

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 02-058-1]

RIN 0579-AB49

#### Flag Smut Import Prohibitions on Wheat and Related Products

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

**ACTION:** Advance notice of proposed rulemaking and request for comments.

**SUMMARY:** We are soliciting public comment on whether and how we should amend the regulations regarding the importation of wheat and related items. Under these regulations, importation of wheat and related items from a number of countries and localities is currently prohibited to prevent the introduction of foreign strains of flag smut into the United States. We are considering easing restrictions on the importation of wheat and related articles from these countries and localities based on a recent risk assessment. After evaluating public comment on the issues presented in this document, we will determine whether to propose changes to our regulations.

**DATES:** We will consider all comments that we receive on or before April 8, 2003.

**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. 02-058-1, 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. 02-058-1. 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. 02-058-1" 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>. **FOR FURTHER INFORMATION CONTACT:** Mr. Wayne Burnett, Senior Import Specialist, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; (301) 734-6799.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in "Subpart—Wheat Diseases" (7 CFR 319.59 through 319.59-2, referred to below as the regulations) prohibit the importation of wheat and related items into the United States from certain parts of the world to prevent the introduction of foreign strains of flag smut and Karnal bunt. This advance notice of proposed rulemaking concerns only the prohibitions on flag smut. Flag smut is a plant disease caused by a highly infective fungus, *Urocystis agropyri*, which attacks wheat and substantially reduces its yield.

Flag smut was first described in 1868 in Australian wheat fields. Affected plants within the growing crop are often severely stunted and produce excessive numbers of tillers. Unlike other bunts and smuts of wheat, flag smut does not affect the quality of harvested grain for feed or flour. Flag smut of wheat was first discovered in the United States in 1919, and a quarantine on wheat from countries having flag smut was put in effect. Until the 1930's, flag smut was a significant disease of wheat in the United States, but has recently been found only on wheat in the Pacific Northwest when seed is sown in late August and early September at depths of more than 2 inches.

To address the risk presented by foreign strains of flag smut, the regulations prohibit the importation, except by the United States Department of Agriculture under a departmental permit, of certain articles from specified countries and localities. Specifically, the regulations prohibit the importation of the following articles of *Triticum* spp. (wheat) or *Aegilops* spp. (barb goatgrass, goatgrass):

- Seeds;
- Plants;
- Straw (other than straw, with or without heads, that has been processed or manufactured for use indoors, such as for decorative purposes or for use as toys);
- Chaff; and
- Products of the milling process (*i.e.*, bran, shorts, thistle sharps, and pollards) other than flour.

The regulations also prohibit the importation of seeds of *Melilotus indica* (annual yellow sweetclover) and seeds of any other field crops that have been separated from wheat during the screening process.

The countries and localities from which the importation of those articles is prohibited are listed in § 319.59-2(a)(2) of the regulations. The listed countries and localities are: Afghanistan, Algeria, Armenia, Australia, Azerbaijan, Bangladesh, Belarus, Bulgaria, Chile, China, Cyprus, Egypt, Estonia, Falkland Islands, Georgia, Greece, Guatemala, Hungary, India, Iran, Iraq, Israel, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Libya, Lithuania, Moldova, Morocco, Nepal, North Korea, Oman, Pakistan, Portugal, Romania, Russia, Spain, Tajikistan, Tanzania, Tunisia, Turkey, Turkmenistan, South Africa, South Korea, Ukraine, Uzbekistan, and Venezuela.

We recently evaluated the need for continuing the prohibitions to protect against foreign strains of flag smut. We are considering removing these prohibitions because a risk assessment we have prepared regarding flag smut indicates: (1) Flag smut exists in the United States in only two counties in the Pacific Northwest; (2) there is no evidence that foreign strains of flag smut differ genetically from strains present in the United States or that they pose more risk than domestic strains to wheat production in the United States; (3) we do not currently regulate the interstate

movement of domestic commodities from areas in the United States where flag smut exists; (4) because of temperature and moisture needs of the pathogen, flag smut occurs in the United States only in the Pacific Northwest and only when seed is sown under certain conditions; and (5) effective production strategies exist that minimize the effects of this disease on wheat. The pest risk assessment is available on the Internet at <http://www.aphis.usda.gov/ppq/prs>, or a copy may be requested by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Under these circumstances, it does not appear that U.S. wheat would be at risk from foreign strains of flag smut if we remove the current prohibitions. Also, we believe that we are obligated to remove the prohibitions under the World Trade Organization Agreement on Sanitary and Phytosanitary Measures and the International Plant Protection Convention. These agreements require our import regulations concerning a specified plant or plant pest to be no more stringent than our domestic regulations concerning the same plant or plant pest. These agreements also require us to impose the least restrictive requirements consistent with our appropriate level of protection.

