

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 96-016-15]

RIN 0579-AA83

#### Karnal Bunt; Compensation for the 1996-1997 Crop Season

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Karnal bunt regulations by adding compensation provisions for certain growers, handlers, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey who incur losses and expenses because of Karnal bunt in the 1996-1997 crop season. The payment of compensation is necessary in order to reduce the economic impact of the Karnal bunt regulations on affected wheat growers and other individuals, and to help obtain cooperation from affected individuals in Karnal bunt eradication efforts. The proposed amendments appear necessary to make compensation appropriate for circumstances in the 1996-1997 crop season.

**DATES:** Consideration will be given only to comments received on or before September 9, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 96-016-15, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 96-016-15. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call

ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247.

#### 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. 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. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89-1 through 301.89-14. 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.

In an interim rule effective June 27, 1996, and published in the **Federal Register** on July 5, 1996, the Animal and Plant Health Inspection Service (APHIS) amended the regulations to provide compensation for certain wheat growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred in the 1995-1996 crop season because of actions taken by the Secretary to prevent the spread of Karnal bunt (61 FR 35102-35107, Docket No. 96-016-7). On May 6, 1997, we published a document in the **Federal Register** (62 FR 24745-24653, Docket No. 96-016-17) making final the July 5 interim rule, and adding compensation provisions for handlers of wheat that was tested and found negative for Karnal bunt and for participants in the National Karnal Bunt Survey whose wheat tested positive for Karnal bunt in the 1995-1996 crop season.

We believe it is appropriate at this time to revise the scope of the 1995-1996 compensation program for wheat to be harvested in 1997. We are, therefore, proposing to add

compensation provisions for 1996-1997 crop season wheat.<sup>1</sup> These provisions would provide compensation for growers and handlers, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey in order to mitigate losses and expenses incurred during the 1996-1997 crop season because of the regulations for Karnal bunt.

##### Compensation for Growers and Handlers

We are proposing to add a new § 301.89-15 to the Karnal bunt regulations, to apply to growers and handlers in the 1996-1997 crop season. This section would provide compensation to growers and handlers for the loss in value of 1996-1997 crop season wheat seed and grain (referred to in the regulations as propagative and nonpropagative wheat) due to Karnal bunt. The compensation calculation we would offer for wheat seed would be the same as that offered for wheat grain. For the 1996-1997 crop season, we are proposing to compensate only for wheat that was tested by APHIS and found positive for Karnal bunt.

Movement of grain that tested negative out of the regulated area during the 1996 harvest season also had restricted movement. It could only move to approved facilities under specific safeguard and sanitation requirements. An interim rule effective on April 25, 1997, and published in the **Federal Register** on May 1, 1997 (62 FR 23620-23628, Docket No. 96-016-19), amended the testing requirements and movement restrictions for wheat from the regulated areas. These regulations now allow wheat grain that tests negative to move under certificate to any location in the United States without further safeguarding or sanitation requirements. In light of the amended movement restrictions, we do not believe that it would be necessary to compensate growers and handlers for wheat that tests negative for Karnal bunt in the 1996-1997 crop season.

For the 1996-1997 crop season, we are proposing different levels of compensation for growers and handlers of positive wheat, depending on which of the following two sets of

<sup>1</sup> The 1995-1996 crop season is that season in which wheat was harvested in 1996. The 1996-1997 crop season is that season in which wheat is harvested in 1997.

circumstances applies: (1) The wheat is from an area that became regulated for Karnal bunt after the 1996–1997 crop was planted, or for which an Emergency Action Notification (PPQ Form 523)(EAN) was issued after the 1996–1997 crop was planted, and that remained regulated or under an EAN at the time the wheat was sold; or (2) the wheat is from an area that became regulated for Karnal bunt before the 1996–1997 crop was planted, or for which an EAN was issued before the 1996–1997 crop was planted, and that remained regulated or under an EAN at the time the wheat was sold. We would call these areas “areas under the first regulated crop season” and “areas under the second regulated crop season,” respectively. Growers and handlers in areas under the first regulated crop season would not have known that their area was to become regulated for Karnal bunt at the time they made their planting and many of their contracting decisions, and would not have been prepared for the loss in value of their wheat due to Karnal bunt. Growers and handlers in areas under the second regulated crop season knew they were in an area regulated for Karnal bunt at the time planting and contracting decisions were made for the 1996–1997 crop season. Understanding the restrictions, growers and handlers could have chosen to alter their planting or contract decisions to avoid experiencing losses due to Karnal bunt. We believe the compensation we are proposing for first regulated crop season areas and second regulated crop season areas is appropriate for the circumstances in each area.

