Rules and Regulations

Federal Register
Vol. 63, No. 6
Friday, January 9, 1998

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–25]

RIN 0579–AA83

Karnal Bunt; Compensation for Wheat Seed and Straw in the 1995–1996 Crop Season

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Karnal bunt regulations by adding compensation provisions for growers and seed companies for the loss in value of wheat seed and straw in the 1995–1996 crop season. The payment of compensation is necessary in order to reduce the economic impact of the Karnal bunt regulations on affected wheat growers and other individuals.

EFFECTIVE DATE: December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247, or e-mail: mstefan@aphis.usda.gov.

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 smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–14. Among other things, the regulations define areas regulated for Karnal bunt and restrict the movement of certain regulated articles, including wheat seed and grain, from the regulated areas.

On May 6, 1997, we published a document in the **Federal Register** (62 FR 24745–24753, Docket No. 96–016–17, effective April 30, 1997) making final an interim rule that amended the regulations to provide compensation for certain growers and handlers of wheat grain, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred in the 1995–1996 crop season because of actions taken by the Secretary to prevent the spread of Karnal bunt. The final rule also added compensation provisions for handlers of wheat grain that was tested and found negative for Karnal bunt and participants in the National Karnal Bunt Survey whose wheat grain tested positive for Karnal bunt in the 1995–1996 crop season. These compensation regulations are set forth at 7 CFR 301.89–14.

On July 30, 1997, we published in the **Federal Register** (62 FR 40756–40763, Docket No. 96–016–21) a proposal to amend the regulations by adding compensation provisions for wheat seed growers and seed companies for the loss in value of wheat seed in the 1995–1996 crop season. We also proposed to add compensation provisions for the loss in value of wheat straw in the 1995–1996 crop season.

We solicited comments concerning our proposal for 30 days ending August 29, 1997. We received six comments by that date. They were from wheat growers, plant breeders, seed companies, and seed industry associations. All the comments recommended additions or revisions to the compensation provisions. They are discussed below.

Comments Resulting in Changes to the Proposed Rule

Seed That Is Not Sold—Proposed § 301.89–14(e)

With one exception, our proposed compensation for seed companies addressed loss in value of wheat seed that was sold. As an exception, we also proposed that a seed company that did not sell its wheat seed could receive compensation at $7.00 per bushel for private variety seed and $4.90 per bushel for public variety seed. We explained that these amounts represent the seed margins of $4.50 for private variety seed and $2.40 for public variety seed plus the maximum $2.50 per bushel compensation for wheat grain provided in the regulations (see § 301.89–14(b) of the regulations). We stipulated that compensation would only be paid if the seed company has destroyed the wheat by burying it in a sanitary landfill or other site that has been approved by the Animal and Plant Health Inspection Service (APHIS).

We explained in the preamble to the proposal that this compensation would be necessary in a small number of cases where seed companies had their seed treated with a fungicide and bagged. Most seed companies did not treat their 1995–1996 crop season seed. Some seed companies, however, had seed from past crop seasons on hand that had already been treated in this manner. Treated seed cannot be used as grain, so if a seed company was unable or chose not to market treated seed for planting within the regulated areas, the only option for disposal of the treated seed was burial.

Two commenters said that the compensation offered in this circumstance should also include the cost of treating and bagging the seed, as well as the cost of cleaning it to separate out broken kernels and foreign matter prior to treating. These costs were incurred with the expectation of being able to sell the seed at a price that would allow the seed company to recover the costs. These costs are not accounted for in the seed margin that we factored into the proposed compensation amount.

In response to these comments, we are amending the compensation amounts for seed companies that buried their seed instead of selling it. We have determined that the average cost of cleaning, treating, and bagging seed is $2.40 per bushel (based on $1.20 per bushel for cleaning, $.60 per bushel for treating, and $.60 per bushel for bagging). We are adding this amount to the proposed compensation amounts, so that the compensation rates for seed companies that do not sell their seed will equal $9.40 per bushel for private

variety seed and $7.30 per bushel for public variety seed.

The preamble to the proposed rule explained that this compensation would apply to a small number of cases where seed companies had already cleaned, treated with a fungicide, and bagged their seed. However, the proposed rule did not limit the compensation to only those cases. Section 301.89–14(e) of the proposed rule stated that ''Seed companies are also eligible to receive compensation under the following circumstance: If a seed company is not able to or elects not to sell 1995–1996 crop season wheat grown for propagative purposes or propagative wheat inventories in their possession that were unsold as of March 1, 1996, the compensation rate will equal * * *.'' Because the compensation in this final rule has been increased to provide for the cleaning, treating, and bagging of seed, the final rule limits compensation to buried seed that has been cleaned, treated, and bagged.

We are not aware of any reason that a seed company would have been compelled or would have considered it more profitable to bury its seed rather than sell it in the 1995–1996 crop season, other than if the seed was previously cleaned, treated, and bagged. In fact, one of the comments on the proposed rule pointed out that a seed company trying to mitigate its losses would not dispose of untreated seed by burying it because the seed company would lose the salvage value. Therefore, § 301.89–14(e) of this final rule states that a seed company is eligible for compensation if the seed company has wheat that cannot be sold for use as grain or animal feed because it was previously cleaned, treated, and bagged.

The same two comments also requested that compensation for cleaned, treated, and bagged seed that was not sold include the cost of disposing of the wheat. We are not making any changes to the proposal in response to this request. Section 301.89–14(c) of the regulations provides compensation for 1995–1996 crop season wheat grain that was buried because it could not be sold, at the rate of $2.50 per bushel. This rate does not include the cost of disposal. It would be inconsistent to compensate seed companies for disposal costs for the burial of wheat seed when we did not compensate owners of grain that was buried for disposal.

Certified Seed

Several commenters said that we should specify that compensation will be paid only on ''certified'' seed. Certified seed is wheat that has been classified as ''certified'' by a State seed certification agency. The seed production and certification process can vary. We have attempted to provide a general description of the process below.

Certified seed is the final classification stage in the seed production process. The other classification stages are breeder, foundation, and registered seed. Breeder, foundation, and registered seed inventories are often produced by the seed company and are typically kept in relatively small quantities as stock for producing more seed. Certified seed is the progeny of breeder, foundation, or registered seed, and is the class of seed sold to farmers for growing wheat grain. Typically, seed companies contract with growers to produce certified seed. Before classifying seed as certified, the seed certification agency considers several factors, including the class of seed from which the seed to be certified will be grown and the condition of the field in which the seed to be certified is planted. The seed certification agency also analyzes the harvested seed for genetic and mechanical factors relating to specific seed standards.

Several commenters said that compensating growers and seed companies only for certified seed would ensure that wheat being compensated was actually grown for use as seed, and not as grain. This would help prevent false claims for compensation. The commenters said that seed certification is the only clear establishment of intent to produce wheat as a seed crop.

