

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 01–112–1]

RIN 0579–AB45

#### Karnal Bunt Compensation

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

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

**SUMMARY:** We are amending the Karnal bunt regulations to provide compensation for certain growers and handlers of grain and seed affected by Karnal bunt who are not currently eligible for compensation, and for certain wheat grown outside the regulated area that was commingled with wheat grown in regulated areas in Texas. The payment of compensation is necessary in order to encourage the participation of, and obtain cooperation from, affected individuals in our efforts to contain and reduce the prevalence of Karnal bunt.

**DATES:** This interim rule is effective May 1, 2002. We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 1, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–112–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–112–1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached

files. Please include your name and address in your message and “Docket No. 01–112–1” on the subject line.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Spaide, Director for Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 98, Riverdale, MD 20737–1231; (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 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 301.89–16 (referred to below as the regulations). 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. The regulations also provide for the payment of compensation for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey who incurred losses and

expenses because of Karnal bunt during certain years. These provisions are in § 301.89–15, “Compensation for growers, handlers, and seed companies in the 1999–2000 and subsequent crop seasons,” and § 301.89–16, “Compensation for grain storage facilities, flour millers, and National Survey participants for the 1999–2000 and subsequent crop seasons.”

On August 6, 2001, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** a final rule (66 FR 40839–40843, Docket No. 96–016–37) that established the compensation levels for the 1999–2000 growing season and subsequent years and made several other changes to the compensation regulations. One of these changes was that, after the 2000–2001 growing season, compensation would no longer be made available to persons growing or handling crops that were knowingly planted in previously regulated areas.

We have recently identified and analyzed five situations where certain wheat growers, handlers, and other parties covered by the compensation regulations appear to be ineligible to receive compensation for grain or seed affected by Karnal bunt due to restrictive language used in the regulations that did not anticipate certain complications in the harvest and storage of grain that arose following discovery of Karnal bunt in four counties in northern Texas. The situations we are addressing primarily affect growers and handlers in Texas, and certain handlers who moved grain from other States to Texas for storage. In particular, four counties in northern Texas became regulated areas during the latter part of the 2000–2001 growing season, and due to the need to quickly declare these counties as regulated areas, we were unable to modify the compensation regulations at that time to address certain relevant aspects of the way seed and grain are moved, stored, and used in the newly regulated areas. We are now revising the compensation regulations to address five particular situations in Texas regulated areas. These cases represent unanticipated circumstances applicable only to the 2000–2001 growing season where we believe the parties affected should, in fairness, be eligible for compensation.

We are revising the compensation regulations to allow persons included in

these five situations to apply for compensation. The situations covered by these regulatory changes are described below.

*Compensation for Certain Karnal Bunt Negative Wheat*

In 2001, we have added four counties in Texas (Archer, Baylor, Throckmorton, and Young Counties) to the list of Karnal bunt regulated areas (66 FR 32209–32210, Docket No. 01–058–1, June 14, 2001, and 66 FR 37575–37576, Docket No. 01–063–1, July 19, 2001). Approximately 7.4 million bushels of negative-tested wheat from the four counties added in 2001 are currently stored in grain elevators.

Even though this wheat is Karnal bunt negative, it cannot be exported to major markets as it normally would be, because it was tested after harvest at the elevator, not in the field. Major foreign importers will accept U.S. wheat only if it can be certified as coming from an area where Karnal bunt is not known to exist. Such certification is currently based on testing at the field level.

For this reason, when a producer near an area affected by Karnal bunt knows his wheat is destined for export, he generally arranges to have his fields tested for Karnal bunt. However, in northern Texas this past crop season, most wheat had already been harvested when Karnal bunt was discovered in the four counties subsequently added as regulated areas, so that wheat could only be tested in bins. The result is that approximately 7.4 million bushels of this wheat are still in storage, cannot be exported, must move under limited permit, and are currently ineligible for compensation under the regulations.

We are making this wheat eligible for compensation payments by adding a new paragraph (d) to § 301.89–15, “Compensation for growers, handlers, and seed companies in the 1999–2000 and subsequent crop seasons.” This new paragraph reads as follows: “(d) *Special allowance for negative wheat grown in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000–2001 growing season.* Notwithstanding any other provision of this section, wheat that was harvested from fields in Archer, Baylor, Throckmorton, or Young Counties, TX, in the 2000–2001 growing season, and that tested negative for Karnal bunt after harvest, is eligible for compensation in accordance with paragraph (a) of this section.”