At the present time, there are no areas under the first regulated crop season. All currently regulated areas are in the second regulated crop season. APHIS is continuing to monitor for Karnal bunt throughout wheat producing areas in the United States. If Karnal bunt is found to exist in an area outside the currently regulated area during the 1996–1997 crop season, APHIS will regulate that area, and growers and handlers would be eligible for compensation for the loss in value of their wheat in accordance with the proposed provisions for areas under the first regulated crop season.

#### **First Regulated Crop Season**

As stated previously, we would define an area in the first regulated crop season as an area that became regulated for Karnal bunt after the 1996–1997 crop was planted or for which an EAN was issued after the 1996–1997 crop was planted. Further, the area must have remained regulated or under an EAN at

the time the wheat was sold in order for a grower or handler to be eligible for compensation. An EAN (issued in accordance with § 301.89–3(d) of the regulations) temporarily regulates a nonregulated area as a regulated area. Areas temporarily regulated under an EAN are subject to the same restrictions, and potential losses or expenses, as areas that are listed in the regulations as “regulated areas.” However, the Secretary of Agriculture is authorized to compensate only individuals who are in States for which an extraordinary emergency has been declared.

The compensation we are proposing for growers and handlers of positive-testing wheat grown in an area under the first regulated crop season is similar to the compensation offered to growers and handlers of positive-testing wheat in the 1995–1996 crop season. In areas under the first regulated crop season, we would compensate growers and handlers for positive 1996–1997 crop season wheat and for positive wheat inventories in their possession that were unsold at the time the area became regulated for Karnal bunt.

We are proposing that growers of wheat in an area under the first regulated crop season who sell propagative or nonpropagative wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results, would be eligible to receive compensation as follows:

1. If the wheat was grown under contract and a price was determined in the contract before the area where the wheat was grown became regulated for Karnal bunt, compensation would equal the contract price minus the actual price received by the grower; or
2. If the wheat was not grown under contract or a price was determined in the contract after the area where the wheat was grown became regulated for Karnal bunt, compensation would equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the grower.

We are proposing two different compensation calculations for growers in the first regulated crop season because contract prices set after the area where the wheat was grown became regulated for Karnal bunt may reflect the loss-in-value of wheat due to the Karnal bunt regulations. For both situations described above, compensation for positive-testing wheat would not exceed \$1.80 per bushel under any circumstances.

Contract price is currently defined in the regulations to mean “(t)he net price after adjustments for any premiums or discounts stated in the contract.” We would add a definition to the regulations for “actual price received” to read “the net price after adjustments for any premiums or discounts stated on the sales receipt.” This is to ensure that individuals are not paid compensation for quality issues not related to Karnal bunt.

For the 1995–1996 crop season, estimated market prices were calculated for durum wheat and hard red winter wheat for the harvest months of May and June. The estimated market prices for durum wheat were calculated based on the following: the daily closing cash prices for choice milling durum wheat traded on the Minneapolis Grain Exchange during the period of May 1 to June 30, 1996, adjusted to account for the handling and transportation charges incurred in getting the wheat from the regulated area in California and Arizona to the central market in Minneapolis. These adjustments were based on the average difference between the Minneapolis cash price and the cash prices within the regulated area for 1995. Estimated market prices for hard red winter wheat were calculated in a similar manner, based on the daily closing futures prices for the July hard red winter wheat contract traded on the Kansas City Board of Trade during the period of May 1 to June 30, 1996, adjusted to account for the handling and transportation charges incurred in getting the wheat from a central point in the regulated area to the market in Kansas City. These adjustments were based on the average difference between the Kansas City futures price and the cash prices within the regulated area for 1995.

For the 1996–1997 crop season, estimated market prices would be calculated in a similar manner, as appropriate for the types of wheat grown in the regulated area that is under the first regulated crop season and the relevant terminal markets and harvest months for that area. Separate estimated market prices would be calculated for propagative and nonpropagative wheat.