In the proposed rule, we specified that, to claim compensation for wheat seed, a copy of the contract under which the wheat was grown must be provided with each compensation claim. We believed that a contract would show that the wheat for which compensation is being claimed was intended to be sold as seed. Some commenters said, however, that seed production contracts could be easily forged, resulting in illegitimate claims.

We agree with commenters that requiring that seed be certified in order to be eligible for compensation is the most reliable establishment of intent to produce wheat as a seed crop. However, some seed companies did not complete the seed certification process because of the Karnal bunt quarantine. As explained above, the seed certification process consists of several steps. The final step is usually laboratory analysis of the harvested wheat for genetic and mechanical factors relating to specific seed standards. Prior to completion of this final step, the wheat is considered ''certifiable.'' However, seed that is grown with the intention of producing breeder, foundation, or registered seed is also classified as ''certifiable'' up to the point that it has completed the laboratory analysis step of the seed certification process. The intent of the proposed rule was to offer compensation only for seed in the final stage of seed production (that is, commercially available seed). We did not intend to offer compensation for seed still in non-final stages (that is, breeder, foundation, or registered seed).

With all this in mind, and in response to commenters concerns, we are amending the proposed rule to require that seed be either certified or grown with the intention of producing certified seed in order to be eligible for compensation. We will require this for both grower and seed company compensation. Throughout the rule, we will insert language indicating that compensation is for certified seed or seed grown with the intention of producing certified seed only. This language will replace proposed language referring to ''wheat grown for propagative purposes.'' In addition, in order to claim compensation, we will require that growers and seed companies submit documentation that provides evidence that the wheat being considered for compensation is classified as certified seed or is considered certifiable as certified seed by a State seed certification agency. Seed certification agencies usually require that applicants for seed certification keep records of the amount of certifiable seed harvested. This documentation may include one or more of the following types of documents: An application to the State seed certification agency for field inspection (to show that seed is eligible for certification); a bulk sale certificate; certification tags or labels issued by the State seed certification agency; or a document issued by the State seed certification agency verifying that the wheat is certified seed. Growers who do not have copies of such documentation can obtain it from the seed company or from their State's seed certification agency.

Private Variety Seed

The proposed rule provided different compensation rates to seed companies depending on whether their seed was private variety seed or public variety seed. Specifically, the seed margin used in the compensation calculations was set by the proposal at $4.50 for private variety seed and $2.40 for public variety seed. We explained in the preamble to the proposal that private variety seed is seed that has a plant variety protection

patent. The seed margin for private variety seed was set higher than the seed margin for public variety seed to reflect premiums paid by the seed company to the private firm that owns the plant variety protection patent.

Several of the commenters pointed out to us that not all private variety seed is patented. Usually, private varieties are protected by a patent. However, there are some private varieties that do not have patent protection. For example, some varieties are developed to be so specific to the needs of a particular customer that a patent is not deemed necessary. Another example is that a private individual (such as someone doing research at a university) may develop a variety that they do not wish to patent. The individual may sell the rights to this variety to a seed company. Such varieties may be recognized within the industry as being ''owned'' by a seed company, even though they are not protected by a patent. Commenters said that, among seed industry groups, private variety seed is defined simply as a variety owned by a private individual or company.

We agree with commenters that our description of private variety seed was incomplete. Public varieties of seed are usually developed by State or Federal government researchers, or by a university. Public variety seed is considered to be owned by the public and is available to anyone for planting and production. Because it is owned by the public, no private individual must be reimbursed for the development costs. In contrast, private varieties of seed are usually developed by a private individual or company. Seed margins for private variety seed are intended to reimburse the individual or company for the costs of developing the seed variety. In the case of patented varieties, the higher seed margin reflects premiums paid by the seed company to the developer who owns the patent. In other cases (as described above), the seed company may have purchased the rights to the variety from a developer. In such cases, the higher seed margin reflects the up front costs of the seed company for purchasing the seed variety.

Our explanation of private variety seed was in the preamble to the proposed rule. Because the actual rule did not define private variety seed, it is not necessary for us to make any changes to the rule in response to this comment. However, in implementing this final rule, we will consider any variety that is owned by a private individual or company to be a private variety. USDA's Farm Service Agency (FSA) will be processing compensation claims under this rule. The State FSA offices will make the determination as to what varieties are private and what varieties are public.

Seed Premium Not Specified in Contract

For compensation for growers, we proposed that ''the seed premium specified in the contract'' is to be used for certain compensation calculations. For example, compensation for growers under proposed § 301.89–14(d)(1)(i) would equal the contract price (CP) including the seed premium specified in the contract (SP)(contract) minus the higher of either the salvage value (SV) plus the actual seed premium received by the grower (SP)(actual), or the actual price received by the grower (AP) plus the actual seed premium received by the grower (SP)(actual). The equation for this compensation would be: Compensation rate = [CP + SP(contract)]—higher of [SV + SP(actual)] or [AP + SP(actual)].

One commenter said that this would be a problem because not all seed production contracts specify a seed premium separately. In these cases, the seed premium is included in the contract price. In response to the comment, we are making several changes to the proposed rule to accommodate these cases. Section 301.89–1 of the Karnal bunt regulations already defines ''contract price'' to mean the net price after adjustment for any premiums or discounts stated in the contract. Under this definition, seed premiums are considered part of the contract price. In the calculations, we will continue to mention the seed premium to make it clear that the seed premium must always be included in the contract price, even if it is specified in the contract separately. However, we are amending the proposed rule so that calculations will use only the contract price, with a phrase explaining that the contract price must include the seed premium if one is specified in the contract. Similarly, because the actual seed premium received by the grower may not always be specified on the receipt for the final sale of the wheat, we would make similar changes to the calculations that use ''actual price received.'' In addition, some calculations require use of either the seed premium specified in the contract or the actual seed premium received by the grower, separately from the contract price or the actual price received. In cases where there is no seed premium specified, we will use $.30 in the calculation. This represents the average seed premium received by growers in the regulated area.

For example, proposed § 301.89–14(d)(1)(i), cited above, will read as follows in this final rule: The compensation rate will equal the contract price (CP), including the seed premium if specified in the contract, minus the higher of either the salvage value (SV) plus the actual seed premium received by the grower (SP)(actual), or the actual price received by the grower (AP), including any seed premium specified on the receipt for the final sale of the wheat. If the actual seed premium received by the grower is not specified on the receipt for the final sale of the wheat, the seed premium will be set at $.30 for the compensation calculation. The equation for this compensation will be: Compensation rate = CP − higher of [SV + (SP(actual) or $.30)] or [AP].

In addition, we are making a change to the compensation provisions for seed companies. Under proposed § 301.89–14(d)(3)(i), a seed company would be eligible for compensation if the seed company honored the contract with the grower by paying the grower the full contract price, including the seed premium. For the same reasons discussed above, this final rule will state that a seed company is eligible for compensation if the seed company paid the grower the full contract price, ''including the seed premium if a seed premium is specified in the contract.''