*Compensation for the Cost of Replacing Uncertified Seed*

With regard to seed, the regulations in effect prior to this rule limit compensation payments to certified

seed and seed being grown as certified seed. This provision does not address compensation in situations where a producer holds back grain from sale in order to use it as seed the next season. This practice of holding back grain for use as seed is common in regulated areas of Texas but is rare in other regulated States. The regulations do not address losses associated with the inability of producers to use held-back grain as seed for planting the next year's crop if Karnal bunt spores are detected in that grain. Because they cannot use spore-positive held-back grain as seed for planting, growers must purchase replacement seed to plant next year's crop.

Growers who hold back wheat in order to use it as seed only to find that it contains Karnal bunt spores may be able to sell that wheat as grain, but the cost of replacement seed will exceed the income generated from the sale of the seed as grain. Approximately 176 growers, and 483,000 bushels of uncertified seed, are affected by this situation. The growers involved will incur losses between \$2 and \$3 per bushel. As an incentive for program participation, we intend to partially mitigate this loss by changing the regulations to make producers in this situation eligible for compensation for held-back grain intended for use as seed that is determined to be Karnal bunt spore-positive. The current compensation cap on both grain and seed is \$1.80 per bushel in an area under the first regulated crop season and \$0.60 per bushel in previously regulated areas, regardless of the actual loss.

To accomplish this change, we are changing the last sentence of the introductory text of § 301.89–15(a) to read “The compensation provided in this section is for wheat grain, certified wheat seed, wheat held back from harvest by a grower in the 2000–2001 growing season for use as seed in the next growing season, and wheat grown with the intention of producing certified wheat seed.”

*Compensation for the Cost of Disposing of Uncertified Treated Seed*

Another case where the regulations in effect prior to this rule did not provide compensation applies to the owners of uncertified Karnal bunt spore-positive seed that has been treated with fungicides or other chemicals, and thus cannot be sold as grain. The regulations did not allow compensation for uncertified seed, or provide any reimbursement for disposal costs. An estimated 56,000 bushels of uncertified treated seed tested positive for spores in

the 2000–2001 growing season. This treated seed cannot be used for consumption by humans or animals; it must be disposed of in an approved manner, such as burying in a landfill or on-farm disposal.

We are adding a paragraph to provide compensation for the disposal costs for treated uncertified wheat seed. This compensation for disposal costs is in addition to the payments discussed in the previous section regarding compensation for replacing uncertified seed. The cost to bury wheat seed, whether on the producer's premises or at a landfill, is about \$1.00 per bushel. In addition, there are transportation costs involved in moving seed to a landfill, which average about \$0.20 per bushel. Therefore, we are adding new paragraph § 301.89–15(e) to read as follows: “(e) *Special allowance for disposal costs for treated uncertified wheat seed in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000–2001 growing season.* Notwithstanding any other provision of this section, growers in Archer, Baylor, Throckmorton, or Young Counties, TX, who own treated uncertified wheat seed that tested positive for Karnal bunt spores during the 2000–2001 growing season are eligible for compensation in accordance with this paragraph. The grower is eligible for compensation for the costs of disposing of such wheat seed, by burial on the grower's premises, by burial at a landfill, or through another means approved by APHIS. The compensation for disposing of wheat seed by burial on the grower's premises is \$1.00 per bushel. The compensation for disposing of wheat seed by burial at a landfill, or through another means approved by APHIS, is the actual cost of disposal, up to \$1.20 per bushel, as verified by receipts for disposal costs. To apply for this compensation, the grower must submit a Karnal Bunt Compensation Claim form, provided by the Farm Service Agency, and must also submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results, and verification as to the actual (not estimated) weight of the uncertified wheat seed that tested positive for spores (such as a copy of a facility weigh ticket, or other verification). For seed disposed of by burial at a landfill, the grower must also submit one or more receipts for the disposal costs of the uncertified wheat seed, showing the total bushels destroyed and the total disposal costs (landfill fees, transportation costs, etc.).”