We are proposing that handlers who sell propagative or nonpropagative wheat grown in an area under the first regulated crop season would be eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler, but was tested by APHIS and found positive for Karnal bunt after purchase by the handler, as long as the price to be paid is not contingent on the test results. Compensation would equal the

estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the handler. Separate estimated market prices would be calculated for propagative and nonpropagative wheat. However, compensation for positive-testing wheat would not exceed \$1.80 per bushel under any circumstances.

The calculation described above for handlers would provide compensation only for handlers who experience a change in the expected value of purchased wheat. Wheat that is negative for Karnal bunt is expected to be worth more than positive wheat because of the restrictions imposed by the Karnal bunt regulations on the movement and use of positive wheat. In the 1995–1996 crop season, wheat was tested twice before movement, with the first test being done from samples taken in the field. Therefore, results of at least one test were known before a grower sold the wheat to a handler. For the 1996–1997 crop season, testing protocols will require wheat to be sampled and tested for the first time at the means of conveyance, at which time the wheat will usually already have been purchased by a handler. If a handler purchases untested wheat at a price appropriate for negative wheat, instead of making the price contingent on test results, and the wheat later tests positive, the handler would experience a loss in value of the wheat.

### **Second Regulated Crop Season**

We would describe an area in the second regulated crop season as an area that became regulated for Karnal bunt before the 1996–1997 crop was planted or for which an EAN was issued before the 1996–1997 crop was planted. Further, the area must have remained regulated or under an EAN at the time the wheat was sold in order for a grower or handler to be eligible for compensation. However, the Secretary of Agriculture is authorized to compensate only individuals who are in States for which an extraordinary emergency has been declared. As discussed previously in this document, all of the areas currently listed as regulated areas in the Karnal bunt regulations, and all the areas currently regulated for Karnal bunt under EANs, would be considered to be in the second regulated crop season.

We are proposing that growers in the second regulated crop season who sell propagative or nonpropagative wheat are eligible to receive compensation only if the wheat was tested by APHIS and found positive for Karnal bunt prior to sale, or was tested by APHIS and

found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results. Compensation would be at the rate of \$.60 per bushel of positive testing wheat.

We are proposing that handlers who sell propagative or nonpropagative wheat grown in an area under the second regulated crop season are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase, but was tested by APHIS and found positive for Karnal bunt after purchase, as long as the price to be paid is not contingent on the test results. Compensation would be at the rate of \$.60 per bushel of positive testing wheat.

### **Growers and Handlers—To Claim Compensation**

We are proposing that the Farm Service Agency (FSA) of USDA would issue compensation to growers and handlers for the loss in value of their wheat. We would require that all compensation claims be received by FSA on or before March 31, 1998. The Administrator of APHIS could extend that deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

Growers and handlers who are eligible for compensation under the proposed first or second regulated crop season regulations would need to provide the same documents for claiming compensation, with a few exceptions. Both growers and handlers would have to submit a Karnal Bunt Compensation Claim form, provided by FSA. (We have developed a form to be used in claiming Karnal bunt compensation. See the information under the "Paperwork Reduction Act" section of this document for further information on this form.) If the wheat was grown in an area that is not a regulated area, but for which an EAN has been issued, the grower or handler would have to submit a copy of the EAN. Both growers and handlers would also have to submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results, and verification as to the actual (not estimated) weight of the wheat that tested positive (such as a copy of the limited permit under which the wheat is being moved, or other verification).

In addition to the documents described above for both growers and handlers, growers would have to submit a copy of the receipt for the final sale of the wheat, showing the total bushels

sold and the total price received by the grower. Growers compensated under the regulations for areas in the first regulated crop season would have to submit a copy of the contract the grower has for the wheat, if the wheat was under contract. Growers compensated under the regulations for areas in the second regulated crop season who sold wheat that was not yet tested by APHIS would have to submit documentation showing that the price paid to the grower was contingent on test results (this information could appear on the receipt for the final sale of the wheat or on a contract the grower has for the wheat, if the wheat was under contract).

In addition to the documents described above for both growers and handlers, handlers would have to provide the FSA office with a copy of the receipt for the purchase of the wheat, and a copy of the receipt for the final sale of the wheat. The handler would also have to submit documentation showing that the price paid or to be paid to the grower is not contingent on the test results (this documentation could appear on the receipt for the purchase of the wheat from the grower or on a contract for the purchase of the wheat, if the wheat was purchased under contract).

