

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2007–0157]

#### Karnal Bunt; Removal of Regulated Areas in Texas

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Karnal bunt regulations to remove certain areas or fields in Baylor, Knox, Throckmorton, and Young Counties, TX, from the list of regulated areas based on our determination that those fields or areas meet our criteria for release from regulation. This action is necessary to relieve restrictions that are no longer necessary.

**DATES:** This interim rule is effective April 7, 2008. We will consider all comments that we receive on or before June 6, 2008.

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

*Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/>

*main?main=DocketDetail&d=APHIS-2007-0157* to submit or view comments and to view supporting and related materials available electronically.

*Postal Mail/Commercial Delivery:*

Please send two copies of your comment to Docket No. APHIS–2007–0157, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0157.

*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. Matthew H. Royer, Associate Director, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road, Unit 26, Riverdale, MD 20737–1236; (301) 734–7819.

#### 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 followed by very specific environmental conditions matched during specific stage of wheat growth. 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, United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

Upon detection of Karnal bunt in Arizona in March of 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat-producing areas in the United States. The quarantine continues in effect, although it has since been modified, both in terms of its physical boundaries and in terms of its restrictions on the production and movement of regulated articles from regulated areas. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations).

Under the regulations in § 301.89–3(f), a field known to have been infected

with Karnal bunt, as well as any noninfected acreage surrounding the field, will be released from regulation if:

- The field has been permanently removed from crop production; or
- 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 harvested grain must test negative, through the absence of bunted kernels, for Karnal bunt.

The regulations in § 301.89–3(g) describe the boundaries of the regulated areas in Arizona, California, and Texas. In this interim rule, we are amending § 301.89–3(g) by removing certain areas or fields in Baylor, Knox, Throckmorton, and Young Counties, TX, from the list of regulated areas, based on our determination that these fields or areas are eligible for release from regulation under the criteria in § 301.89–3(f). This action relieves restrictions on fields within those areas that are no longer necessary. With this action, there are no longer any regulated areas in Baylor or Knox Counties, TX, and the size of the regulated areas in each of the two remaining regulated Texas counties is reduced.

#### Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

#### 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 under Executive Order 12866.

This rule modifies the Karnal bunt regulations by removing certain areas in

Texas from quarantine based on surveys that indicate the areas meet our criteria for release from regulation. In Texas, four counties will be affected by this change and a total of 37,012.25 acres will be removed from quarantine. The following table presents the acreage and number of fields removed from regulation by this rule:

TABLE 1.—LOCATION, ACREAGE, AND NUMBER OF FIELDS TO BE RELEASED FROM REGULATION, BY COUNTY

| County             | Number of acres released | Number of fields |
|--------------------|--------------------------|------------------|
| Baylor .....       | 20,404.13                | 281              |
| Knox .....         | 11,522.39                | 117              |
| Throckmorton ..... | 4,040.25                 | 43               |
| Young .....        | 1,045.48                 | 18               |

In both Throckmorton and Young counties there will still be portions that remain under quarantine for Karnal bunt. Additionally, the quarantine boundaries will remain the same in California and Arizona. In the areas released from regulation for Karnal bunt, producers and other entities will no longer have to meet the restrictions that apply to regulated articles moved from quarantined areas.

The affect of this rule will be to allow affected landowners and businesses in the previously quarantined areas to resume normal operations since the areas have met the criteria for removal from quarantine. The U.S. Small Business Administration's (SBA) size standard for wheat farming is \$750,000 or less in annual receipts.<sup>1</sup> We believe the majority of affected entities will be small by SBA standards. There were a total of 230,000 farms, including wheat farms, in the State of Texas in 2006. Of the 230,000 farms, only 3,900 (1.7 percent) had sales of \$500,000 or more.<sup>2</sup> Statewide, a total of 5.5 million all-purpose acres were planted with wheat in 2006, with most of it not harvested but used as forage.<sup>3</sup> Of the 1.4 million wheat acres that were harvested, there was an average yield of 24 bushels per acre, for a total production of 33.6 million bushels.<sup>4</sup> The average price for

wheat in 2006 was \$4.55/bushel, for a total value of production of over \$152.8 million in Texas. In 2002, the most recent year of the Census of Agriculture, there were a total of 9,031 farms that harvested wheat for grain in Texas. Of those, the Census of Agriculture recorded that there were 342 wheat farms located in the four counties that will be affected by the interim rule.<sup>5</sup>