### *Compensation for Affected Wheat Grown Outside of Regulated Areas*

Approximately 2.8 million bushels of wheat stored in bins in Texas is considered Karnal bunt positive; some of this wheat was grown in regulated areas and an unknown amount was grown by Texas producers located outside the regulated area and by producers located in Oklahoma. Because of commingling, all 2.8 million bushels—including that wheat grown outside of the regulated area—is considered positive. The regulations provide that to be eligible for compensation, the wheat must be grown in a State where the Secretary has declared an extraordinary emergency and must meet certain other criteria. Therefore, prior to this rule, compensation could be paid for that portion of the 2.8 million bushels that was grown in Texas, but the wheat grown in Oklahoma was not eligible for compensation, because the Secretary has not declared an extraordinary emergency in that State.

To address this, we are adding a new sentence to § 301.89–15(a), the paragraph that describes eligibility for compensation of growers and handlers. The new sentence reads “Growers and handlers of wheat grown in Oklahoma during the 2000–2001 growing season are eligible to receive compensation if the wheat was commingled in storage with wheat that meets the above requirements of this paragraph.” This change allows compensation to be paid to Oklahoma growers and handlers whose wheat has been commingled in Texas with Texas-grown Karnal bunt positive wheat during storage. The Oklahoma growers and handlers will receive the same compensation as the Texas growers; i.e., payments of up to \$1.80 per bushel.

### *Eligibility for Compensation in the 2001–2002 Crop Season*

The regulations state that, beginning with the 2001–2002 crop season, growers who knowingly plant wheat in previously regulated areas are not eligible for compensation. We included this requirement based on our belief that the regulations should not provide “insurance” for growers who knowingly take the risk of planting in an area where their wheat crop faces an increased risk of testing positive for Karnal bunt. Growers who are aware that previously regulated areas present a greater risk of contaminating their crop with Karnal bunt can choose to alter their planting or contracting decisions to avoid experiencing losses due to Karnal bunt. However, when this policy

was announced in the August 6, 2001, final rule, growers in northern Texas were faced with a situation where they had incomplete knowledge upon which to base their business decisions for the next growing season. Karnal bunt was discovered in northern Texas well into the 2000–2001 growing season, reducing the time growers had to plan for the next season. While APHIS had declared four entire counties as regulated areas, there had been only limited testing of certain fields in those counties (about 150 fields were tested before the final rule), and growers knew that the regulated area might be either reduced to less than the entire counties, or conversely expanded to include fields in adjacent counties, depending on future test results. Therefore, growers could not make fully informed business decisions on whether it was prudent to plant wheat in the four regulated counties, or adjacent areas, in the 2001–2002 growing season. The discovery of Karnal bunt in these counties also came at the same time growers were making commitments for field usage, seed, and equipment for the next growing season, and some growers had already committed to growing wheat the following year in what became a regulated area. Finally, the weather and moisture conditions in this part of northern Texas make it unlikely that growers could successfully substitute another crop for wheat in the regulated areas.

For these reasons, growers in the four northern Texas counties have sought 1-year deferral of the regulatory requirement that growers who knowingly plant wheat in previously regulated areas are not eligible for compensation. We agree that to enforce the requirement in this case would represent an unanticipated and unintended hardship on growers in the Texas counties of Archer, Baylor, Throckmorton, and Young, and are changing the regulations to make this provision take effect, with regard only to only those counties, beginning with the 2002–2003 crop season instead of the 2001–2002 crop season. This deferral does not apply to the 27 fields in northern Texas that were discovered to be infected (i.e., to contain one or more bunted kernels) in the course of Karnal bunt surveys in 2001, as owners of these fields had timely notice of the survey results and had a reasonable opportunity to change their planting plans for the next season.

To accomplish this change, we are adding an exception to the second-to-last sentence of the introductory text of § 301.89–15(b), “Growers, handlers, and seed companies in previously regulated

areas.” As amended, that sentence reads: “Growers, handlers, and seed companies in previously regulated areas will not be eligible for compensation for wheat from the 2001–2002 and subsequent crop seasons; except that, for growers or handlers of wheat harvested in any field in the Texas counties of Archer, Baylor, Throckmorton, and Young during the 2000–2001 crop season that has not been found to contain a bunted wheat kernel, this requirement applies to compensation for wheat from the 2002–2003 and subsequent crop seasons.”