Binned Seed Inventories

One commenter requested that we remove the requirement in proposed § 301.89–14(d)(7) that, to claim compensation, seed companies must provide a copy of the contract under which the wheat was grown. The commenter said that a common practice of seed companies is to ''bin'' bulk seed inventories, meaning that harvested seed from multiple growers (and contracts) is combined together in the same storage bin. This would make it impossible for seed companies to specifically associate a particular grower contract with a specific volume of seed. The commenter said that the requirement that seed companies must ''certify to FSA that the propagative wheat was in the seed company's possession as of March 1, 1996'' should be adequate.

We believe that the commenter is referring to seed inventories from past crop seasons that have been binned. Compensation provisions for seed companies for seed inventories from past crop seasons appear in proposed § 301.89–14(d)(3)(ii), (d)(4), (d)(5), and (e). To claim compensation for seed inventories, the proposed rule stated that seed companies must certify to FSA that the wheat was in the seed

company's possession as of March 1, 1996. The proposed rule also requires that the seed company provide a contract under which the wheat was grown. We understand that this may be difficult if seed inventories have been binned, because seed companies may not be able to tell which grower's seed was sold the previous year and which grower's seed was kept in inventory.

We have reviewed the proposed rule, and have determined that a copy of the contract under which the wheat was grown is not necessary to process compensation claims for seed inventories from past crop seasons. However, our review of the proposed rule also revealed an oversight in regard to compensation for seed companies for 1995–1996 crop season seed. Section 301.89–14(d)(3)(i) of the proposal stated that the seed company must have paid the grower the full contract price for the wheat. In this case, a copy of the contract is necessary to verify the full contract price. Proposed § 301.89–14(d)(4) (''Seed companies that sold propagative wheat for nonpropagative purposes and that have claimed compensation'') and (d)(5) (''Seed companies that sold propagative wheat for propagative purposes'') should have also contained the requirement that the seed company must have paid the grower the full contract price on the wheat seed in order to claim compensation. This requirement is necessary because if a seed company did not pay the grower the full contract price, the seed company would in effect have already been compensated for the loss in value of the wheat seed.

The failure to include this requirement in proposed § 301.89–14(d)(4) and (d)(5) was an oversight. This final rule, therefore, requires that, to claim compensation for 1995–1996 crop season wheat seed under § 301.89–14(d)(4) and (d)(5), the seed company must have paid the grower the full contract price, and must provide a copy of the contract under which the wheat was grown. For seed inventories from past crop seasons, seed companies would have already paid growers of the seed in the year it was harvested (prior to the discovery of Karnal bunt). Any variation in payment from the contract price on the inventories would not, therefore, have been related to Karnal bunt, making it unnecessary for FSA to verify the contract price. For this reason, we are removing the requirement that seed companies claiming compensation for seed inventories from past crop seasons provide a copy of the contract under which the wheat was grown.

Karnal Bunt Certificate

The proposed rule also required that claimants provide a copy of the Karnal bunt certificate issued by APHIS showing whether the wheat tested positive or negative for Karnal bunt. The salvage values used in the proposed compensation calculations vary depending on whether the wheat tested positive or negative for Karnal bunt. A Karnal bunt certificate is the most reliable documentation of the Karnal bunt test results.

One commenter said that binning (as described previously in this document) will make it difficult to associate Karnal bunt certificates with a particular volume of seed inventory. Further, the commenter said that seed inventories on hand as of March 1, 1996, were selectively sampled by APHIS for Karnal bunt testing. Therefore, not all inventories have a corresponding Karnal bunt certificate. The commenter also said this same requirement caused several weeks of delays in processing claims for 1995–1996 crop season wheat grain and that, ultimately, it will only prove what is already known, that only wheat that tested negative for Karnal bunt was allowed to be saved as seed.

This commenter addresses several issues. First, the commenter's assertion that only wheat that tested negative for Karnal bunt was allowed to be saved as seed is true. However, the proposed rule included compensation for wheat that was grown with the intention of producing certified seed, whether it tested positive or negative for Karnal bunt. If it tested positive for Karnal bunt, it was likely sold for use as animal feed, and would be compensated under proposed § 301.89–14(d)(2) for growers or § 301.89–14(d)(3) or (d)(4) for seed companies. Regardless, to determine the correct compensation amount, we would need to know whether the seed tested positive or negative for Karnal bunt.

Second, selective sampling of seed inventories was done by APHIS; however, a positive or negative status for Karnal bunt was determined for all seed inventories. For example, a lot of seed may have been composed of 2000 bags of seed. By March 1996, these bags of seed from a single lot could have potentially been held in inventory in several different locations. APHIS would have selectively sampled a number of bags of seed from the lot, in the same or in different locations. Based on the results of those samples, the entire lot would have been considered positive or negative for Karnal bunt.

Third, the commenter is correct that some delays were experienced when processing compensation for a small amount of 1995–1996 crop season wheat grain because a Karnal bunt certificate was never issued for this wheat. In the 1995–1996 crop season, a Karnal bunt certificate was issued only on wheat that was tested for movement outside of the regulated area. In a few cases in the 1995–1996 crop season, wheat grain that was considered negative based on a field test was sold within the regulated area, and so no Karnal bunt certificate was issued for it. Those cases were few, and we were able to handle them on a case-by-case basis to determine what other documentation was available to verify the Karnal bunt status of the wheat.

We agree with the commenter that a similar situation may occur when we process seed compensation claims. As described previously in regard to grain, any wheat that was intended for movement outside of the regulated area was tested for Karnal bunt and issued a Karnal bunt certificate at the time of movement. However, there are several circumstances under which wheat grown with the intention of producing certified seed would not have been issued a Karnal bunt certificate. First, because the Karnal bunt regulations prohibited the movement of wheat outside the regulated area if it was to be used as seed for planting, no Karnal bunt certificates were issued on wheat that was tested as seed. Most such seed that tested positive was sold within the regulated area for use as animal feed; the balance of positive testing seed was buried or kept in inventory. Some seed that tested negative for Karnal bunt was sold for planting within the regulated area; some was sold as grain for milling within the regulated area (if it could not be marketed as seed); some was kept in inventory. A Karnal bunt certificate would not have been issued on such seed.

We are adding several sentences to the regulations to accommodate claimants who do not have Karnal bunt certificates for their wheat. All wheat that tested positive for Karnal bunt in the 1995–1996 crop season was moved under a limited permit, even within the regulated area. The limited permits stated whether the wheat being moved was positive for Karnal bunt. We are adding a sentence to § 301.89–14(d)(7) (''To claim compensation'') to state that if the grower or seed company moved its wheat only within the regulated area, and therefore, does not have a corresponding Karnal bunt certificate for the wheat for which compensation is being claimed, a limited permit stating that the wheat was positive for Karnal bunt will be accepted in lieu of a Karnal

bunt certificate. Any wheat that was moved only within the regulated area and that was not moved under a limited permit will be considered negative for Karnal bunt.