However, simply removing the prohibitions related to flag smut could present a plant pest risk. The flag smut regulations have for many years prohibited the importation of wheat and related products from the countries and localities listed in § 319.59-2(a)(2). As the prohibitions were put into place prior to our adoption of the pest risk analysis process, no risk assessment has been prepared to determine whether other plant pests associated with wheat and other products covered by the flag smut regulations are present in those countries and localities.

We are weighing whether to continue prohibitions on wheat and related products from these countries, even if we remove the prohibitions related to flag smut, until a risk assessment can be completed that would evaluate the risk of those products introducing other plant pests. Also, we are weighing whether a similar risk assessment should be done relative to imports of wheat and related products from countries that are not currently covered by the flag smut regulations and that already ship wheat and related products to the United States. Although pest interception data has not indicated a problem with those imports, no risk assessment has been done to evaluate the risk of those products introducing other plant pests. Major exporters of

wheat to the United States include Canada and Mexico.

We invite comments on these issues. In particular, we are soliciting comments that address the following questions:

1. Should we remove the current prohibitions related to foreign strains of flag smut?

2. If we remove the prohibitions related to flag smut, are any lesser restrictions or safeguards necessary? If so, why, and what restrictions or safeguards would be appropriate?

3. If we remove the prohibitions related to flag smut, should we continue to prohibit the importation of wheat and related products from countries and localities currently covered by the flag smut regulations until a risk assessment can be completed that would evaluate the risk of those products introducing other plant pests?

4. If we require a risk assessment before allowing wheat and related products to be imported from countries now covered by the flag smut regulations, should we also require a risk assessment for wheat and related products from countries that are not currently covered by the flag smut regulations and that already ship wheat and related products to the United States?

5. What would be the effects of any of these options on:

- a. U.S. wheat producers;
- b. U.S. consumers of wheat products; and
- c. Other interested parties in the United States, such as grain storage facilities, grain haulers, feed and flour millers, and seed companies?

We welcome comments on these questions and encourage the submission of new options or suggestions.

This action 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.

**Authority:** 7 U.S.C. 166, 450, 7711-7714, 7718, 7731, 7732, and 7751-7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 3rd day of February 2003.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 03-3057 Filed 2-6-03; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

**12 CFR Parts 3, 5, 6, 7, 9, 28, and 34**

**[Docket No. 03-02]**

**RIN 1557-AB97**

### Rules, Policies, and Procedures for Corporate Activities; Bank Activities and Operations; Real Estate Lending and Appraisals

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) proposes to amend several of its regulations to update and clarify them in various respects. Proposed revisions to parts 5 and 7 would implement new authority provided to national banks by sections 1204, 1205, and 1206 of the American Homeownership and Economic Opportunity Act of 2000 (AHEOA). Section 1204 permits national banks to reorganize directly to be controlled by a holding company. Section 1205 increases the maximum term of service for national bank directors, permits the OCC to adopt regulations allowing for staggered terms for directors, and permits national banks to apply for permission to have more than 25 directors. Section 1206 permits national banks to merge with one or more of their nonbank affiliates, subject to OCC approval. In order to clarify issues that have arisen in connection with the scope of the OCC's visitorial powers, the proposal would revise part 7. The proposal contains other amendments to parts 5, 7, 9, and 34 as well as several technical corrections.

**DATES:** Comments must be received by April 8, 2003.

**ADDRESSES:** Please direct your comments to: Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1-5, Washington, DC 20219, Attention: Docket No. 03-02; fax number (202) 874-4448; or Internet address: [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov). Due to delays in the delivery of paper mail in the Washington area, we encourage the submission of comments by fax or e-mail whenever possible. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874-5043.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning proposed 5.20,