### *Compensation for Grain Storage Facilities, Flour Millers, and National Survey Participants*

The Karnal bunt compensation regulations for the 1995–1996 crop season provided compensation for the decontamination of grain storage facilities, the treatment of millfeed, and participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found by APHIS to be positive for Karnal bunt. We are proposing to include compensation for these same losses and expenses in the 1996–1997 crop season. Unlike for growers and handlers in the 1996–1997 crop season, there would not be separate compensation for areas in the first and second regulated crop season. The proposed compensation for the decontamination of grain storage facilities, the treatment of millfeed, and participants in the National Karnal Bunt Survey would appear in a new § 301.89–16.

### **Decontamination of Grain Storage Facilities**

As part of the Karnal bunt program, APHIS may require the decontamination of grain storage facilities that have been determined by APHIS to be contaminated with Karnal bunt. Section 301.89–14(d) of the Karnal bunt regulations provides compensation for

the 1995–1996 crop season to owners of grain storage facilities that are in States where the Secretary has declared an extraordinary emergency, and who have decontaminated their grain storage facilities pursuant to an EAN issued by an inspector. We are proposing to offer the same compensation for the decontamination of grain storage facilities in the 1996–1997 crop season. Compensation for decontamination of grain storage facilities would appear in paragraph (a) of proposed § 301.89–16, and would be as follows:

Owners of grain storage facilities that are in States where the Secretary has declared an extraordinary emergency, and who have decontaminated their grain storage facilities pursuant to an EAN issued by an inspector would be eligible to be compensated, on a one time only basis for each facility for each covered crop year wheat, for up to 50 percent of the direct cost of decontamination. However, compensation would not exceed \$20,000 per grain storage facility. General clean-up, repair, and refurbishment costs would be excluded from compensation.

Compensation payments for the decontamination of grain storage facilities would be issued by APHIS. To claim compensation, the owner of the grain storage facility would have to submit to an inspector records demonstrating that decontamination was performed on all structures, conveyances, or materials ordered to be decontaminated by the EAN on the facility. The records would have to include a copy of the EAN, contracts with individuals or companies hired to perform the decontamination, receipts for equipment and materials purchased to perform the decontamination, time sheets for employees of the grain storage facility who performed activities connected to the decontamination, and any other documentation that helps show the cost to the owner and that decontamination has been completed.

We would require that claims for compensation be received by APHIS on or before March 31, 1998. The Administrator could extend this deadline, upon written request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

#### **Compensation for Treating Millfeed**

The compensation regulations for the 1995–1996 crop season provide that flour millers who, in accordance with a compliance agreement with APHIS, heat-treat millfeed made from wheat

produced in regulated areas that require such treatment are eligible to be compensated at the rate of \$35.00 per short ton of millfeed. Paragraph (b) of proposed § 301.89–16 would provide the same compensation for treating millfeed in the 1996–1997 crop season. The amount of millfeed compensated would be calculated by multiplying the weight of wheat from the regulated area received by the miller by 25 percent (the average percent of millfeed derived from a short ton of grain). Compensation payments would be issued by APHIS. To claim compensation, the miller would have to submit to an inspector verification as to the actual (not estimated) weight of the wheat (such as a copy of the limited permit under which the wheat was moved to the mill or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification). Flour millers would also have to submit verification that the millfeed was heat treated (such as a copy of the limited permit under which the wheat was moved to a treatment facility and a copy of the bill of lading accompanying that movement; or a copy of PPQ Form 700 (which includes certification of processing) signed by the inspector who monitors the mill). Claims for compensation would have to be received by APHIS on or before March 31, 1998. The Administrator may extend this deadline, upon written request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

We are considering proposing to eliminate the requirement to heat treat millfeed made from wheat produced in regulated areas. If this requirement is eliminated by a future rulemaking, compensation would not be paid for millfeed that is heat treated after the effective date of such a rule.

#### **National Karnal Bunt Survey Participants**

We are also proposing compensation provisions for participants in the National Karnal Bunt Survey in the 1996–1997 crop season whose wheat tests positive for Karnal bunt. APHIS is conducting a National Karnal Bunt Survey to demonstrate to our trading partners that areas producing wheat for export are free of the disease. APHIS is receiving voluntary cooperation from many grain storage facilities in wheat producing areas both within and outside the States in which the Secretary of Agriculture has declared an extraordinary emergency. The declarations of extraordinary emergency

authorize the Secretary of Agriculture to take emergency action with regard to Karnal bunt, and authorize the Secretary to compensate growers and other persons for economic losses incurred by them as a result of those emergency actions. The Secretary is not authorized to pay compensation to individuals who are not in States for which an extraordinary emergency has been declared.