### *Deadline for Submission of Claims*

As discussed previously, this rule extends existing compensation provisions to cover certain additional growers, handlers, and owners of grain storage facilities to mitigate losses and expenses incurred in the 2000–2001 crop season because of the Karnal bunt quarantine and emergency actions. The regulations in § 301.89–15(c) provide that compensation payments to growers, handlers, and seed companies will be issued by the Farm Service Agency (FSA), and that claims for compensation must be received by FSA on or before March 1 of the year following the crop season during which the losses occurred. Thus, claims for compensation for the 2000–2001 crop season were due on March 1, 2002. The regulations in § 301.89–15(c) also provide that the Administrator may extend the deadline, upon request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates. Given that the effective date of this rule falls after the March 1, 2002, deadline cited above, we are extending, for a period of 90 days from the effective date of this rule, the 2000–2001 crop season claims deadline to provide for the submission of claims for the compensation provided for by this interim rule. Such claims must be received by FSA on or before July 30, 2002.

### *Emergency Action*

This rulemaking is necessary on an emergency basis to eliminate the risk presented by maintaining large stores of Karnal bunt-positive wheat, which cannot be destroyed until its eligibility for indemnity is clarified. The indemnity payments authorized by this rule are also necessary in order to reduce the economic effect of the Karnal bunt regulations on affected wheat growers and other individuals and to help obtain cooperation from affected individuals in our efforts to contain and

reduce the prevalence of Karnal bunt. 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 rule 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 as a result of the comments.

#### **Executive Order 12866 and Regulatory Flexibility Act**

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

This rule extends existing compensation provisions to cover certain additional growers, handlers, and owners of grain storage facilities to mitigate losses and expenses incurred in the 2000–2001 crop season because of the Karnal bunt quarantine and emergency actions. The affected parties are primarily growers and handlers in four northern Texas.

Below is an economic analysis for this interim rule. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

The following economic analysis indicates that the cost of the rule would be about \$4.8 million. It would be necessary to obtain these funds from the Commodity Credit Corporation. Benefits cannot be monetized with accuracy, but would include averting future wheat crop losses that would occur without the improved producer participation this rule is expected to achieve.

Benefits would also include greater likelihood of grower cooperation in Karnal bunt testing requirements and participation in the National Karnal Bunt Survey.

#### **Compensation for Certain Karnal Bunt-Negative Wheat**

Prior to this rule, the regulations did not allow for compensation for any Karnal bunt-negative wheat.<sup>1</sup> This rule

allows compensation for losses associated with certain negative wheat, i.e., elevator-tested-negative wheat harvested in the 2000–2001 crop season in northern Texas. The level of compensation offered is the same as that currently being offered for positive-testing grain and certified seed in first regulated areas, i.e., up to \$1.80/bushel. The four-county regulated area in northern Texas became a regulated area in the 2000–2001 crop season.

Approximately 7.4 million bushels of negative-tested wheat from the four-county regulated area in northern Texas is currently stored in grain elevators. Even though it is Karnal bunt-negative, this wheat cannot be exported to major markets as it normally would be because it was tested after harvest at the elevator, not in the field. (Major foreign importers will accept U.S. wheat only if it can be certified as coming from an area where Karnal bunt is not known to exist. Such certification is currently based on testing at the field level.) In northern Texas this past crop season, most wheat had already been harvested when Karnal bunt was discovered, so it could only be tested in bins. The glut on the local domestic market created by the absence of an export outlet, and the reluctance of some mills to accept “tainted” wheat that may move only under a limited permit, have severely limited the market for this negative wheat, resulting in a loss in its value.

The loss in value of the negative grain is estimated at about \$0.35/bushel. Based on this per bushel loss estimate, compensation will total about \$2.6 million for all 7.4 million bushels of grain.

It is estimated that approximately 20 to 30 handlers will be affected by this rule, including two handlers who, together, account for 70 percent of the 7.4 million affected bushels.

