Rules and Regulations

Federal Register
Vol. 73, No. 82
Monday, April 28, 2008

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–112–2]

RIN 0579–AB45

Karnal Bunt Compensation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations to provide compensation for certain growers and handlers of grain and seed affected by Karnal bunt who had not been eligible for compensation, and for certain wheat grown outside the regulated area that had been commingled with wheat grown in regulated areas in Texas. The compensation provided by the interim rule was necessary to encourage the participation of, and obtain cooperation from, affected individuals in our efforts to contain and reduce the prevalence of Karnal bunt.

DATES: Effective on April 28, 2008, we are adopting as a final rule the interim rule published at 67 FR 21561–21566 on May 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Royer, Associate Director, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, 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 fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the planting 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, participants in the National Karnal Bunt Survey, and custom harvesters and owners or lessees of other equipment 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, National Survey participants, and certain custom harvesters and equipment owners or lessees for the 1999–2000 and subsequent crop seasons.''

In an interim rule effective and published in the **Federal Register** on May 1, 2002 (67 FR 21561–21566, Docket No. 01–112–1), we amended the Karnal bunt regulations to provide compensation for certain growers and handlers of grain and seed affected by Karnal bunt who had not been eligible for compensation, and for certain wheat grown outside the regulated area that had been commingled with wheat grown in four counties in Texas that had been added to the list of regulated areas.

In Archer, Baylor, Throckmorton, and Young Counties, certain wheat growers, handlers, and other parties covered by the compensation regulations had appeared to be ineligible to receive compensation for grain or seed affected by Karnal bunt due to restrictive language in the regulations that did not anticipate certain complications in the harvest and storage of grain that arose following the discovery of Karnal bunt in those counties. Due to the need to quickly declare these counties as regulated areas, we had been unable to modify the compensation regulations at that time to address certain relevant aspects of the way seed and grain were moved, stored, and used in the newly regulated areas.

The May 2002 interim rule amended the compensation provisions of the regulations to allow persons affected by these complications in the harvest or storage of grain to apply for compensation. These cases represented unanticipated circumstances applicable only to the 2000–2001 growing season, and we determined that the parties affected should, in fairness, be eligible for compensation. The situations addressed by the interim rule primarily affected growers and handlers in Texas, and certain handlers who moved grain from other States to Texas for storage.

We solicited comments on the interim rule for 60 days ending on July 1, 2002. We received 86 comments by that date, from individual custom harvesters and wheat growers and from boards and associations of custom harvesters and wheat growers and marketers. None of these commenters objected to the provisions of the interim rule.

Several commenters urged us to provide compensation to custom harvesters whose business was affected by the addition of the four counties as regulated areas. In response to these comments, in an interim rule that was effective and published in the **Federal Register** on May 5, 2004 (69 FR 24909–24016, Docket No. 03–052–1) and in a subsequent final rule that was effective and published in the **Federal Register** on May 9, 2005 (70 FR 24297–24302, Docket No. 03–052–3), we amended the regulations in § 301.89–16 to provide for the payment of compensation to custom harvesters whose mechanized harvesting equipment was used to harvest Karnal bunt-infected host crops in Archer, Baylor, Throckmorton, and Young Counties, TX, during the 2000–2001 crop season and was required to be cleaned and disinfected prior to movement from those counties. (A fuller discussion of the comments we received on this topic can be found in the May 2004 interim rule.) This compensation

was intended to reimburse custom harvesters for the cost of that cleaning and disinfection.

The May 2004 interim rule also provided for the payment of compensation equivalent to the value of one contract that an eligible custom harvester lost due to the downtime necessitated by cleaning and disinfection. If an eligible custom harvester did not lose a contract due to this downtime, the interim rule provided for the payment of compensation for the fixed costs he or she incurred during the time the machine was being cleaned and disinfected. The May 2004 interim rule also provided for the payment of compensation for the expenses associated with the cleaning and disinfection of other types of equipment used in the four affected counties.

The other comments we received did not address the situations addressed by the interim rule. Instead, they addressed the regulations in place before the publication of the interim rule, requesting that APHIS provide additional compensation to parties affected by the Karnal bunt quarantine regulations. Specifically, commenters stated that:

- APHIS should pay compensation for wheat grown in quarantined areas;
- Compensation for wheat should be based on the market in which the wheat farmer being compensated is accustomed to selling wheat;
- Compensation should be provided for acreage within the quarantined areas that would normally be planted with wheat but is left fallow;
- APHIS should provide compensation for more than 50 percent of the cost of decontaminating grain storage facilities and raise the $20,000 overall limit on such compensation; and
- APHIS should provide greater compensation for seed, since seed prices are 2 to 4 times higher than local grain prices.

These comments are outside the scope of the interim rule. The provisions of the regulations addressed by these commenters were added to the regulations in a final rule published in the **Federal Register** on August 6, 2001 (66 FR 40839–40843, Docket No. 96–016–37) that established the compensation levels for the 1999–2000 crop season and subsequent years and made several other changes to the compensation regulations. For the reasons discussed in that final rule, we have determined that the present compensation provisions are appropriate.

One commenter stated that APHIS should provide compensation to seed companies and handlers that store uncertified wheat seed that tests spore-positive for Karnal bunt.

The regulations in § 301.89–15 provide for compensation for handlers and seed companies who sell wheat grown in an area under the first regulated crop season only if the wheat was not tested by APHIS prior to purchase by the handler or seed company and found positive for Karnal bunt after purchase by the handler or seed company, as long as the price to be paid is not contingent on the test results. Compensation for such wheat will equal the estimated market price for the relevant class of wheat (meaning the type of wheat, such as durum or hard red winter), minus the actual price received by the handler or seed company. Further details are specified in paragraph (a)(2) of § 301.89–15. These provisions were in place during the 2000–2001 crop season, and thus it was not necessary to amend the regulations in the interim rule to accommodate this situation.

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

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, this action 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.

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 21561–21566 on May 1, 2002.

Done in Washington, DC, this 17th day of April 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–9236 Filed 4–25–08; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 50, 51, 52, and 100

[NRC–2008–0222]

RIN 3150–AI05

Limited Work Authorizations for Nuclear Power Plants; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on October 9, 2007 (72 FR 57415), that amended the Nuclear Regulatory Commission's (NRC) regulations applicable to limited work authorizations (LWAs). This document is necessary to correct erroneous language to the preamble and codified language of the final rule.

DATES: The correction is effective April 28, 2008, and is applicable to November 8, 2007.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administrative, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–7163, e-mail *Michael.Lesar@nrc.gov.*

SUPPLEMENTARY INFORMATION: This document corrects erroneous language to the preamble and codified language of the final rule published on October 9, 2007 (72 FR 57415). Also, as published, the final regulations contain errors which may prove to be misleading and need to be clarified. The following corrects the preamble to the October 9, 2007, document.

1. On page 57427, third column, in the first paragraph, the last line is corrected to read as follows:

To ensure that the NRC has sufficient information to perform the cumulative impacts analysis in a timely fashion, the final LWA rule includes a requirement, in § 51.45(c), for the environmental report submitted by an applicant for an ESP, LWA, construction permit, or combined license to include a description of impacts of the applicant's preconstruction activities at the proposed site (i.e., the activities listed in a paragraph (2)(i) through (2)(x) in the definition of construction contained in § 51.4), that are necessary to support the construction and operation of the facility which is the subject of the ESP, LWA, construction permit, or combined license application, and an analysis of the cumulative impacts of the activities