Claims Deadline

In the proposed rule, we set the deadline for claiming compensation at on or before 60 days after the effective date of the final rule. We also said that the Administrator could extend the deadline, upon request in specific cases, when unusual or unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation prior to that date.

Several commenters requested that we extend the deadline in the final rule to on or before 120 days after the effective date of the final rule. This would give growers and seed companies more time to collect the required paperwork and submit their claims to FSA. Based on our past experience in receiving compensation claims, we believe that extending the deadline would be helpful to affected growers and seed companies. It would also give the FSA offices more time to familiarize themselves with the compensation regulations for seed and straw following the effective date of the final rule. Therefore, we are extending the deadline for claiming compensation to on or before 120 calendar days after the effective date of the final rule. We will retain the option for the Administrator to extend the deadline, upon request in specific cases, when unusual or unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation prior to that date.

Comments Not Resulting in Changes to the Proposed Rule

We received numerous comments requesting compensation for losses not addressed in the proposed rule, as well as requests for changes in the compensation amounts offered in the proposal. We recognize that the compensation we have offered for wheat seed and straw does not fully account for every loss or expense due to Karnal bunt in the 1995–1996 crop season. We regret that we cannot offer compensation for every loss experienced by growers and seed companies resulting from Karnal bunt. However, we believe the compensation provisions in this final rule do significantly mitigate losses due to the actions taken by USDA to control Karnal bunt. Before addressing each of the remaining comments specifically, we offer a general description of the rationale behind the Karnal bunt compensation program to date.

In the absence of measures taken by USDA to prevent the spread of Karnal bunt, the establishment of Karnal bunt in the United States would have significant consequences with regard to marketing wheat in the United States and with regard to the export of U.S. wheat to international markets. Approximately 50 percent of U.S. wheat exports are to countries that maintain restrictions against wheat imports from countries where Karnal bunt is known to occur. Upon discovering Karnal bunt in Arizona in March 1996, quarantine of affected areas and emergency actions were necessary to maintain the integrity of the wheat industry in the United States in order to preserve international markets, both for wheat within the regulated areas and for wheat produced in other parts of the country. The Karnal bunt regulations that were initially established were necessarily broad due to the lack of data available at the time as to the extent of the infestation. The discovery of Karnal bunt and subsequent quarantine and emergency actions occurred after production and marketing decisions had been made. Producers and other affected individuals had little time or ability to avoid the unexpected costs or pass those costs on to others in the marketing chain.

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

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

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

Several comments on the proposed rule requested compensation for losses not addressed in the proposed rule, including demurrage charges on railcars, the cost of cleaning and sanitizing railcars prior to loading, declines in transporter operations due to delays caused by the Karnal bunt regulations, and extra storage costs due to the shipping delays. Commenters also requested compensation for losses incurred at various stages of seed production, including losses caused by interruption of seed increase programs, destruction and/or fumigation of research nurseries and resulting loss of germplasm, and loss of future royalties from destroyed seed varieties still in the development stages. Commenters further requested compensation for loss of the ability to ''conduct business as usual'' outside the regulated area. One commenter requested compensation for loss of export seed markets.

We have considered all of these comments very carefully, but we are not making any changes to the compensation regulations in response to these comments. Again, we recognize that the compensation we have offered does not fully account for every loss or expense due to Karnal bunt. However, we believe the compensation provisions in this final rule do significantly mitigate losses due to the actions taken by USDA to control Karnal bunt.

In regard to the request for compensation for demurrage charges on

railcars, cleaning of railcars, declines in transporter operations, and extra storage, we did not offer compensation for similar costs and losses related to wheat grain. In regard to requests for compensation for losses incurred at various stages of seed production, the loss in value of certified, market ready seed is the most quantifiable and direct loss associated with the actions taken by the Department to prevent the spread of Karnal bunt. For this reason, this rule provides compensation for loss in value of wheat seed that was intended to be sold in the 1995–1996 crop season. Many losses connected with seed in other stages of production are less quantifiable and may have been otherwise imposed by market forces, such as market demand and prices over the long term. Further, the eventual impact of these types of losses will likely be alleviated by reductions in the restrictions on the movement of seed from areas regulated for Karnal bunt.

One commenter said that the Regulatory Flexibility Analysis in the proposed rule did not include a discussion of numerous impacts on the wheat seed industry that resulted from Karnal bunt. Losses specifically referred to by the commenter are destruction of research nurseries, costs of additional required treatments, nursery seed losses of research and development companies, lost cleaning revenues of seed companies due to reduced seed sales, and carry costs paid to maintain seed inventories.

The Regulatory Flexibility Analysis that appeared in the proposed rule referenced a more detailed analysis that was published in the **Federal Register** on May 6, 1997 (62 FR 24753–24765, Docket No. 96–016–20). However, as the commenter says, neither of these analyses provides a detailed discussion of losses for which we did not intend to provide compensation. The intent of this rule is to compensate for the loss in market value of wheat seed and straw in the 1995–1996 crop season. The decision of intent was made in line with several criteria for compensation, which have been discussed earlier in this document. For this reason, the discussion of losses to the seed industry as a result of Karnal bunt were limited, both in the proposed rule and in the Regulatory Flexibility Analysis published on May 6, to losses in market value of 1995–1996 crop season wheat seed. We stated in the analysis published on May 6 that other economic losses were suffered by the seed industry due to Karnal bunt. These are mainly long-term losses, including costs to relocate wheat breeding operations outside the regulated areas and loss of breeding stock under development. The costs mentioned by the commenter would also be long term losses potentially suffered by the seed industry in the regulated area. As discussed previously in this document, the Karnal bunt compensation program for seed is intended to cover only for the loss in value of market-ready seed.

One commenter requested compensation for barley seed. The commenter said that types of planting seed other than wheat, most notably barley, were affected by the regulations for Karnal bunt; the commenter further stated that he has not been able to sell barley seed outside the regulated area since the original Karnal bunt quarantine was issued, and that his barley seed inventories had to be sold as grain.

Barley is not a regulated article under the Karnal bunt regulations. Therefore, the Karnal bunt regulations place no restrictions on the movement of barley from the regulated area. We are aware that, primarily early in the 1996 harvest, some countries (for example, Canada) prohibited the importation of anything from the regulated area that would fall under the category of small grains. Wheat, barley, and oats are small grains. These importing countries were fearful that Karnal bunt could infect or be spread by means of any small grain. However, the Karnal bunt fungus only affects wheat and wheat hybrids. Barley, oats, and other small grains are not affected by Karnal bunt. In general, importers from other countries recognized this, and growers and seed companies in the regulated area experienced little difficulty in exporting their barley and oat seed. Because the Karnal bunt regulations placed no restrictions on the movement of barley from the regulated area, we will not offer compensation for this loss.

