

# Proposed Rules

Federal Register

Vol. 62, No. 146

Wednesday, July 30, 1997

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. 96-016-21]

RIN 0579-AA83

#### Karnal Bunt; Compensation for Wheat Seed and Straw in the 1995-1996 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 growers and seed companies for the loss in value of wheat seed and straw in the 1995-1996 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.

**DATES:** For comments on all portions of this proposed rule except the rule's information collection and recordkeeping requirements that are subject to the Paperwork Reduction Act, consideration will be given only to comments received on or before August 29, 1997. For comments on the Paperwork Reduction Act requirements of this proposed rule, consideration will be given only to comments received on or before September 29, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 96-016-21, 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. 96-016-21. 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. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89-1 through 301.89-14. 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 (61 FR 35102-35107, Docket No. 96-016-7), 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. On May 6, 1997, we published a document in the **Federal Register** (62 FR 24745-24753, Docket No. 96-016-17, effective April 30, 1997) 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 participants in the National Karnal Bunt Survey whose wheat tested positive for Karnal bunt in the 1995-1996 crop season. Several comments on the July 5 interim rule requested compensation for loss in value of wheat seed and straw in the 1995-1996 crop season. We stated in the May 6 final rule that we were still

considering what compensation was appropriate for these losses. The provisions of the compensation plan for seed and straw are proposed in this document.

The Agency has identified three principles for deciding whether to provide compensation. First, compensation may be appropriate where quarantine and emergency actions result in economic costs over and above those that would result from the normal operation of market forces. Payment of compensation would reflect the incremental burdens of complying with regulatory requirements insofar as market forces would not otherwise impose similar or analogous costs. Second, compensation may be appropriate where parties undertake actions that confer significant benefits on others. Under this principle, payment of compensation would be intended to overcome the usual disincentives to produce such benefits. Third, compensation may be appropriate where a small number of parties necessarily bear a disproportionate share of the burden of providing such benefits. This principle rests on the widely shared belief that burden-sharing is a fundamental principle of equity. Our decisions concerning the compensation we are proposing for seed and straw were made after consideration of these three principles.

##### Compensation for Seed

In the 1995-1996 crop season, areas in Arizona, California, New Mexico, and Texas were regulated for Karnal bunt. For 1995-1996 crop season wheat, commercial shipments of wheat to be used for seed were prevented from moving outside of the regulated areas. Wheat seed grown in the regulated areas could be planted within the regulated areas, but only after it tested negative for Karnal bunt and was treated. These restrictions prevented most wheat seed from being shipped to intended markets. Growers and seed companies were permitted to sell their wheat seed for use as grain (for milling or animal feed). However, even under normal market conditions, the value of grain is less than for seed. In the 1995-1996 crop season, grain from the regulated areas was also decreased in value because of the Karnal bunt regulations. It is estimated that 1.5 million bushels of

wheat seed grown in the regulated areas sustained loss in value of between \$5 and 6 million in the 1995–1996 crop season.

Seed companies had contracts with growers in the regulated areas to produce commercial quantities of wheat seed (a seed company acquires wheat and processes it for sale as seed). Under a typical contract, a grower agreed to produce a specified quantity of seed for a price that was normally equal to the price the wheat would be worth as grain plus a 30 to 50 cents per bushel seed premium. This premium reflects the added precautions taken by the grower in production to ensure seed integrity and cleanliness. Some contract prices, including the seed premiums, were set in the contracts prior to the discovery of Karnal bunt in Arizona in March 1996. However, many of the contracts specified that the prices were to be set at harvest, which was after the discovery of Karnal bunt. Contract prices set at harvest were, therefore, likely to reflect the loss in value of wheat seed due to the restrictions on moving seed in the Karnal bunt regulations. Growers experienced a loss in the expected value of their seed if seed companies did not pay the full contract price specified in the contract prior to harvest, or if a price was determined in the contract at harvest, after the discovery of Karnal bunt.