#### **Compensation for the Cost of Replacing Certain Uncertified Seed**

Prior to this rule, the regulations limited compensation payments to certified seed and seed being grown as certified seed, and did not address losses associated with the inability of growers to use held-back grain that is found to be spore-positive for planting the next year's crop. This rule makes

and thus generally no costs or losses imposed on its owners. However, there is precedent for paying compensation for negative wheat when its value is affected by movement restrictions applied to positive wheat. In the 1995–1996 crop season, when Karnal bunt was first discovered in Arizona, compensation was paid for the loss in value of negative-testing wheat, due to regulatory restrictions that existed at that time, which included a requirement that the negative-testing wheat could be moved only under a limited permit.

compensation available for such losses on a one crop season-only basis, i.e., for grain grown in the 2000–2001 crop season intended for use in planting the 2001–2002 season's crop. The level of compensation offered is the same as that currently being offered for positive-testing grain and certified seed in the 2000–2001 crop season, i.e., up to \$1.80/bushel in first regulated areas and \$0.60/bushel in previously regulated areas.

Growers in Texas normally hold back a quantity of grain for use as seed in the next planting season. During the 2000–2001 crop season, approximately 483,000 bushels of this seed (457,000 bushels in the four northern Texas counties and 26,000 bushels in San Saba County, Texas) tested negative for bunted kernels but positive for spores, which means that it can be used for grain but not seed. Growers, therefore, will have to purchase replacement seed. However, the cost of replacement seed will exceed the income generated from the sale of the seed as grain, meaning that growers involved will incur losses. Grower losses, before any compensation from USDA, are estimated to range between \$2 and \$3/bushel.

Total compensation is estimated at \$838,200; i.e., \$822,600 for the 457,000 bushels in the four newly regulated northern Texas counties ( $457,000 \times \$1.80$ ), and \$15,600 for the 26,000 bushels in previously regulated San Saba County ( $26,000 \times \$0.60$ ). Since grower losses are expected to range between \$2 and \$3/bushel, growers and handlers qualify for compensation at the maximum levels offered. Approximately 176 growers will be affected by this aspect of the rule.

#### **Compensation for the Cost of Disposing of Certain Uncertified Treated Seed**

Prior to this rule, there was no compensation for the cost of disposing of uncertified treated seed that tests positive for spores or bunted kernels. This rule allows for such compensation on a one crop season-only basis, i.e., for seed grown in the 2000–2001 crop season. This compensation for disposal costs is in addition to the payments discussed in the previous paragraphs regarding compensation for replacing uncertified seed. The level of compensation offered for the cost of disposing of uncertified treated seed that tests positive for spores or bunted kernels is \$1.00/bushel, or up to \$1.20/bushel, depending on whether the seed is disposed of in a landfill or on-farm. The former is for on-farm disposal, the

<sup>1</sup> This is because there are no regulatory restrictions on the movement of negative wheat,

latter for landfill disposal.<sup>2</sup> The landfill disposal cost of \$1.00/bushel is based on a telephone survey of regional landfills conducted by the APHIS Texas area office.

As indicated above, approximately 457,000 bushels of uncertified seed grown in the four northern Texas counties in the 2000–2001 crop season tested positive for spores. Of that total, about 38,000 bushels were treated with fungicides prior to testing, which means that it cannot be used for consumption by humans or animals; it must be disposed of in an approved manner, e.g., burying it in a landfill or disposing of it on-farm. Such disposal requirements impose additional costs on growers.

In addition, about 18,000 bushels of uncertified seed grown in the four northern Texas counties in the 2000–2001 crop season tested positive for bunted kernels. These 18,000 bushels, because they were treated with fungicides prior to testing, must also be disposed of in an approved manner.

For all 56,000 bushels, compensation is estimated to total \$66,080. This compensation estimate assumes that 50,400 bushels, or 90 percent of the total affected bushels, will be disposed of in a landfill at a cost of \$1.20/bushel, and that the remainder (5,600 bushels) will be disposed of on-farm at a cost of \$1.00/bushel.<sup>3</sup> Approximately 15 to 20 growers will be affected by this change.

#### *Compensation for Handlers With Positive Wheat Grown Outside the Regulated Area*

Prior to this rule, handlers in Texas were not eligible for compensation for losses associated with any wheat grown outside the regulated area that was declared positive because it was commingled in storage with positive wheat grown in the regulated areas. This rule offers such compensation. The level

of compensation offered will be the same as that currently being offered for positive-testing grain and certified seed in first regulated areas, i.e., up to \$1.80/bushel.

