

## VIRGINIA

Clarke County. The entire county.

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Done in Washington, DC, this 29th day of December, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04-80 Filed 1-2-04; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 7 CFR Part 301

[Docket No. 03-047-1]

## 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 or fields regulated because of Karnal bunt, a fungal disease of wheat. We are adding certain areas in Arizona to the list of regulated areas either because they were found during surveys to contain a bunted wheat kernel, or because they are within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. We are also removing certain areas from the list of regulated areas in Riverside County, CA, because recently completed detection and delineating surveys show them to be free of Karnal bunt. These actions are necessary to prevent the spread of Karnal bunt into noninfected areas of the United States and to relieve restrictions that are no longer warranted.

**DATES:** This interim rule is effective January 5, 2004. We will consider all comments that we receive on or before March 5, 2004.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03-047-1, 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. 03-047-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto: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. 03-047-1" on the subject line.

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 Spaide, Senior Program Advisor, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737-1236; (301) 734-4387.

## 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 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 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 wheat 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.

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.

The regulations in § 301.89–3(f) describe the boundaries of the regulated areas in Arizona, California, and Texas. Certain regulated areas include noninfected acreage that functions as a buffer zone to guard against the spread of Karnal bunt. Our current policy is to utilize a 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. Based on over 7 years of experience surveying noninfected acreage included in regulated areas, we have determined that a buffer zone of no more than 3 miles is sufficient.

In this interim rule, we are amending § 301.89–3(f) by modifying the list of regulated areas associated with Karnal bunt. Specifically, we are adding certain areas in Arizona to the list of regulated areas either because the fields within those areas were found during detection and delineating surveys to contain a bunted wheat kernel, or because the fields within those areas fall within the 3-mile-wide buffer zone around fields affected with Karnal bunt. This action is necessary in order to help prevent the spread of Karnal bunt into noninfected areas of the United States.

As part of this same rule, we are also removing certain areas from the list of regulated areas in California because recently completed detection and delineating surveys show them to be free of Karnal bunt. This action relieves restrictions on 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 adding new regulated areas in Maricopa and Pinal Counties due to the detection of bunted wheat kernels there or as a result of the application of the 3-mile-wide buffer zone around fields affected with Karnal bunt. These additional regulated areas in Maricopa and Pinal Counties involve approximately 2,589 acres (57 fields).

#### California

We are removing from the list of regulated areas in California a total of 42,802 acres (1,093 fields) located in the Palo Verde Valley of eastern Riverside County. Bunted kernels have never been found in the fields of the Palo Verde Valley that we are deregulating; these fields had been designated as regulated areas based on the detection of spores in the fields and the fields' association with bunted kernels found in a storage facility. As an additional safeguard, the

California Department of Food and Agriculture (CDFA) plant pathologists routinely perform size-selective sieving prior to examination for bunted kernels. CDFA has not found spores present in samples that had no bunted kernels. We believe that this data allows us to deregulate these 1,093 fields.

In addition, all 1,093 fields have been used to grow non-host, cultivated crops since the time they were placed under regulation. All of the fields have been cultivated no fewer than 9 times, with some having been cultivated 25 times over the course of 6 seasons.

#### Immediate Action

This rulemaking is necessary on an immediate basis to help prevent Karnal bunt from spreading to noninfected areas of the United States. This rule will also 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.

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 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 (f) is amended as follows:

■ a. Under the heading “Arizona,” in the entry for Maricopa County, by revising paragraph (2) to read as set forth below, and in the entry for Pinal County, by revising paragraph (1) to read as set forth below.

■ b. Under the heading “California,” by revising the entry for Riverside County to read as set forth below.

#### § 301.89–3 Regulated areas.

\* \* \* \* \*  
(f) \* \* \*

#### Arizona

\* \* \* \* \*  
*Maricopa County.* \* \* \*

(2) Beginning at the intersection of the Maricopa/Pinal County line and the southwest corner of sec. 31, T. 2 S., R. 5 E.; then north to the southeast corner of sec. 25, T. 2 S., R. 5 E.; then west to the southwest corner of sec. 25, T. 2 S., R. 5 E.; then north to the northwest corner of sec. 24, T. 2 S., R. 4 E.; then west to the southwest corner of sec. 15, T. 2 S., R. 4 E.; then north to the northwest corner of sec. 3, T. 2 S., R. 4