If a grain storage facility participating in the National Survey in one of the States for which an extraordinary emergency has been declared tests positive for Karnal bunt, APHIS will regulate the facility under an EAN. We are proposing that APHIS would compensate the owner for the loss in value of the wheat and for up to 50 percent of the direct cost of decontaminating the facility (not to exceed \$20,000) on a one time only basis for any covered crop season wheat. In the event that a grain storage facility participating in the National Survey that is in a State not covered by a declaration of extraordinary emergency should test positive for Karnal bunt, the State may offer to compensate the owner of the facility for the loss in value of the positive wheat and for the cost of decontamination. If the State is unwilling or unable to offer compensation at a level equal to that offered by APHIS (as proposed in this document), the Secretary may, in consultation with the State Department of Agriculture, declare an extraordinary emergency in that State. APHIS could then compensate the owner as discussed above.

We completed the National Survey for the 1995–1996 crop season in the fall of 1996. We plan to continue the National Survey after the 1996–1997 crop season wheat is harvested. If a grain storage facility participating in the National Karnal Bunt Survey in the 1996–1997 crop season tests positive for Karnal bunt, the facility will be regulated, and may be ordered decontaminated, pursuant to an EAN issued by an inspector. We are proposing that, if a declaration of extraordinary emergency has been declared in the State in which the grain storage facility is located, the owner would be eligible for compensation for the loss in value of the positive-testing wheat and for the decontamination of the grain storage facility, if decontamination is required. These provisions would appear in paragraph (c) of proposed § 301.89–16.

Compensation for the loss in value of positive-testing wheat would equal the estimated market price for the relevant class of wheat minus the actual price received for the wheat. The estimated

market price would be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the relevant time period for that facility, with adjustments for transportation and other handling costs. However, compensation would not exceed \$1.80 per bushel under any circumstances. Compensation payments for loss in value of wheat would be issued by FSA. To claim compensation, the owner of the facility would have to submit to the local FSA office a Karnal Bunt Compensation Claim form, provided by FSA; a copy of the EAN under which the facility is or was regulated; verification as to the actual (not estimated) weight of the wheat (such as a copy of the limited permit under which the wheat was moved to a mill or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification); and a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the owner of the grain storage facility. Claims for compensation would have to be received by FSA on or before March 31, 1998. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

Compensation for the decontamination of the grain storage facility would be on a one time only basis for each grain storage facility for each covered crop year wheat for the direct costs of decontamination of the facility at the same rate described previously in this document for the decontamination of grain storage facilities (up to 50 per cent of the direct costs of decontamination, not to exceed \$20,000 per grain storage facility)(see proposed § 301.89-16(a)). Compensation payments for decontamination of grain storage facilities would be issued by APHIS, and claims for compensation would have to be submitted in accordance with the provisions described previously in this document for compensation for the decontamination of grain storage facilities. Claims for compensation would have to be received by APHIS on or before March 31, 1998. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. This rule has been determined to be economically significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This action would amend the regulations to establish compensation for certain growers, handlers, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey to mitigate losses and expenses incurred in the 1996-1997 crop season because of the Karnal bunt quarantine and emergency actions. The quarantine and regulations for Karnal bunt were established by a series of interim rules and a final rule published in the **Federal Register** on October 4, 1996. This proposed rule for 1996-1997 crop season compensation is being issued on an expedited basis, so that we can accept public comments and promulgate compensation regulations before the end of the 1997 harvest. An interim rule effective on April 25, 1997, and published in the **Federal Register** on May 1, 1997, substantially reduces the size of the area regulated for Karnal bunt, which means that there will no longer be restrictions imposed upon the movement of regulated articles such as grain, seed, and straw from those areas released from regulation. The interim rule also eases restrictions on the movement of grain and other regulated articles from those areas that remain under regulation. We anticipate that the changes made by the interim rule will have a significant deregulatory impact on affected entities. This will significantly reduce the number of entities in need of compensation, and the amount of compensation those entities are ultimately paid will likely be reduced.