Another commenter requested compensation for winter seed increases of wheat, barley, oats, and triticale that could not be shipped outside the regulated area. Winter seed increases are often grown in Arizona and other parts of the regulated area for seed companies in northern climates (such as Minnesota or Canada). These companies contract with growers in southern climates to grow seed during the winter months in order to increase their seed stock. Typically, winter seed increases are not certified, commercially available seed; winter seed increase programs are more likely used to increase foundation or registered seed stock.

After the 1996 harvest, some crops of winter seed increases could not be moved out of the regulated area. Because winter seed increases were not intended for sale as certified seed during the 1995–1996 crop season, we are not compensating for most of these situations. However, if the winter seed increase was for certified seed, the grower who was unable to move the seed out of the regulated area would be eligible for compensation. In regard to barley and oat seed increases, the Karnal bunt regulations did not place restrictions on the movement of such seed. For this reason, we are not offering compensation. In regard to triticale (which is a regulated article), we are not aware of any attempts to move triticale from the regulated area in the 1995–1996 crop season. Even so, winter seed increases of triticale were most likely not intended for sale as certified seed during the 1995–1996 crop season, and would therefore not be eligible for compensation.

One commenter requested that we consider compensation for losses caused by the delay in paying compensation until almost a year and a half after the losses were incurred.

Karnal bunt was first discovered in the United States in Arizona on March 8, 1996, and a quarantine and regulations were promulgated soon after. On July 5, 1996, we published an interim rule in the **Federal Register** (61 FR 35102–35107, Docket No. 96–016–7) that provided compensation to certain wheat grain growers and handlers, owners of grain storage facilities, and flour millers. Because the seed industry is complex, we needed more time to develop a compensation plan for seed growers and seed companies. Some growers and seed companies may have experienced certain kinds of losses due to uncertainty over what losses they would eventually be compensated for. We regret that such losses occurred as a result of the delay in compensation for 1995–1996 crop season seed. However, the intent of the Karnal bunt compensation program for seed is to compensate for the loss in value of seed that was intended for sale in the 1995–1996 crop season. We are not making any changes to the proposed rule based on this comment.

One commenter noted that the proposed rule estimated that the loss in seed value in the 1995–1996 crop season was between $5 and $6 million. The commenter said they have also heard USDA estimates of $10.8 million. The commenter said they would like us to clarify whether these levels are considered caps or estimates.

We stated in the preamble to the proposed rule that an estimated 1.5 million bushels of wheat seed grown in the regulated areas sustained a loss in value of between $5 and $6 million in

the 1995–1996 crop season. In the Regulatory Flexibility Act portion of the proposed rule, we said that $10.8 million has been apportioned for compensation to seed producers and companies for the loss in value of their seed. The $5 to $6 million figure is, therefore, an estimate. The $10.8 million figure is the maximum amount currently available to USDA for payments on seed compensation claims. Considering that we estimate the loss in value to be between $5 and $6 million, we anticipate that the $10.8 million apportionment will be adequate to fulfill all eligible claims for compensation.

One commenter said that growers and seed companies should not have to provide copies of Karnal bunt certificates, and also asked that we remove the requirement that growers and seed companies provide copies of Emergency Action Notifications (EANs) for wheat grown in an area that was not regulated for Karnal bunt but for which an EAN had been issued. The commenter's reason was that Karnal bunt certificates and EANs were issued by USDA, and so should not have to be provided back to USDA to claim compensation.

We are making no changes to the proposed rule based on this comment. Claims for 1995–1996 crop season wheat seed and straw will be processed by FSA. While FSA and APHIS are both a part of USDA, they do not share offices, computer systems, or recordkeeping systems. We understand that filing claims for compensation does require claimants to provide a number of documents, and collecting these requirements may seem cumbersome. However, affected entities were provided with copies of EANs and Karnal bunt certificates, and claimants should, therefore, not have difficulty in collecting these documents. At this time, the most efficient way for FSA to process compensation claims is for the claimant to provide the documents to FSA. As discussed previously in this document, this final rule will accommodate situations where a Karnal bunt certificate is not available.

One commenter said that our proposed seed margins and maximum compensation amounts are too low, and, further, that the proposed rule did not give enough information about how APHIS calculated these figures. Another commenter asked us to add a $.90 cleaning margin to the proposed seed margin amount.

We are not making any changes to the proposed rule in response to these comments. Seed margins were used in the proposed rule to calculate compensation for seed companies. We set seed margins at $4.50 for private variety seed and $2.40 for public variety seed because, according to our information, these were the average seed margins that seed companies in the regulated areas expected to receive in the 1995–1996 crop season. We set maximum compensation amounts for seed companies at $7.00 per bushel for private variety seed and $4.90 per bushel for public variety seed. We stated in the preamble to the proposed rule that these maximum compensation amounts represent the seed margins (described above) plus the maximum $2.50 compensation for nonpropagative wheat provided in the regulations. We believe that these amounts will provide reasonable compensation for losses sustained by seed companies.

Another commenter also said that the maximum compensation amount is too low. Some seed companies held on to their 1995–1996 crop season seed while awaiting publication of regulations on seed compensation. The commenter stated that, for this reason, these seed companies have been unable to sell their seed in 1997 at the market highs that existed during the summer of 1996. As a result, the commenter said that losses exceeded $7.00 per bushel (the proposed maximum compensation amount for private variety seed). The commenter recommends that the maximum compensation amounts should be revised to $14.00 per bushel for ''bagged treated seed'' and $8.00 per bushel for ''bulk non-treated seed.''

We are making no changes to the proposed rule based on this comment. As discussed previously in response to other comments, we based the proposed maximum compensation rates for seed companies on the seed margins plus the maximum $2.50 compensation for nonpropagative wheat provided in the regulations. The seed margins were determined in accordance with information we received from a variety of individuals operating in the regulated area. We believe the proposed maximum compensation amounts of $7.00 per bushel for private variety seed and $4.90 per bushel for public variety seed are appropriate for the losses that occurred in the 1995–1996 crop season, and will significantly mitigate the effects of those losses for seed companies.

One commenter cited the estimation in the proposal that 1.5 million bushels of wheat seed grown in the regulated areas sustained a loss in value of between $5 and 6 million dollars in the 1995–1996 crop season. The commenter stated that, calculated on a per bushel basis, the proposed maximum compensation of $2.50 per bushel is inadequate (i.e., 1.5 million multiplied by $2.50 only equals $3.75 million). The commenter says that to cover estimated losses, the maximum compensation amount should be raised to at least $3.00 per bushel.

This comment implies a misunderstanding of the proposed rule, and we are making no changes to the proposed rule based on this comment. The maximum compensation amount for wheat grain is $2.50 in the 1995–1996 crop season; this amount appears in the current regulations. The maximum compensation amounts we proposed for wheat seed in the 1995–1996 crop season are higher than for grain. For growers, the maximum compensation amount is $2.80 per bushel, which consists of $2.50 grain compensation plus an additional $.30 seed premium. For seed companies, the maximum compensation amounts are $7.00 per bushel for private variety seed and $4.90 per bushel of public variety seed. These amounts represent the $2.50 grain compensation plus seed margins of $4.50 per bushel for private variety seed and $2.40 per bushel for public variety seed.