Approximately 2.8 million bushels of Karnal bunt-positive wheat is stored in bins in Texas, including a relatively small amount (no more than 25,000 bushels) of wheat grown by producers located in Oklahoma. (Because of commingling, all of the grain—including that grown outside the regulated area is considered positive.) The one handler who owns all of the Oklahoma-grown wheat has incurred losses, because it was purchased from the Oklahoma producers at the price for Karnal bunt-negative wheat but can now be sold only at the much lower price for positive wheat. Prior to this rule, the regulations provided that, for handlers and others to be eligible for compensation, the wheat must have been grown in a State where the Secretary has declared an extraordinary emergency and meet certain other criteria. Thus, compensation was available for that portion of the 2.8 million bushels that was grown in Texas, but the wheat grown in Oklahoma, because the Secretary has not declared an extraordinary emergency in that State, was not eligible for compensation.

Compensation is estimated to total no more than \$45,000 (25,000 bushels x \$1.80). One handler will be affected by this aspect of the rule.

#### *Eligibility for Compensation in 2001–2002 Crop Season*

The regulations in effect prior to this interim rule stated that, effective with the 2001–2002 crop season, growers who knowingly plant wheat in previously regulated areas are not eligible for compensation. This rule defers, for 1 year, the effective date of that ineligibility provision with regard to the four-county regulated area in northern Texas (excluding areas in or near one of the 27 known infected fields).

Growers in northern Texas have argued that, because of limited testing, they and USDA have limited knowledge about the status of fields in the regulated area and the risk of infection next year. The growers requested the 1-year deferral to allow for the completion of next year's delimiting survey.

The estimated amount of compensation that will result from the 1-year deferral for growers in the four-county regulated area in northern Texas is unknown, because future infection rates are unknown. However, based on operational experience conducting the

Karnal bunt program in other areas, there is no reason to believe that next year's compensation costs will be higher than this year's total. If 43 percent of the 5 million bushels expected to be produced in the four-county regulated area during 2000–2001 turn up positive, the compensation would total \$1,290,000 (2,150,000 bushels x \$0.60). The infection rate of 43 percent is an average of last year's infection rate in Arizona's largest production area and in San Saba County, TX. This aspect of the rule will affect approximately 400 to 450 growers in northern Texas.

The Regulatory Flexibility Act requires that agencies consider the economic impact of rules on small businesses, organizations, and governmental jurisdictions. Growers and handlers of wheat grain and seed are those most affected by this rule. It is estimated that there are a total of 420 to 480 wheat growers and handlers potentially affected by this rule, most of whom are located in the four northern Texas counties of Archer, Baylor, Throckmorton, and Young. Most of these entities have total annual sales of less than \$750,000, the Small Business Administration's threshold for classifying wheat producers as small entities. Accordingly, most economic impacts of this rule will be on small entities.

This rule is expected to have a positive economic impact on all affected entities, large and small. Although most of the affected entities are small in size, the bulk of this rule's benefits, in dollar terms, are likely to accrue to two large handlers. Compensation for Karnal bunt-related losses and expenses serves to encourage compliance with testing requirements within the regulated areas, thereby aiding in the preservation of an important wheat growing region in the United States. It also serves to encourage participation in the National Karnal Bunt Survey program.

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.

#### *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

<sup>2</sup> For landfill disposal, the maximum level of compensation (i.e., \$1.20/bushel) is derived based on the estimated cost to buy wheat seed at a landfill (\$1.00/bushel) and the estimated cost to transport the seed to the landfill (\$0.20/bushel). Although on-farm disposal eliminates the need to transport the seed to the landfill, that disposal method still involves additional costs for growers. For these purposes, it is assumed that the cost of on-farm disposal and the estimated cost of landfill disposal (excluding transportation costs) are the same. If on-farm disposal costs do exceed \$1.00/bushel, growers always have the option of landfill disposal. The transportation cost of \$0.20/bushel is the approximate cost to transport one bushel of wheat from the four county regulated area in northern Texas to the landfill site, near Wichita Falls, Texas. In January 2002, the Texas Department of Natural Resources began accepting applications for permits to dispose of the seed at the landfill site.

<sup>3</sup> For several reasons, including the fact that many growers lease rather than own their land, on-farm disposals are assumed to be much fewer in number than landfill disposals.

