

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 01-063-2]

#### Karnal Bunt; Regulated Areas

**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 by adding Archer and Baylor Counties in Texas to the list of regulated areas. The interim rule, which followed the detection of bunted kernels in samples taken from bins of wheat grain stored in Baylor County and harvested in Archer and Baylor Counties, was necessary to prevent the spread of Karnal bunt to noninfected areas of the United States.

**EFFECTIVE DATE:** This interim rule became effective July 13, 2001.

**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

In an interim rule effective July 13, 2001, and published in the **Federal Register** on July 19, 2001 (66 FR 37575-37576, Docket No. 01-063-1), we amended the Karnal bunt regulations in 7 CFR 301.89-3 by adding Archer and Baylor Counties, in their entirety, to the list of regulated areas in Texas. This action was 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.

Comments on the interim rule were required to be received on or before September 17, 2001. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

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

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### Regulatory Flexibility Act

This rule affirms an interim rule that amended the Karnal bunt regulations by adding Archer and Baylor Counties, TX, to the list of regulated areas. As a result of that action, the interstate movement of regulated articles from those areas is restricted.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses, organizations, and governmental jurisdictions. The entities most likely to have been affected by the interim rule are wheat producers. The size of these entities is unknown. It is reasonable to assume, however, that most have gross annual receipts of less than \$750,000 and are, therefore, small in size according to the U.S. Small Business Administration's criteria. This assumption is based on composite data from the 1997 Census of Agriculture, which reports that wheat was harvested for grain from 50,167 acres on 159 farms in Archer County in 1997; that grain had a market value of \$4.161 million. In Baylor County, wheat was harvested for grain from 84,368 acres on 166 farms in 1997; that grain had a market value of \$6.686 million.

Producers in regulated areas may grow Karnal bunt host crops, but the wheat, durum wheat, or triticale must be tested for Karnal bunt before the harvested crop is moved from the field in which it was grown. This required testing is provided to producers free of charge. Negative-testing grain may be moved out of the regulated area without restriction. Grain found to contain bunted kernels may be moved outside a regulated area only under a limited

permit and only to a specified destination for specified handling, utilization, or processing that will mitigate the Karnal bunt risk associated with the grain.

Compensation has been made available to producers in regulated areas to address the loss in value of positive-testing grain. As the 2000-2001 crop season was the first regulated crop season for Archer and Baylor Counties, producers there were eligible for compensation payments of up to \$1.80 per bushel. Those payments have, in many cases, already been made to producers affected by the detection of Karnal bunt in Archer and Baylor Counties, thus limiting the negative effects of Karnal bunt infection and the subsequent regulatory restrictions intended to prevent the further spread of the disease.

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.

#### 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 66 FR 37575-37576 on July 19, 2001.

**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).

Done in Washington, DC, this 16th day of January 2002.

**W. Ron DeHaven,**

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

[FR Doc. 02-1748 Filed 1-23-02; 8:45 am]

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