In the interim rule, we explained that the expedited basis on which that rule was issued made compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. Given that we cannot yet assess the effects of the interim rule, and the effects of the interim rule will significantly affect the impact of this proposed rule, compliance with section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is also impracticable with regards to this proposed rule. We will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we are requesting approval from the Office of Management and Budget (OMB) of a revision of a currently approved information collection in support of the Karnal bunt regulations.

*Title:* Karnal Bunt.

*OMB Number:* 0579-0121.

*Expiration Date of Approval:* April 30, 2000.

*Type of Request:* Revision of a currently approved information collection.

*Abstract:* This rule would require that growers and handlers contact a Farm Service Agency (FSA) office and provide certain documents to that office in order to claim compensation. Growers and handlers would also have to submit to FSA a Karnal Bunt Compensation Claim form. The local FSA office would provide the form and would complete the form using information provided by the grower or handler. The grower or handler would have to sign the form to attest that the information on the form is accurate and to demonstrate acceptance of the compensation. In addition, for compensation claims from growers and handlers in the first regulated crop season, the local FSA office would have to complete a Karnal Bunt Compensation Worksheet in order to calculate the rate of compensation in accordance with the regulations. This worksheet would be completed using the information collected by FSA in completing the Karnal Bunt Compensation Claim form. This rule would also require that owners of grain storage facilities and flour millers provide certain records and documents to an APHIS inspector in order to claim compensation.

The above information collection is necessary in order to verify a claimant's eligibility for compensation and to provide documentation of compensation claims and payments.

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average .57 hours per response.

*Respondents:* Growers, handlers, owners of grain storage facilities, and flour millers.

*Estimated number of respondents:* 2249.

*Estimated number of responses per respondent:* 4.20.

*Estimated total annual burden on respondents:* 5332 hours.

In addition, as discussed previously in this document, APHIS is conducting a National Karnal Bunt Survey to demonstrate to our trading partners that areas producing wheat for export are free of Karnal bunt. APHIS is receiving voluntary cooperation in conducting this survey from grain storage facilities in wheat producing areas throughout the United States. To conduct the survey, APHIS is asking that personnel at participating grain storage facilities set aside samples of grain at the time that shipments of wheat enter the facility. The grain samples will be collected, tested, and recorded by APHIS to determine if Karnal bunt is present.

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average .1 hours per response.

*Respondents:* Employees of grain storage facilities.

*Estimated number of respondents:* 2100.

*Estimated number of responses per respondent:* 10.

*Estimated total annual burden on respondents:* 2100 hours.

We are soliciting comments from the public (as well as affected agencies) concerning the information collection and recordkeeping requirements in this proposed rule, and concerning the information collection in support of the National Karnal Bunt Survey. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission responses).

Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 96-016-15. Please send a copy of your comments to: (1) Docket No. 96-016-15, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

#### List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 would be amended as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.89-1, a definition for *Actual price received* would be added in alphabetical order to read as follows:

##### § 301.89-1 Definitions.

*Actual price received.* The net price after adjustment for any premiums or discounts stated on the sales receipt.

\* \* \* \* \*

3. New §§ 301.89-15 and 301.89-16 would be added to read as follows:

##### § 301.89-15 Compensation for growers and handlers in the 1996-1997 crop season.

Growers and handlers are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1996-1997 crop season to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Growers and handlers in areas under first regulated crop season.* Growers and handlers are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (a)(1) and (a)(2) of this section if: the wheat was grown in a State where the Secretary has declared an extraordinary emergency; and, the wheat was grown in an area of that State that became regulated for Karnal bunt after the 1996-1997 crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued after the 1996-1997 crop was planted; and, the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers and handlers in areas under the first regulated crop season are eligible for compensation for 1996-1997 crop season wheat and for wheat inventories in their possession that were unsold at the time the area became regulated.

(1) *Growers.* Growers of wheat in an area under the first regulated crop season, who sell propagative or nonpropagative wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results, are eligible to receive compensation as described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section. However, compensation for positive-testing wheat will not exceed \$1.80 per bushel under any circumstances.

(i) If the wheat was grown under contract and a price was determined in the contract before the area where the wheat was grown became regulated, compensation will equal the contract price minus the actual price received by the grower.

(ii) If the wheat was not grown under contract or a price was determined in the contract after the area where the wheat was grown became regulated, compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the grower. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the harvest months for the area, with adjustments for transportation and other handling costs. Separate estimated market prices will be calculated for propagative and nonpropagative wheat.