This interim rule will allow producers in the deregulated area to freely move harvested wheat. As a result, it is possible that these producers may have a broader sales base and increased marketing opportunities than prior to the implementation of the interim rule as they will be able to reacquire domestic and international markets that may have been closed to them because of the quarantine. In addition, the possibility of enhanced buyer perceptions that the wheat is of higher quality than when the area was under quarantine may translate into higher prices received. That said, the benefits of this rule are still expected to be small for each producer. The requirement to test grain for Karnal bunt, a prerequisite of movement from a regulated area, is already performed free of charge. Removal of these areas from quarantine represents more the eliminating of the inconvenience of testing rather than a large financial gain.

It is important to note that the effects of this rule, although beneficial, will not result in a significant impact on the domestic market for wheat. As stated earlier, Texas wheat production in 2006 totaled 33.6 million bushels, with the value of production totaling over \$152.8 million. For that same year, U.S. wheat production totaled over 1.8 billion bushels, with the value of production over \$7.7 billion dollars.<sup>6</sup> Therefore, Texas represented only 1.86 percent of total U.S. wheat production, and contributed 1.98 percent to the value of U.S. wheat production. Wheat production in the affected counties is a small fraction of the Texas total, and any benefits of the interim rule experienced by affected producers will not have an impact on the price for wheat.

To further illustrate the point, in 2002 Texas production of wheat for grain totaled over 75.1 million bushels. In the four counties that are affected by this rule, production of wheat for grain totaled about 3.8 million bushels, representing approximately a 5 percent

share of the State total. The 2002 percentage share of total U.S. wheat production for the counties of Baylor, Knox, Throckmorton, and Young, combined, was limited to 0.24 percent.<sup>7</sup> The interim rule will not have an impact on the domestic market for wheat. Table 2 presents the wheat production data in 2002 for the four counties affected by the interim rule.

TABLE 2.—FARM PRODUCTION DATA OF HARVESTED WHEAT FOR GRAIN FOR THE FOUR AFFECTED COUNTIES, 2002

| County             | Number of farms | Bushels harvested |
|--------------------|-----------------|-------------------|
| Baylor .....       | 68              | 636,391           |
| Knox .....         | 150             | 2,195,982         |
| Throckmorton ..... | 59              | 694,079           |
| Young .....        | 65              | 309,121           |
| Total .....        | 342             | 3,835,573         |

Source: USDA—NASS, 2002 *Census of Agriculture—Texas County Data*, Table 24. Washington, DC: National Agricultural Statistics Service.

Wheat producers will not be the only entities to benefit from the quarantine removal. The quarantine regulations require that all conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures used for storing and handling wheat, durum wheat, or triticale be cleaned by removing all soil and plant debris. If disinfection is required by an inspector in addition to cleaning, the articles must be disinfected by one of the methods specified in § 301.89–12 of the regulations. As with the affected wheat producers, we expect that most if not all of the independent operators of harvesting equipment and other service providers that operate in the areas removed from quarantine by this rule are small entities.<sup>8</sup> They will benefit, but the financial gains for them are not expected to be significant.

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

<sup>7</sup> U.S. production of harvested wheat for grain in 2002 totaled over 1.5 billion bushels. USDA—NASS, 2002 *Census of Agriculture—U.S. State Data*, Table 23. Washington, DC: National Agricultural Statistics Service.

