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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04-038-1]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations to make changes to the list of areas regulated because of Karnal bunt, a fungal disease of wheat. We are removing certain areas in Arizona and Texas from the list of regulated areas based on our determination that the fields in those areas meet our criteria for release from regulation. This action is necessary to relieve restrictions that are no longer warranted.

DATES: This interim rule was effective May 12, 2004. We will consider all comments that we receive on or before July 16, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04-038-1, 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. 04-038-1.

- E-mail: Address your comment to 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. 04-038-1" on the subject line.

- Agency Web site: Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday

through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Matthew Royer, Senior Program Adviser, Pest Detection and Management Programs, PPD, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737-1236; (301) 734-7819.

SUPPLEMENTARY INFORMATION: 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 primarily through the movement of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

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

Regulated Areas

The regulations in § 301.89-3(e) provide that we will classify a field or area as a regulated area when it is:

- A field planted with seed from a lot found to contain a bunted wheat kernel;
- A distinct definable area that contains at least one field that was found during a survey to contain a bunted wheat kernel. The distinct definable area may include an area where Karnal bunt is not known to exist

but where intensive surveys are required because of the area's proximity to a field found during survey to contain a bunted wheat kernel; or

- A distinct definable area that contains at least one field that has been determined to be associated with grain at a handling facility containing a bunted kernel of a host crop. The distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of that area's proximity to the field associated with the bunted kernel at the handling facility.

The boundaries of distinct definable areas are determined using the criteria in paragraphs (b) through (d) of § 301.89-3, which provide for the regulation of less than an entire State, the inclusion of noninfected acreage in a regulated area, and the temporary designation of nonregulated areas as regulated areas. Paragraph (c) of § 301.89-3 states that the Administrator may include noninfected acreage within a regulated area due to its proximity to an infestation or inseparability from the infested locality for regulatory purposes, as determined by:

- Projections of the spread of Karnal bunt along the periphery of the infestation;
- The availability of natural habitats and host materials within the noninfected acreage that are suitable for establishment and survival of Karnal bunt; and
- The necessity of including noninfected acreage within the regulated area in order to establish readily identifiable boundaries.

When we include noninfected acreage in a regulated area for one or more of the reasons previously listed, the noninfected acreage, along with the rest of the acreage in the regulated area, is intensively surveyed. Negative results from surveys of the noninfected acreage provide assurance that all infected acreage is within the regulated area. In effect, the noninfected acreage serves as a buffer zone between fields or areas affected with Karnal bunt and areas outside of the regulated area.

Under the regulations in § 301.89-3(f), a field known to have been infected with Karnal bunt, as well as any noninfected acreage surrounding the field, will be released from regulation if:

- The field is no longer being used for crop production; or
- Each year for a period of 5 consecutive years, the field is subjected to any one of the following management practices (the practice used may vary from year to year): (1) Planted with a cultivated non-host crop; (2) tilled once

annually; or (3) planted with a host crop that tests negative, through the absence of bunted kernels, for Karnal bunt.

The regulations in § 301.89–3(g) describe the boundaries of the regulated areas in Arizona, California, and Texas. In this interim rule, we are amending § 301.89–3(g) by removing certain areas in Arizona and Texas from the list of regulated areas, based on our determination that the fields in those areas are eligible for release from regulation under the criteria in § 301.89–3(f). This action relieves restrictions on fields within those areas that are no longer warranted.

Arizona

The list of regulated areas in Arizona includes individual fields and other distinct definable areas located in La Paz, Maricopa, and Pinal Counties. In this interim rule, we are removing two fields and the surrounding regulated acreage (a total of 26,256 acres) located in La Paz County, AZ. The fields had been designated as a regulated area because they were planted, in 1996, with seed that was potentially contaminated with Karnal bunt. We are now deregulating this portion of the regulated area because each year for a period of 5 consecutive years, the fields were subjected to at least one of the management practices described in § 301.89–3(f)(2).

Texas

The list of regulated areas in Texas includes distinct definable areas located in Archer, Baylor, Knox, McCulloch, San Saba, Throckmorton, and Young Counties. In this interim rule, we are modifying the boundaries for the regulated areas in McCulloch and San Saba Counties by removing one field in San Saba County and the surrounding regulated acreage, which falls in both counties (a total of 23,680 acres) from the list of regulated areas. This particular field had been designated as part of the regulated area in 1997 because it was found during survey to contain spores consistent with Karnal bunt. We are now deregulating this portion of the regulated area because each year for a period of 5 consecutive years, the field was subjected to at least one of the management practices described in § 301.89–3(f)(2).

Immediate Action

Immediate action is warranted to relieve restrictions on certain fields or areas that are no longer warranted. 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.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the Karnal bunt regulations to make changes to the list of areas or fields regulated because of Karnal bunt. We are removing certain areas in Arizona and Texas from the list of regulated areas based on our determination that the fields in those areas meet our criteria for release from regulation. This action is necessary to relieve restrictions that are no longer warranted.

The Regulatory Flexibility Act requires that agencies consider the economic effect of their rules on small entities. The entities most likely to be affected by this rule are producers of Karnal bunt host crops whose fields are being removed from the list of regulated areas and who plan to grow Karnal bunt host crops in the future.