We received one comment concerning the proposed compensation for loss in value of 1995–1996 straw. The commenter said that, though he normally bales and sells wheat straw, he did not bale straw after the 1996 harvest because of the Karnal bunt quarantine. The commenter requests compensation for this loss, even though in this case there are no bales of straw to weigh or count.

The proposed rule offered compensation to wheat straw producers at the rate of $1.00 per 80-pound bale or $1.25 per hundredweight. We proposed that producers would be eligible for compensation regardless of whether or not the straw is sold, but the straw must have been produced under contract. Thus, the criteria for compensation eligibility under the proposed rule requires that the straw must have been baled or weighed, and that there must be a contract for production. It would be impossible for us verify a grower's intent to produce straw if no straw was actually harvested and baled or weighed. Further, a significant portion of the proposed compensation amount for straw was intended to reimburse straw producers for the costs of harvesting and baling the straw, and moving the straw to the intended destination. If the straw was not actually harvested and baled or weighed, the grower incurred no production costs. For these reasons, we

are not making any changes to the proposed rule based on this comment.

Miscellaneous

Throughout the proposed rule, we specified maximum compensation amounts. For growers who sold wheat seed under contract, the maximum compensation amount that appears in § 301.89–14(d)(1) is $2.80 per bushel. We neglected to add the same maximum compensation amount to paragraph (d)(2) for growers who sold wheat seed for nonpropagative purposes. To correct this oversight, we are adding a sentence to paragraph (d)(2) to state that compensation will not exceed $2.80 per bushel under any circumstances.

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

Effective Date

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

Executive Order 12866 and Regulatory Flexibility Act

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

The quarantine and regulations for Karnal bunt were established by a series of interim rules and a final rule published in the **Federal Register** on October 4, 1996. A final rule effective on April 30, 1997, and published in the **Federal Register** on May 6, 1997, amended the regulations to provide compensation for certain wheat grain growers and handlers, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey in order to mitigate losses and expenses incurred in the 1995–1996 crop season because of actions taken by the Secretary of Agriculture to prevent the spread of Karnal bunt. The economic impact of the series of interim rules and the October 1996 final rule establishing the Karnal bunt quarantine and regulations, and the May 1997 final rule on compensation, was discussed in a regulatory flexibility analysis and regulatory impact analysis also published in the **Federal Register** on May 6, 1997 (62 FR 24753–24765, Docket No. 96–016–20). The analyses estimate that losses due to the discovery of Karnal bunt and the subsequent emergency regulatory actions amounted to $44 million (see table below). These losses were associated with the plowdown of fields in New Mexico and Texas that were known to be planted with Karnal bunt-infected seed, decontamination of grain storage facilities, the decline in market value of wheat grain testing either positive or negative for Karnal bunt, treatment of millfeed required by the regulations, the decline in market value of wheat seed and straw, and damages to combine harvesters due to required disinfection treatment.

In order to alleviate some of the economic hardships caused by the Karnal bunt regulations, and to ensure full and effective compliance with the regulatory program, compensation to mitigate certain losses was offered to affected parties in the regulated areas. A discussion of losses and the rationale for compensation can be found in the regulatory flexibility analysis and regulatory impact analysis cited above. Funding for compensation in the amount of $39 million has been made available through apportionment action (transfers from the Commodity Credit Corporation). Of the $39 million, $26.5 million has been allocated specifically for compensation for plowdown, decontaminating grain storage facilities, loss in value of grain, and millfeed treatment.

This final rule amends the Karnal bunt regulations by adding compensation provisions for wheat straw producers and wheat seed growers and seed companies for the loss in value of their straw and seed due to the regulations for Karnal bunt. As discussed in the regulatory impact analysis referred to above, losses to seed growers were estimated to be about $6 million; losses to straw producers were estimated at about $200,000. The compensation in this final rule for buried seed (see § 301.89–14(e)) has been increased from what was proposed, to provide an additional $2.40 per bushel for the cost of previously cleaning, treating, and bagging the seed. Based on our experience with compensating for buried grain in the 1995–1996 crop season, we expect the amount of compensation for buried seed in the 1995–1996 crop season to be less than $100,000. Given that the amount of buried seed for which compensation will be claimed is expected to be small, the inclusion of cleaning, treatment, and bagging costs in the compensation offered for buried seed does not affect the estimated loss in value of seed that appeared in the regulatory impact analysis referred to above. Other changes in this final rule primarily clarify the intent of the proposed rule, and, likewise, do not affect the estimated loss in value of seed or straw that appeared in the regulatory impact analysis.

The regulatory flexibility analysis referred to above discusses the impact of the Karnal bunt regulations on small entities. The majority of the affected entities in the regulated areas have been determined to be small entities. The table below is taken from the regulatory impact analysis, and shows estimated losses due to the Karnal bunt regulations in the 1995–1996 crop season.

ESTIMATED LOSS IN VALUE DUE TO KARNAL BUNT REGULATIONS, 1995–96 CROP YEAR

[In millions of dollars]

Action	Estimated loss in value
1. Plowdown of NM and TX fields planted with infected seed	$1.2
2. KB-positive grain diverted to animal feed market	4.2
3. KB-negative grain that experienced loss in value	[1] 28.0
4. Cost of sanitizing storage facilities	0.3
5. Millfeed treatment of KB-negative grain	1.6
6. Loss in value of seed	6.0
7. Loss in value of straw	0.2
8. Loss related to cleaning and disinfecting of combine harvesters	2.0
Total	44.0

[1] $28 million is the potential *maximum* amount of loss in value of uninfected wheat.

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

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control numbers are 0579–0121 and 0579–0126. Some of the information collection requirements in this final rule differ from what was proposed in order to facilitate the submission of applications for compensation. However, these changes do not result in any changes in burden hours.

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

2. In § 301.89–14, paragraph (f)(2), the reference to ''paragraph (d)'' is removed both times it appears and a reference to ''paragraph (f)'' is added in its place.

3. In § 301.89–14, paragraphs (d), (e), and (f) are redesignated as paragraphs (f), (g), and (h) respectively; and new paragraphs (d), (e), and (i) are added to read as set forth below.

§ 301.89–14 Compensation for the 1995–1996 crop season.

* * * * *

(d) *Growers and seed companies that sold wheat seed.* Growers of and seed companies with certified wheat seed or wheat grown with the intent of producing certified wheat seed are eligible for compensation for the loss in value of their seed, in accordance with this section, if the seed was grown in a State where the Secretary has declared an extraordinary emergency, and if the seed was grown in an area of that State that was regulated for Karnal bunt or under Emergency Action Notification (PPQ Form 523) for Karnal bunt during the 1995–1996 crop season.

