin at 9 a.m. and is scheduled to end at 5 p.m. each day.

**ADDRESSES:** The public forums will be held at the following locations:

1. Kansas City, MO: Holiday Inn International Airport, Heartland Rooms 1 and 2, 11832 Plaza Circle, Kansas City, MO.
2. Phoenix, AZ: Embassy Suites Hotel, Manzana Room, 3210 Grand Avenue, Phoenix, AZ.
3. Imperial, CA: Veterans Memorial Home, 247 South Imperial Avenue, Imperial, CA.

Any persons who are unable to attend the forum, but who wish to comment on any aspect of the Karnal bunt program, may send written comments.

Consideration will be given only to comments received on or before September 3, 1996. Please send an original and three copies of written comments to Docket No. 96-016-11, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 96-016-11. Comments received, including transcripts from the public forums, may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call

ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247.

**SUPPLEMENTARY INFORMATION:** The public forums are being held concerning the Animal and Plant Health Inspection Service's (APHIS) program to control and eradicate Karnal bunt. Comments will be accepted on the regulations established and amended by a series of interim rules published by APHIS in the Federal Register since March, 1996. Comments will also be accepted on a proposed rule (Docket No. 96-016-10, "Karnal Bunt") published in the "Proposed Rules" section of this issue of the Federal Register, which would amend the Karnal bunt regulations.

The interim rules were published on March 28, 1996 (61 FR 13649-13655, Docket No. 96-016-3), April 25, 1996 (61 FR 18233-18235, Docket No. 96-016-5), and July 5, 1996 (61 FR 35107-35109, Docket No. 96-016-6 and 61 FR 35102-35107, Docket No. 96-016-7). Comments are required to be received on the interim rules by September 3, 1996. Comments on the proposed rule (Docket No. 96-016-10) must be received by September 3, 1996.

A representative of the United States Department of Agriculture (USDA) will preside at the public forums. Any interested person may appear and be heard in person, or through an attorney or other representative. Persons who wish to speak at the public forums will be asked to provide their names and affiliations. Parties wishing to make oral presentations may register in advance by calling the Legislative and Public Affairs staff of APHIS, USDA, at (202) 720-2511. Registration will also be held for each forum at that forum site from 8 a.m. until 8:45 a.m. on the day of the forum. Speakers will be scheduled in the order their registration is received. Advance registrations for the forums must be made no later than the following:

1. Kansas City, MO: 4 p.m. e.d.s.t., August 9, 1996;
2. Phoenix, AZ: 4 p.m. e.d.s.t., August 12, 1996; and
3. El Centro, CA: 4 p.m. e.d.s.t., August 13, 1996.

The public forums will begin at 9 a.m. and are scheduled to end at 5 p.m. local time. However, the forums may be terminated at any time after they begin if all persons desiring to speak have been heard. The presiding officer may limit the time for each presentation so