(2) *Handlers.* Handlers who sell propagative or nonpropagative wheat

grown in an area under the first regulated crop season are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler, but was tested by APHIS and found positive for Karnal bunt after purchase by the handler, as long as the price to be paid is not contingent on the test results. Compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the handler. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the harvest months for the area, with adjustments for transportation and other handling costs. Separate estimated market prices will be calculated for propagative and nonpropagative wheat. However, compensation will not exceed \$1.80 per bushel under any circumstances.

(b) *Growers and handlers in areas under second regulated crop season.* Growers and handlers are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (b)(1) and (b)(2) of this section if: the wheat was grown in a State where the Secretary has declared an extraordinary emergency; and, the wheat was grown in an area of that State that became regulated for Karnal bunt before the 1996–1997 crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued before the 1996–1997 crop was planted; and, the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers and handlers in areas under the second regulated crop season are eligible for compensation only for 1996–1997 crop season wheat.

(1) *Growers.* Growers of wheat in an area under the second regulated crop season who sell propagative or nonpropagative wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results, are eligible to receive compensation at the rate of \$.60 per bushel of positive testing wheat.

(2) *Handlers.* Handlers who sell propagative or nonpropagative wheat grown in an area under the second regulated crop season are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler, but was tested

by APHIS and found positive for Karnal bunt after purchase by the handler, as long as the price to be paid by the handler is not contingent on the test results. Compensation will be at the rate of \$.60 per bushel of positive testing wheat.

(c) *To claim compensation.* Compensation payments to growers and handlers under paragraphs (a) and (b) of this section will be issued by the Farm Service Agency (FSA). Compensation claims must be received by FSA on or before March 31, 1998. The Administrator may extend the deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998. To claim compensation, a grower or handler must complete and submit to the local FSA county office the following documents:

(1) *Both growers and handlers.* A grower or handler must submit a Karnal Bunt Compensation Claim form, provided by FSA. If the wheat was grown in an area that is not a regulated area, but for which an Emergency Action Notification (PPQ Form 523)(EAN) has been issued, the grower or handler must submit a copy of the EAN. Growers and handlers must also submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results, and verification as to the actual (not estimated) weight of the wheat that tested positive (such as a copy of the limited permit under which the wheat is being moved, or other verification).

(2) *Growers.* In addition to the documents required in paragraph (c)(1) of this section, growers must submit a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the grower. Growers compensated under paragraph (a)(1) of this section (first regulated crop season) must submit a copy of the contract the grower has for the wheat, if the wheat was under contract. Growers compensated under paragraph (b)(1) of this section (second regulated crop season) whose wheat was not tested prior to sale must submit documentation showing that the price paid to the grower was contingent on test results (such as a copy of the receipt for the final sale of the wheat or a copy of the contract the grower has for the wheat, if this information appears on those documents).

(3) *Handlers.* In addition to the documents required in paragraph (c)(1) of this section, handlers must submit a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the

handler. The handler must also submit documentation showing that the price paid or to be paid to the grower is not contingent on the test results (such as a copy of the receipt for the purchase of the wheat or a copy of the contract the handler has with the grower, if this information appears on those documents).

**§ 301.89–16 Compensation for grain storage facilities, flour millers, and National Survey participants for the 1996–1997 crop season.**

Owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1996–1997 crop season to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Decontamination of grain storage facilities.* Owners of grain storage facilities that are in States where the Secretary has declared an extraordinary emergency, and who have decontaminated their grain storage facilities pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector are eligible to be compensated, on a one time only basis for each facility for each covered crop year wheat, for up to 50 percent of the direct cost of decontamination. However, compensation will not exceed \$20,000 per grain storage facility (as defined in § 301.89–1). General clean-up, repair, and refurbishment costs are excluded from compensation.

Compensation payments will be issued by APHIS. To claim compensation, the owner of the grain storage facility must submit to an inspector records demonstrating that decontamination was performed on all structures, conveyances, or materials ordered to be decontaminated by the Emergency Action Notification on the facility. The records must include a copy of the Emergency Action Notification, contracts with individuals or companies hired to perform the decontamination, receipts for equipment and materials purchased to perform the decontamination, time sheets for employees of the grain storage facility who performed activities connected to the decontamination, and any other documentation that helps show the cost to the owner and that decontamination has been completed. Claims for compensation must be received by APHIS on or before March 31, 1998. The Administrator may extend this deadline, upon written request in specific cases, when unusual and unforeseen circumstances occur which prevent or

hinder a claimant from requesting compensation on or before March 31, 1998.