(1) *Growers who sold wheat seed under contract.* Growers who sold 1995–1996 crop season certified wheat seed or 1995–1996 crop season wheat grown with the intent of producing certified wheat seed are eligible to receive compensation as described in paragraphs (d)(1)(i) and (d)(1)(ii) of this section if they sold the wheat under contract to a seed company. However, compensation will not exceed $2.80 per bushel under any circumstances.

(i) If the wheat was grown under contract and a price was determined in the contract on or before March 1, 1996, and the contract price was not honored by the seed company, the compensation rate will equal the contract price (CP), including the seed premium if specified in the contract, minus the higher of either the salvage value (SV), as described in paragraph (d)(6) of this section, plus the actual seed premium received by the grower (SP)(actual), or the actual price received by the grower (AP), including any seed premium specified on the receipt for the final sale of the wheat. If the actual seed premium received by the grower is not specified on the receipt for the final sale of the wheat, the seed premium will be set at $.30 for the compensation calculation. In each case, the amount of the actual price or the salvage value of the wheat seed will include the value of any proceeds accrued through insurance claims, judgments, or from any other source. The equation for this compensation is: Compensation rate = CP—higher of [SV + (SP(actual) or $.30) or [AP].

(ii) If the wheat was grown under contract and a price was determined in the contract after March 1, 1996, the compensation rate will equal the estimated market price for grain (EMP) plus the seed premium if specified in the contract (SP)(contract) minus the higher of either the salvage value (SV), as described in paragraph (d)(6) of this section, plus the actual seed premium received by the grower (SP)(actual), or the actual price received by the grower (AP), including any seed premium specified on the receipt for the final sale of the wheat. If a seed premium is not specified in the contract or on the receipt for the final sale of the wheat, the seed premium that is added to the estimated market price (EMP) and the seed premium that is added to the salvage value (SV) will be set at $.30. In each case, the amount of the actual price or the salvage value of the wheat seed will include the value of any proceeds accrued through insurance claims, judgments, or from any other source. The equation for this compensation is: Compensation rate = [EMP + (SP(contract) or $.30)]—higher of [SV + (SP(actual) or $.30)] or [AP]. 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) *Growers who sold wheat seed for nonpropagative purposes.* Growers with 1995–1996 crop season certified wheat seed or 1995–1996 crop season wheat grown with the intent of producing certified wheat seed are eligible to receive compensation in accordance with paragraphs (d)(2)(i) and (d)(2)(ii) of this section if they sold the wheat for nonpropagative purposes. However, compensation will not exceed $2.80 per bushel under any circumstances.

(i) If the grower has not claimed compensation under paragraph (b) of this section, the compensation rate will equal the estimated market price for grain (EMP) minus the actual price received by the grower (AP), plus the seed premium specified in the contract the grower had with a seed company (SP). If a seed premium is not specified in the contract, SP will equal $.30. In each case, the amount of the actual price of the wheat seed will include the value of any proceeds accrued through insurance claims, judgments, or from any other source. The equation for this compensation is: Compensation rate = (EMP − AP) + (SP or $.30). Growers who claim compensation under this paragraph may not claim compensation under paragraph (b) of this section.

(ii) If the grower has claimed compensation under paragraph (b) of this section, the compensation rate will equal the premium specified in the contract the grower had with a seed company. If no seed premium is specified in the contract, compensation will equal $.30 per bushel.

(3) *Seed companies that sold wheat seed for nonpropagative purposes and that have not claimed compensation.* Seed companies with 1995–1996 crop season certified wheat seed or 1995–1996 crop season wheat grown with the intent of producing certified wheat seed, and seed companies with certified wheat seed inventories in their possession that were unsold as of March 1, 1996, are eligible to receive compensation as described in paragraphs (d)(3)(i) and (d)(3)(ii) of this section if the wheat seed was sold for nonpropagative purposes and if the seed company has not claimed compensation under paragraph (b) of this section. Seed companies that claim compensation under paragraph (d)(3)(i) or (d)(3)(ii) of

this section may not claim compensation under paragraph (b) of this section.

(i) If the wheat was grown in the 1995–1996 crop season, was under contract, and the seed company honored the contract by paying the grower the full contract price, including the seed premium if a seed premium is specified in the contract, the compensation rate will equal the estimated market price for grain (EMP) plus the seed margin (SM) minus the higher of either the actual price received by the seed company (AP) or the salvage value (SV), as described in paragraph (d)(6) of this section. The equation for this compensation is: Compensation rate = EMP + SM − higher of AP or SV. The seed margin is $4.50 per bushel for private variety seed and $2.40 per bushel for public variety seed. In each case, the amount of the actual price or the salvage value of the wheat seed will include the value of any proceeds accrued through insurance claims, judgments, or from any other source. However, compensation will not exceed $7.00 per bushel for private variety seed and $4.90 per bushel for public variety seed under any circumstances.

(ii) If a seed company had wheat inventories from past crop seasons that were unsold as of March 1, 1996, the compensation rate will equal the estimated market price for grain (EMP) plus the seed margin (SM) minus the higher of either the actual price received by the seed company (AP) or the salvage value (SV), as described in paragraph (d)(6) of this section. The equation for this compensation is: Compensation rate = EMP + SM − higher of AP or SV. The seed margin is $4.50 per bushel for private variety seed and $2.40 per bushel for public variety seed. In each case, the amount of the actual price or the salvage value of the wheat seed will include the value of any proceeds accrued through insurance claims, judgments, or from any other source. However, compensation will not exceed $7.00 per bushel for private variety seed and $4.90 per bushel for public variety seed under any circumstances.

(4) *Seed companies that sold wheat seed for nonpropagative purposes and that have claimed compensation.* Seed companies with 1995–1996 crop season certified wheat seed or 1995–1996 crop season wheat grown with the intent of producing certified wheat seed, and seed companies with certified wheat seed inventories in their possession that were unsold as of March 1, 1996, are eligible to receive compensation as described in this paragraph if the wheat seed was sold for nonpropagative purposes and if the seed company has claimed compensation under paragraph (b) of this section. In addition, for claims on 1995–1996 crop season wheat, the wheat must have been grown under contract and the seed company must have honored the contract by paying the grower the full contract price, including the seed premium if a seed premium is specified in the contract. The compensation rate will equal the seed margin. The seed margin is $4.50 per bushel for private variety seed and $2.40 per bushel for public variety seed.