E.; then east to the southwest corner of sec. 35, T. 1 S., R. 4 E., then north to the northwest corner of sec. 35, T. 1 S., R. 4 E.; then east to the northeast corner of sec. 33, T. 1 S., R. 5 E.; then north to the northwest corner of sec. 22, T. 1 S., R. 5 E.; then east to the northeast corner of sec. 19, T. 1 S., R. 6 E.; then north to the northwest corner of sec. 8, T. 1 S., R. 6 E.; then east to the southwest corner of sec. 3, T. 1 S., R. 6 E.; then north to the northwest corner of sec. 3, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 2, T. 1 S., R. 6 E.; then south to the southeast corner of sec. 2, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 7, T. 1 S., R. 7 E.; then south to the northwest corner of sec. 5, T. 2 S., R. 7 E.; then east to the northeast corner of sec. 3, T. 2 S., R. 7 E.; then north to the northwest corner of sec. 35, T. 1 S., R. 7 E.; then east to the northeast corner of sec. 36, T. 1 S., R. 7 E. and the Maricopa/Pinal County line; then south along the Maricopa/Pinal County line to the southeast corner of sec. 36, T. 2 S., R. 7 E.; then east along the Maricopa/Pinal County line to the point of beginning.

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*Pinal County.* (1) Beginning at the intersection of the Maricopa/Pinal County line and the northwest corner of sec. 31, T. 1 S., R. 8 E.; then east to the northeast corner of sec. 32, T. 1 S., R. 8 E.; then south to the northwest corner of sec. 4, T. 2 S., R. 8 E.; then east to the northeast corner of sec. 4, T. 2 S., R. 8 E., then south to the southeast corner of sec. 28, T. 2 S., R. 8 E.; then west to the northeast corner of sec. 32, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 32, T. 2 S., R. 8 E.; then west to the Maricopa/Pinal County line; then north along the Maricopa/Pinal County line to the point of beginning.

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#### California

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*Riverside County.* Beginning at the intersection of the Colorado River and 8th Avenue; then west on 8th Avenue to Lovekin Boulevard; then south on Lovekin Boulevard to 10th Avenue; then west on 10th Avenue to Arrowhead Avenue; then south on Arrowhead Avenue to Hobson Way; then west on Hobson Way to Neighbours Boulevard; then south on Neighbours Boulevard to 14th Avenue; then west on 14th Avenue approximately 0.84 mile to the edge of the irrigated production area; then south and west along the edge of the irrigated production area to a point on Keim Boulevard approximately 0.27 mile south of the intersection of Keim

Boulevard and 16th Avenue; then south on Keim Boulevard to 28th Avenue; then east on 28th Avenue to Arrowhead Avenue; then south on Arrowhead Avenue to 30th Avenue; then east on 30th Avenue to the Colorado River; then north along the Colorado River to the point of beginning.

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Done in Washington, DC, this 29th day of December, 2003.

**Kevin Shea,**

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

[FR Doc. 04-78 Filed 1-2-04; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 03-082-1]

#### Golden Nematode; Regulated Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the golden nematode regulations by adding a field in Steuben County, NY, to the list of generally infested regulated areas. This action is necessary to prevent the artificial spread of golden nematode to noninfested areas of the United States.

**DATES:** This interim rule is effective January 5, 2004. We will consider all comments that we receive on or before March 5, 2004.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03-082-1, 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. 03-082-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto: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. 03-082-1" on the subject line.

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**FOR FURTHER INFORMATION CONTACT:** Dr. Vedpal Malik, Agriculturalist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-6774.

#### SUPPLEMENTARY INFORMATION:

##### Background

The golden nematode (*Globodera rostochiensis*) is a destructive pest of potatoes and other solanaceous plants. Potatoes cannot be economically grown on land which contains large numbers of the nematode. The golden nematode has been determined to occur in the United States only in parts of New York.

The golden nematode regulations (contained in 7 CFR 301.85 through 301.85-10 and referred to below as the regulations) list two entire counties and portions of seven other counties in the State of New York as regulated areas and restrict the interstate movement of regulated articles from those areas. Such restrictions are necessary to prevent the artificial spread of the golden nematode to noninfested areas of the United States.

Regulated areas are those areas in which the golden nematode has been found or in which there is reason to believe that the golden nematode is present, or those areas which it is deemed necessary to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. The regulations provide that less than an entire State may be designated as a regulated area only if the Deputy Administrator determines that the State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of the articles and the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the golden nematode.