

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 01-063-1]

#### 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 by adding Archer and Baylor Counties in Texas to the list of regulated areas. This action is precipitated by the detection of bunted kernels in samples taken from bins of wheat grain stored in Baylor County and harvested in Archer and Baylor Counties. This action will help prevent the spread of Karnal bunt into noninfected areas of the United States.

**DATES:** This interim rule was effective July 13, 2001. We invite you to comment on this docket. We will consider all comments that we receive by September 17, 2001.

**ADDRESSES:** Please send four copies of your comment (an original and three copies) to: Docket No. 01-063-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 01-063-1.

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 fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the planting 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. 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 areas' proximity to a field found during survey to contain a bunted kernel; or
- A distinct definable area that contains at least one field that was found during survey to contain spores

consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing 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 that area's proximity to a field that has been associated with grain at a handling facility containing a bunted kernel.

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 infected 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.

The regulations at § 301.89-3(f) set the boundaries for regulated areas in Arizona, California, New Mexico, and Texas. Certain regulated areas in Arizona, California, and Texas include noninfected acreage that functions as a buffer zone to guard against the spread of Karnal bunt.

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 associated with a bunted kernel and areas outside of the regulated area.

In this document, we are adding Archer and Baylor Counties, in their entirety, to the list of regulated areas in

Texas. This action is necessary due to the detection of bunted wheat kernels in samples taken from bins of wheat grain stored in Baylor County. The wheat grain was harvested in Archer and Baylor Counties. Until APHIS completes its detection and delimiting surveys, the entirety of each county will be designated as a regulated area in order to include all fields that have a reasonable possibility of being infected.

**Emergency Action**

This rulemaking is necessary on an emergency basis to prevent Karnal bunt from spreading to noninfected areas of the United States. 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. 533 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. 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. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

**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 interim 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 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. In § 301.89-3, paragraph (f), under the heading for “Texas”, add two new entries in alphabetical order to read as follows:

**§ 301.89-3 Regulated areas.**

\* \* \* \* \*

(f) \* \* \*

Texas

*Archer County.* The entire county.

*Baylor County.* The entire county.

\* \* \* \* \*

Done in Washington, DC, this 13th day of July 2001.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 01-18071 Filed 7-18-01; 8:45 am]

**BILLING CODE 3410-34-U**

**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**27 CFR Parts 4 and 24**

**RIN: 1512-AB78**

[T.D. ATF-458]

**Implementation of Public Law 105-34, Section 1417, Related to the Use of Additional Ameliorating Material in Certain Wines (98R-89P)**

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Treasury Decision, final rule.

**SUMMARY:** This final rule implements one of the provisions of the Taxpayer Relief Act of 1997. In accordance with the law, ATF is amending the regulations to extend the amelioration and sweetening limitations so that wines made exclusively from any fruit (excluding grapes) or berry with a fixed acid content of 20 or more parts per thousand are entitled to a volume of up to 60 percent ameliorating material. To provide agreement with the IRC, the regulations are changed to raise the maximum limit on alcohol content derived from fermentation from 13 percent to 14 percent in ameliorated fruit (excluding grape) and citrus wines.

**EFFECTIVE DATE:** These regulations are retroactive to April 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, New York 14202-2301, (716) 551-4048.

**SUPPLEMENTARY INFORMATION:**

**Background**

This final rule implements one of the provisions of the Taxpayer Relief Act of 1997, Public Law 105-34 (“the Act”). Section 1417 of the Act amended section 5384(b)(2)(D) of the Internal Revenue Code of 1986 by striking “loganberries, currants, or gooseberries,” and inserting “any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction to such fruit or berry).” Section 5384 relates to wines other than grape wines.

**Previous Regulation for Amelioration of Fruit and Berries**

Before enactment of the Act, the amelioration and sweetening limitations of 26 U.S.C. 5384 (b)(2)(D) could only be used for wines produced exclusively from loganberries, currants, or