(5) *Seed companies that sold wheat seed for propagative purposes.* Seed companies with 1995–1996 crop season certified wheat seed or 1995–1996 crop season wheat grown with the intent of producing certified wheat seed, and seed companies with certified wheat seed inventories in their possession that were unsold as of March 1, 1996, are eligible to receive compensation as described in this paragraph if the wheat seed was sold for propagative purposes. In addition, for claims on 1995–1996 crop season wheat, the wheat must have been grown under contract and the seed company must have honored the contract by paying the grower the full contract price, including the seed premium if a seed premium is specified in the contract. The compensation rate will equal the estimated market price for grain (EMP) plus the seed margin (SM) minus the higher of either the actual price received by the seed company (AP) or the salvage value (SV), as described in paragraph (d)(6) of this section. In each case, the amount of the actual price or the salvage value of the wheat seed will include the value of any proceeds accrued through insurance claims, judgments, or from any other source. The equation for this compensation is: Compensation rate = EMP + SM − higher of AP or SV. The seed margin is $4.50 per bushel for private variety seed and $2.40 per bushel for public variety seed. However, compensation will not exceed $7.00 per bushel for private variety seed and $4.90 per bushel for public variety seed under any circumstances.

(6) *Salvage value.* Salvage values will be determined 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 areas 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 areas 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.

(7) *To claim compensation.* Compensation payments for claims made under paragraph (d) of this section will be issued by the Farm Service Agency (FSA). Claims for compensation must be received by FSA on or before April 22, 1998. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before that date. To claim compensation, a grower or seed company must submit to the local FSA county office all of the following that apply:

(i) The grower or seed company must submit a Karnal Bunt Compensation Claim form, provided by FSA;

(ii) The grower or seed company must submit a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold, total bushels sold, and the total price received by the grower or seed company;

(iii) The grower or seed company must submit verification as to the actual (not estimated) weight of the wheat for which compensation is being claimed (such as a copy of a facility weigh ticket, or other verification);

(iv) The grower or seed company must submit documentation showing that the wheat is either certified seed or was grown with the intention of producing certified seed (this documentation may include one or more of the following types of documents: an application to the State seed certification agency for field inspection; a bulk sale certificate; certification tags or labels issued by the State seed certification agency; or a document issued by the State seed certification agency verifying that the wheat is certified seed);

(v) For claims on 1995–1996 crop season wheat, the grower or seed company must submit a copy of the contract under which the wheat was grown. Seed companies claiming compensation on seed inventories that were in their possession as of March 1, 1996, do not have to submit a copy of

the contract under which the wheat was grown;

(vi) A seed company that is claiming compensation for seed inventories must certify to FSA that the wheat seed was in the seed company's possession as of March 1, 1996;

(vii) The grower or seed company must submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results; *provided that,* if a grower or seed company moved its wheat only within the regulated area, and therefore, does not have a corresponding Karnal bunt certificate for the wheat for which compensation is being claimed, a limited permit stating that the wheat was positive for Karnal bunt will be accepted in lieu of a Karnal bunt certificate. Any wheat that was moved only within the regulated area and that was not moved under a limited permit will be considered negative for Karnal bunt;

(viii) If the wheat was grown in an area that is not a regulated area, but for which an Emergency Action Notification (PPQ Form 523) (EAN) for Karnal bunt has been issued, the grower or seed company must submit a copy of the EAN.

(e) *Other compensation for seed companies.* Seed companies are also eligible to receive compensation under the following circumstance: If a seed company has 1995–1996 crop season certified wheat seed, or 1995–1996 crop season wheat grown with the intent of producing certified wheat seed, that cannot be sold for use as grain or animal feed because it was previously cleaned, treated, and bagged, the compensation rate will equal $9.40 per bushel for private variety seed and $7.30 per bushel for public variety seed. Compensation will only be paid if the seed company has destroyed the wheat by burying it in a sanitary landfill or other site that has been approved by APHIS. The compensation will be issued by the Farm Service Agency (FSA). Claims for compensation must be received by FSA on or before April 22, 1998. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before that date. To claim compensation, a seed company must submit to the local FSA county office all of the following that apply:

(1) The seed company must submit a Karnal Bunt Compensation Claim form, provided by FSA;

(2) The seed company must submit verification of how much wheat was buried, in the form of a receipt from the sanitary landfill or verification signed by an APHIS inspector;

(3) The seed company must submit documentation showing that the wheat is either certified seed or was grown with the intention of producing certified seed (this documentation may include one or more of the following types of documents: an application to the State seed certification agency for field inspection; a bulk sale certificate; certification tags or labels issued by the State seed certification agency; or a document issued by the State seed certification agency verifying that the wheat is certified seed);

(4) For claims on 1995–1996 crop season wheat that was buried, the seed company must submit a copy of the contract under which the wheat was grown. Seed companies claiming compensation on buried seed inventories that were in their possession as of March 1, 1996, do not have to submit a copy of the contract under which the wheat was grown;

(5) A seed company that is claiming compensation for seed inventories that were buried must certify to FSA that the wheat seed was in the seed company's possession as of March 1, 1996;

(6) If the wheat was grown in an area that is not a regulated area, but for which an Emergency Action Notification (PPQ Form 523)(EAN) for Karnal bunt has been issued, the seed company must submit a copy of the EAN.

* * * * *

(i) *Wheat straw producers.* Producers of wheat straw (either growers who bale their own wheat straw or individuals contracted by growers to remove wheat straw from the growers' fields) made from wheat grown in the regulated areas in the 1995–1996 crop season are eligible to receive compensation on a one-time-only basis at the rate of $1.00 per 80-pound bale or $1.25 per hundredweight. Producers are eligible for compensation regardless of whether or not the straw is sold, but the straw must have been produced under contract. Compensation payments will be issued by the Farm Service Agency (FSA). To claim compensation, a wheat straw producer must submit a Karnal Bunt Compensation Claim form, provided by FSA, and a copy of the contract under which the wheat straw was produced to the local FSA county office. Claims for compensation must be received by FSA on or before April 22, 1998. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation prior to that date.

Done in Washington, DC, this 23rd day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–550 Filed 1–8–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 214, 235, and 274a

[INS No. 1611–93]

RIN 1115–AB72

Temporary Entry of Business Persons Under the North American Free Trade Agreement (NAFTA)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements provisions of the North American Free Trade Agreement (NAFTA) by amending the Immigration and Naturalization Service (Service) regulations establishing procedures for the temporary entry of Canadian and Mexican citizen business persons into the United States. This rule will facilitate temporary entry on a reciprocal basis among the United States, Canada, and Mexico, while recognizing the continued need to ensure border security and to protect indigenous labor and permanent employment in all three countries.

EFFECTIVE DATE: January 9, 1998.

FOR FURTHER INFORMATION CONTACT: Helen V. deThomas, Adjudications Officer, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: On December 17, 1992, the Presidents of the United States and Mexico and the Prime Minister of Canada entered into the North American Free Trade Agreement (NAFTA). Implementation of this agreement has been provided for by the North American Free Trade Agreement Implementation Act (NAFTA Implementation Act), Public Law 103–182. The NAFTA Implementation Act was signed into law by the President of the United States on December 8, 1993. The NAFTA entered into force on January 1, 1994.

This final rule pertains to Canadian and Mexican citizen temporary visitors for business seeking classification under section 101(a)(15)(B) of the Immigration