<sup>8</sup> These entities are covered under NAICS subsector code 115—Support Activities for Agriculture and Forestry, where the SBA size standard is \$6.5 million or less in annual receipts.

<sup>1</sup> Table of Size Standards based on NAICS 2002 [Wheat farming: NAICS code 111140]. Washington, DC: U.S. Small Business Administration, effective October 1, 2007.

<sup>2</sup> USDA—NASS, *Quick Stats: U.S. & All States Data—Farm Numbers, Texas Data: Farm Numbers by Economic Sales Classes*. Washington, DC: National Agricultural Statistics Service.

<sup>3</sup> Wheat is planted for forage, grain, or a combination of the two.

<sup>4</sup> USDA—NASS, *Texas State Agriculture Overview—2006*. Washington, DC: National Agricultural Statistics Service.

<sup>5</sup> USDA—NASS, 2002 *Census of Agriculture—Texas County Data*, Table 24. Washington, DC: National Agricultural Statistics Service.

<sup>6</sup> USDA—NASS, *Quick Stats*. Washington, DC: National Agricultural Statistics Service.

**Executive Order 12372**

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

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This interim 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 are amending 7 CFR part 301 as follows:

**PART 301—DOMESTIC QUARANTINE NOTICES**

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

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

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

■ 2. In § 301–89.3, paragraph (g) is amended under the heading “Texas” by removing the entries for Baylor County and Knox County and by revising the entries for Throckmorton County and Young County to read as follows:

**§ 301.89–3 Regulated areas.**

\* \* \* \* \*

(g) \* \* \*

**Texas**

*Throckmorton County.* Beginning in the northeastern portion of the county at the line of longitude – 98.9921° W and the line of latitude 33.2836° N; then south along the line of longitude – 98.9921° W to the line of latitude 33.2055° N; then east along the line of latitude 33.2055° N to the line of longitude – 98.9891° W; then south along the line of longitude – 98.9891° W

to the line of latitude 33.1809° N; then east along the line of latitude 33.1809° N to the Throckmorton/Young County line at the line of longitude – 98.9527° W; then north along the line of longitude – 98.9527° W to the line of latitude 33.2836° N; then west along the line of latitude 33.2836° N to the point of beginning.

*Young County.* Beginning in the northwestern portion of the county at the line of longitude – 98.9527° W and the line of latitude 33.2836° N; then south along the line of longitude – 98.9527° W to the line of latitude 33.1809° N; then east along the line of latitude 33.1809° N to the line of longitude – 98.8762° W; then north along the line of longitude – 98.8762° W to the line of latitude 33.1946° N; then east along the line of latitude 33.1946° N to the line of longitude – 98.8356° W; then north along the line of longitude – 98.8356° W to the line of latitude 33.2880° N; then west along the line of latitude 33.2880° N to the line of longitude – 98.9430° W; then south along the line of longitude – 98.9430° W to the line of latitude 33.2836° N; then west along the line of latitude 33.2836° N to the point of beginning.

Done in Washington, DC, this 1st day of April 2008.

**Kevin Shea,**

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

[FR Doc. E8–7194 Filed 4–4–08; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 983**

[Docket No. AMS–FV–07–0095; FV07–983–2 FR]

**Pistachios Grown in California; Change in Reporting Requirements**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule changes the current reporting requirements prescribed under the California pistachio marketing order (order). The order regulates the handling of pistachios grown in California and is administered locally by the Administrative Committee for Pistachios (committee). These changes will modify one existing committee form and add a new form to a currently-approved information collection. The information collected will require handlers to report production and producer data, enabling the committee

to obtain better information for preparing its annual marketing policy statement and conducting committee nominations and periodic referenda under the order.

**DATES:** *Effective Date:* April 8, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: [Terry.Vawter@usda.gov](mailto:Terry.Vawter@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 983 (7 CFR part 983), regulating the handling of pistachios grown in California, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act 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 file with USDA 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 law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA 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 his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed