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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–058–3]

Flag Smut; Importation of Wheat and Related Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the importation of wheat and related articles by removing the prohibitions related to flag smut. Based on a number of considerations, we have concluded that U.S. wheat will not be at risk if those prohibitions are removed. We will, however, continue to prohibit the importation of wheat and related articles from flag smut-affected countries until a risk evaluation can be completed to ensure that those articles do not introduce other plant pests. This action removes flag smut-related prohibitions that no longer appear to be necessary while continuing to provide protection against other potential pests or diseases of wheat.

DATES: *Effective Date:* December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Wager-Page, Branch Chief, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1232; (301) 734–8453.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart—Wheat Diseases” (7 CFR 319.59 through 319.59–4, referred to below as the regulations) prohibit or restrict the importation of wheat and related articles into the United States from

certain parts of the world to prevent the introduction of foreign strains of flag smut and Karnal bunt.

On May 20, 2005, we published in the **Federal Register** (70 FR 29212–29214, Docket No. 02–058–2) a proposal to amend the regulations by removing the prohibitions related to flag smut. Based on a number of considerations, we have concluded that U.S. wheat would not be at risk if those prohibitions were removed. We proposed, however, to continue to prohibit the importation of wheat and related articles from flag smut-affected countries listed in § 319.59–3(b)¹ until a risk evaluation can be completed to ensure that wheat and related articles from those countries do not introduce other plant pests. The effect of our proposed changes would be to remove flag smut-related prohibitions that no longer appear to be necessary while continuing to provide protection against other potential pests or diseases of wheat.

We solicited comments concerning our proposal for 60 days ending July 19, 2005. We received two comments by that date. They were from a representative of a foreign national plant protection organization and a group of domestic wheat industry organizations. One commenter supported the proposed rule, and the other used her comment to provide information indicating that her country was free of flag smut and, therefore, should be removed from the list of countries in § 319.59–3(b).

The regulations in § 319.59–3, as amended by this final rule, provide that the national plant protection organization of any country or locality listed in paragraph (b) of that section may contact the Animal and Plant Health Inspection Service (APHIS) to initiate the preparation of an evaluation of the potential pest risks associated with wheat and related articles in that country or locality. Such an evaluation is necessary because our previous flag-smut-based prohibitions had precluded the entry into the United States of wheat and related articles from affected

countries, so there has not been a need or opportunity for APHIS to assess the phytosanitary situation in those countries to determine whether or not there may be other pests of wheat and related articles present there.

We will consider the information submitted by the commenter regarding the freedom of her country from flag smut to be the initiation of a request for market access by her country. As noted previously, § 319.59–3 calls for the preparation of a risk evaluation in this situation and we will work with the commenter with regard to that request. Once an official evaluation is completed, we will, if supported by the results of that evaluation, take action to amend the regulations to remove the commenter’s country from the list in § 319.59–3(b).

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the regulations regarding the importation of wheat and related articles by removing the prohibitions related to flag smut. Based on a number of considerations, we have concluded that U.S. wheat will not be at risk if those prohibitions are removed. We will, however, continue to prohibit the importation of wheat and related articles from flag smut-affected countries until a risk evaluation can be completed to ensure that those articles do not introduce other plant pests. This action removes flag smut-related prohibitions that no longer appear to be necessary while continuing to provide protection against other potential pests or diseases of wheat.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions and to use flexibility to provide regulatory relief when regulations create economic disparities between different-sized entities. According to the Small Business Administration’s (SBA’s) Office of Advocacy, regulations create

¹ 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.

economic disparities based on size when they have a significant impact on a substantial number of small entities.

We expect that this rule will affect domestic producers and processors of wheat. It is likely that the entities affected will be small according to SBA guidelines. As detailed below, information available to APHIS indicates that the effects on these small entities will not be significant.

Affected U.S. wheat producers and processors are expected to be small based on the 2002 Census of Agriculture data. According to the census, there were 169,528 farms in the United States that sold wheat, collectively valued at \$5.64 billion. SBA guidelines for entities in Wheat Farming and Wheat Farming, Field, and Seed Production (North American Industry Classification System [NAICS] code 111140) classify producers in these farm categories as small entities if their total annual sales are no more than \$750,000. APHIS does not have information on the size distribution of domestic wheat producers, but according to 2002 Census data, there were a total of 2,128,892 farms in the United States. Of this number, approximately 97 percent had total annual sales of less than \$500,000 in 2002, which is well below the SBA's small entity threshold for commodity farms. This indicates that the majority of farms are considered small by SBA standards, and it is reasonable to assume that most of the 169,528 wheat farms that could be affected by the rule would also qualify as small.

Additionally, there were 157 wheat milling establishments reported in the census. Of these entities, 153 were wheat flour (except flour mixes) milling establishments (NAICS code 3112111), with a total of 6,720 employees, and 4 were wheat products (except flour) milling establishments (NAICS code 3112114), with a total of 288 employees. In the case of these milling establishments, those entities with fewer than 500 employees are considered small by SBA standards. Therefore, all 157 milling establishments are considered to be small entities.

The United States is the world's leading wheat exporter. The average annual value of exported U.S. wheat over the last 5 years is \$4.4 billion. The volume of wheat exports from the United States has, on average, been 14 times greater than import volume.

Annual costs and benefits associated with removing the import prohibitions associated with flag smut depend upon the level of U.S. domestic wheat production as well as on import levels. The lower the import level when

compared to the level of domestic availability after export, the lower the potential impact of this proposed action on the economic welfare of domestic wheat importers and producers.

Nevertheless, the economic impact on U.S. domestic producers and processors of wheat is expected to be negligible since the percentage of imported wheat has been relatively low (6 percent of the domestic supply) when compared with the domestic supply levels overall. In particular, domestic wheat producers should not face competition from foreign producers given the small percentage of imported wheat in the domestic supply.

Given the relatively small amount of wheat in the domestic supply when compared to U.S. wheat production and the size of the domestic supply overall this change will not have any measurable economic effect on either domestic producers or processors of wheat.

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 12988

This final 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 final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.59–1 [Amended]

- 2. In § 319.59–1, the definition for *foreign strains of flag smut* is removed.
- 3. In § 319.59–2, the introductory text of paragraph (b) is revised to read as follows and paragraph (b)(3) is amended by removing the words “(including foreign strains of flag smut)”.

§ 319.59–2 General import prohibitions; exceptions.

* * * * *

(b) *Triticum* spp. plants, articles listed in § 319.59–3 as prohibited importation pending risk evaluation, and articles regulated for Karnal bunt in § 319.59–4(a) may be imported by the U.S. Department of Agriculture for experimental or scientific purposes if:

* * * * *

- 4. In § 319.59–3, the section heading and the introductory text of the section are revised to read as follows:

§ 319.59–3 Articles prohibited importation pending risk evaluation.

The articles listed in paragraph (a) of this section from the countries and localities listed in paragraph (b) of this section are prohibited from being imported or offered for entry into the United States, except as provided in § 319.59–2(b), pending the completion of an evaluation by APHIS of the potential pest risks associated with the articles. The national plant protection organization of any listed country or locality may contact APHIS¹ to initiate the preparation of a risk evaluation. If supported by the results of the risk evaluation, APHIS will take action to remove that country or locality from the list in paragraph (b) of this section.

* * * * *

Done in Washington, DC, this 21st day of November, 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–23329 Filed 11–25–05; 8:45 am]

BILLING CODE 3410–34–P

¹ Requests should be submitted in writing to Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1236.