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 new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 7 CFR Part 301**

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

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. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

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

2. Section 301.89–15 is amended as follows:

a. In the introductory text of paragraph (a), by removing the last two sentences and by adding three sentences in their place to read as follows.

b. In the introductory text of paragraph (b), by removing the last two sentences and by adding two sentences in their place to read as follows.

c. By adding new paragraphs (d) and (e) to read as follows.

#### **§ 301.89–15 Compensation for growers, handlers, and seed companies in the 1999–2000 and subsequent crop seasons.**

\* \* \* \* \*

(a) \* \* \* Growers and handlers of wheat grown in Oklahoma during the 2000–2001 growing season are eligible to receive compensation if the wheat was commingled in storage with wheat that meets the above requirements of this paragraph. Growers, handlers, and seed companies in areas under the first regulated crop season are eligible for compensation for 1999–2000 or subsequent crop season wheat and for wheat inventories in their possession that were unsold at the time the area became regulated. The compensation provided in this paragraph is for wheat grain, certified wheat seed, wheat held

back from harvest by a grower in the 2000–2001 growing season for use as seed in the next growing season, and wheat grown with the intention of producing certified wheat seed.

\* \* \* \* \*

(b) \* \* \* Growers, handlers, and seed companies in previously regulated areas will not be eligible for compensation for wheat from the 2001–2002 and subsequent crop seasons; except that, for growers or handlers of wheat harvested in any field in the Texas counties of Archer, Baylor, Throckmorton, and Young during the 2000–2001 crop season that has not been found to contain a bunted wheat kernel, this requirement applies to compensation for wheat from the 2002–2003 and subsequent crop seasons. The compensation provided in this paragraph is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed.

\* \* \* \* \*

(d) *Special allowance for negative wheat grown in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000–2001 growing season.* Notwithstanding any other provision of this section, wheat that was harvested from fields in Archer, Baylor, Throckmorton, or Young Counties, TX, in the 2000–2001 growing season, and that tested negative for Karnal bunt after harvest, is eligible for compensation in accordance with paragraph (a) of this section.

(e) *Special allowance for disposal costs for treated uncertified wheat seed in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000–2001 growing season.* Notwithstanding any other provision of this section, growers in Archer, Baylor, Throckmorton, or Young Counties, TX, who own treated uncertified wheat seed that tested positive for Karnal bunt spores during the 2000–2001 growing season are eligible for compensation in accordance with this paragraph. The grower is eligible for compensation for the costs of disposing of such wheat seed, by burial on the grower's premises, by burial at a landfill, or through another means approved by APHIS. The compensation for disposing of wheat seed by burial on the grower's premises is \$1.00 per bushel. The compensation for disposing of wheat seed by burial at a landfill, or through another means approved by APHIS, is the actual cost of disposal, up to \$1.20 per bushel, as verified by receipts for disposal costs. To apply for this compensation, the grower must submit a Karnal Bunt Compensation Claim form, provided by FSA, and must

also submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results, and verification as to the actual (not estimated) weight of the uncertified wheat seed that tested positive for spores (such as a copy of a facility weigh ticket, or other verification). For seed disposed of by burial at a landfill the grower must also submit one or more receipts for the disposal costs of the uncertified wheat seed, showing the total bushels destroyed and the total disposal costs (landfill fees, transportation costs, etc.).

(Approved by the Office of Management and Budget under control number 0579–0182)

Dated: Done in Washington, DC, this 26th day of April 2002.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 02–10723 Filed 4–30–02; 8:45 am]

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#### **DEPARTMENT OF ENERGY**

#### **Office of Energy Efficiency and Renewable Energy**

#### **10 CFR Part 430**

[Docket Number EE–RM/TP–99–500]

RIN 1904–AB04

#### **Energy Conservation Program for Consumer Products: Test Procedure for Dishwashers; Correction**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule; correction.

**SUMMARY:** The Department of Energy (DOE) published a final rulemaking amending its test procedure for dishwashers on December 18, 2001. This document corrects the test procedure in the amendatory language of that rulemaking and makes revisions to a reference to an appendix section and to the equations for determining the water energy consumption per cycle using gas-heated or oil-heated water.

**EFFECTIVE DATE:** June 17, 2002.

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