(b) *Flour millers.* Flour millers who, in accordance with a compliance agreement with APHIS, heat-treat millfeed made from wheat produced in regulated areas that require such treatment are eligible to be compensated at the rate of \$35.00 per short ton of millfeed. The amount of millfeed compensated will be calculated by multiplying the weight of wheat from the regulated area received by the miller by 25 percent (the average percent of millfeed derived from a short ton of grain). Compensation payments will be issued by APHIS. To claim compensation, the miller must submit to an inspector verification as to the actual (not estimated) weight of the wheat (such as a copy of the limited permit under which the wheat was moved to the mill or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification). Flour millers must also submit verification that the millfeed was heat treated (such as a copy of the limited permit under which the wheat was moved to a treatment facility and a copy of the bill of lading accompanying that movement; or a copy of PPQ Form 700 (which includes certification of processing) signed by the inspector who monitors the mill). Claims for compensation must be received by APHIS on or before March 31, 1998. The Administrator may extend this deadline, upon written request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

(c) *National Karnal Bunt Survey participants.* If a grain storage facility participating in the National Karnal Bunt Survey tests positive for Karnal bunt, the facility will be regulated, and may be ordered decontaminated, pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector. If the Secretary has declared an extraordinary emergency in the State in which the grain storage facility is located, the owner will be eligible for compensation as follows:

(1) *Loss in value of positive wheat.* The owner of the grain storage facility will be compensated for the loss in value of positive wheat. Compensation will equal the estimated market price for the relevant class of wheat minus the actual price received for the wheat. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets

(animal feed, milling, or export) during the relevant time period for that facility, with adjustments for transportation and other handling costs. However, compensation will not exceed \$1.80 per bushel under any circumstances. Compensation payments for loss in value of wheat will be issued by the Farm Service Agency (FSA). To claim compensation, the owner of the facility must submit to the local FSA office a Karnal Bunt Compensation Claim form, provided by FSA. The owner of the facility must also submit to FSA a copy of the Emergency Action Notification under which the facility is or was quarantined; verification as to the actual (not estimated) weight of the wheat (such as a copy of the limited permit under which the wheat was moved to a mill or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification); and a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the owner of the grain storage facility. Claims for compensation must be received by FSA on or before March 31, 1998. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

(2) *Decontamination of grain storage facilities.* The owner of the facility will be compensated on a one time only basis for each grain storage facility for each covered crop year wheat for the direct costs of decontamination of the facility at the same rate described under paragraph (a) of this section (up to 50 percent of the direct costs of decontamination, not to exceed \$20,000 per grain storage facility). Compensation payments for decontamination of grain storage facilities will be issued by APHIS, and claims for compensation must be submitted in accordance with the provisions in paragraph (a) of this section. Claims for compensation must be received by APHIS on or before March 31, 1998. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before March 31, 1998.

Done in Washington, DC, this 3rd day of July 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97-18181 Filed 7-10-97; 8:45 am]

BILLING CODE 3410-34-P

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 202

[Regulation B; Docket No. R-0978]

#### Equal Credit Opportunity

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is proposing to amend certain model forms in its Regulation B on equal credit opportunity to reflect recent statutory amendments to the Fair Credit Reporting Act (FCRA) disclosures contained in those forms. Creditors have the option of including the FCRA disclosures with the notice of action taken required under Regulation B.

**DATES:** Comments must be received on or before August 15, 1997.

**ADDRESSES:** Comments should refer to Docket No. R-0978, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20051. They may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in Section 261.8 of the Board's Rules Regarding Availability of Information.

**FOR FURTHER INFORMATION CONTACT:** Jane Jensen Gell, Senior Attorney, or Sheilah A. Goodman, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667; users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452-3544.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Regulation B, which implements the Equal Credit Opportunity Act, requires creditors to provide a consumer with a notice of action taken if an application for credit is denied, an account is terminated, or the terms of an account are unfavorably changed. The Fair Credit Reporting Act (FCRA) (15 U.S.C. 1681a), requires creditors that take adverse action against a consumer, such as denying an application for credit, to