Producers affected by this rule are likely to be classified as small entities based on the size standards set by the Small Business Administration (SBA), as well as data from the 1997 Census of Agriculture, which is the most recent census available. The SBA classifies wheat producers with total annual sales of less than \$750,000 as small entities. According to the 1997 census data, there were a total of 6,135 farms in Arizona (this total includes, but is not limited to, wheat farms). Of the total number of farms in Arizona, 89 percent had annual sales of less than \$500,000, well below the SBA's small entity threshold of \$750,000 for wheat farms. Of the 194,301 farms in Texas, 98 percent are considered small entities according to SBA guidelines. Thus we expect that the farms affected by this rule will be small.

Producers whose fields are deregulated will benefit because they will be able to move wheat or other Karnal bunt host crops without restriction. Prior to this rule, any wheat, durum wheat, or triticale grown in those fields could be moved into or through

a non-regulated area without restriction only if it first tested negative for bunted kernels. In addition, any wheat, durum wheat, or triticale grown in those fields could not be used as seed within or outside a regulated area unless it was tested and found free of bunted kernels and spores.

The impact of this rule on individual producers is not likely to be significant. The elimination of restrictions will increase marketing opportunities for producers, with impacts on prices those producers may set for their wheat, durum wheat, or triticale. Producers whose fields are deregulated may enjoy increased market opportunities for any wheat, durum wheat, or triticale they grow in the future (*e.g.*, the availability of export markets). They may also receive a higher commodity price for their wheat, durum wheat, or triticale, although any price changes would most likely be small.

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 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 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. 7701–7772; 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. In § 301.89–3, paragraph (g) is amended as follows:

■ a. Under the heading “Arizona,” by revising the entry for La Paz County to read as set forth below.

■ b. Under the heading “Texas,” by revising the entry for McCulloch County to read as set forth below, and, in the entry for San Saba County, by revising paragraph (2) to read as set forth below.

§ 301.89–3 Regulated areas.

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(g) * * *

Arizona

La Paz County. Beginning at the southeast corner of sec. 6, T. 7 N., R. 20 W.; then west to the southeast corner of sec. 35, T. 7 N., R. 21 W.; then south to the southeast corner of sec. 2, T. 6 N., R. 21 W.; then west to the southeast corner of sec. 3, T. 6 N., R. 21 W.; then south to the southeast corner of sec. 15, T. 6 N., R. 21 W.; then west to the southwest corner of sec. 13, T. 6 N., R. 22 W., then north to the northwest corner of sec. 25, T. 7 N., R. 22 W.; then east to the southwest corner of sec. 19, T. 7 N., R. 21 W.; then north to the Colorado River; then northeast along the Colorado River to the north edge of sec. 32, T. 8 N., R. 21 W.; then east to the northeast corner of sec. 31, T. 8 N., R. 20 W.; then south to the point of beginning.

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Texas

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McCulloch County. Beginning at the intersection of the line of longitude –98.9975 and the line of latitude 31.2133 N.; then west along the line of latitude 31.2133 N. to the line of longitude 99.1818 W.; then north along the line of longitude 99.1818 W. to the line of latitude 31.3435 N.; then east along the line of latitude 31.3435 N. to the line of longitude –98.9975 W.; then south along the line of longitude –98.9975 W. to the point of beginning.

San Saba County. * * *

(2) Beginning at the intersection of the San Saba/McCulloch County line and the line of latitude 31.3440 N.; then east

along the line of latitude 31.3440 N. to the line of longitude –98.9975 W.; then south along the line of longitude –98.9975 W. to the line of latitude 31.2141 N.; then west along the latitude 31.2141 N. to the San Saba/McCulloch County line; then north along the San Saba/McCulloch County line to the point of beginning.

Done in Washington, DC, this 12th day of May 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–11086 Filed 5–14–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Parts 53 and 71**

[Docket No. 02–091–1]

Spring Viremia of Carp; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending our general indemnity regulations to provide for the payment of indemnity to owners for fish destroyed because of spring viremia of carp. Subject to available funding, the Department may pay eligible owners up to 50 percent of the fair market value for fish destroyed because of spring viremia of carp. In addition, expenses incurred in connection with any cleaning and disinfection required shall be shared according to the agreement between APHIS and the State in which the work is done. We are also amending our interstate movement regulations to prevent the movement of fish infected with or exposed to spring viremia of carp. These actions are necessary to help control and eradicate this disease in the United States.

DATES: This interim rule was effective May 12, 2004. We will consider all comments that we receive on or before July 16, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 02–091–1, 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. 02–091–1.

- **E-mail:** Address your comment to 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. 02–091–1” on the subject line.

- **Agency Web site:** Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

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Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Ms. Jill Rolland, Fishery Biologist, Certification and Control Team, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–8069.

SUPPLEMENTARY INFORMATION:**Background**

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA or the Department) administers regulations at 9 CFR part 53 (referred to below as the regulations) that provide for the payment of indemnity to owners of animals that are required to be destroyed because of foot-and-mouth disease, pleuropneumonia, rinderpest, exotic Newcastle disease, highly pathogenic avian influenza, infectious salmon anemia, or any other communicable disease of livestock or poultry that, in the opinion of the Secretary of Agriculture, constitutes an emergency and threatens the U.S. livestock or poultry population. Payment for animals destroyed is based on the fair market value of the animals.

Section 53.2 of the regulations authorizes the APHIS Administrator to