For seed companies, the price for which they are able to sell their seed consists of the market value for wheat grain plus the seed margin. The seed margin is the difference between the value of wheat sold as seed and wheat sold as grain, and reflects various costs to seed companies for producing seed, including seed premiums paid by the seed company to the grower. Seed companies also contract with growers to produce both public and private variety seed. Private variety seed is seed that has a plant variety protection patent. In the case of private variety seed production, the seed margin would also reflect premiums paid by the seed company to the private firm that owns the plant variety protection patent. Seed margins in the regulated areas average \$4.50 per bushel for private variety seed and \$2.40 per bushel for public variety seed.

In the 1995–1996 crop season, seed companies with wheat seed produced in the regulated areas experienced loss in the expected value of their seed because, under the Karnal bunt regulations, they were unable to move their seed to intended markets outside the regulated areas. Seed companies could have sold their seed as grain, for milling or to make animal feed.

However, they would have lost the seed margin, and they would have had to sell the seed for the reduced prices offered for wheat grain from the regulated areas in the 1995–1996 crop season.

We are proposing to offer compensation to wheat seed growers and seed companies to help mitigate the losses in the value of wheat seed in the 1995–1996 crop season due to the Karnal bunt regulations. The proposed regulations for wheat seed and straw compensation would be added to § 301.89–14, which contains compensation provisions for losses incurred in the 1995–1996 crop season. In the regulations, we would refer to wheat seed as “propagative wheat” or “wheat grown for propagative purposes.” Because the Secretary of Agriculture is authorized to compensate only individuals who are in States for which an extraordinary emergency has been declared, we would state that growers and seed companies would be eligible for compensation only if the wheat was grown in a State where the Secretary has declared an extraordinary emergency. Further, pursuant to an interim rule effective on April 25, 1997, and published in the **Federal Register** on May 1, 1997 (62 FR 23620–23628, Docket 96–016–19), some areas that were regulated for Karnal bunt in the 1995–1996 crop season are no longer regulated for Karnal bunt. For this reason, we would stipulate that the wheat for which compensation is being claimed must have been grown in an area of that State that was regulated for Karnal bunt or under Emergency Action Notification (EAN)(PPQ Form 523) for Karnal bunt during the 1995–1996 crop season. (EANs are issued by APHIS inspectors to temporarily regulate an area, in accordance with § 301.89–3(d) of the Karnal bunt regulations.)

#### **Compensation for Growers Who Sold Propagative Wheat**

As discussed previously in this document, growers experienced a loss in the expected value of their 1995–1996 crop season propagative wheat if seed companies did not pay the full contract price specified in the contract prior to harvest, or if a price was determined in the contract at harvest, after the discovery of Karnal bunt in March 1996. We are not proposing to pay compensation to growers if a price was determined in the contract prior to the discovery of Karnal bunt and that contract price was honored by the seed company. These growers would have received the full expected value of their propagative wheat.

Growers had the option of selling their propagative wheat as grain, instead

of selling it to the seed company with which it was contracted. Growers could then move the wheat out of the regulated areas under less burdensome restrictions than those that applied to commercial shipments of wheat seed. Some growers who chose to do this also filed compensation claims under the regulations for 1995–1996 crop season nonpropagative wheat (see § 301.89–14(b)). These growers would still have experienced the loss of the expected seed premium. We are proposing, therefore, that growers of wheat grown for propagative purposes be eligible for different levels of compensation depending on whether they sold their wheat under contract to a seed company or they sold their wheat elsewhere for nonpropagative purposes. If they sold their wheat elsewhere for nonpropagative purposes, compensation would depend on whether or not they claimed compensation under the regulations for nonpropagative wheat.

Compensation for growers who sold their wheat under contract to a seed company would be as follows:

1. If the wheat was grown under contract and a price was determined in the contract on or before March 1, 1996, and the contract price was not honored by the seed company, the compensation rate would equal the contract price (CP) including the seed premium specified in the contract (SP)(contract) minus the higher of either the salvage value (SV) plus the actual seed premium received by the grower, if any, (SP)(actual), or the actual price received by the grower (AP) plus the actual seed premium received by the grower, if any, (SP)(actual). The equation for this compensation would be as follows: Compensation rate = [CP + SP(contract)]—[higher of (SV + SP(actual)) or (AP + SP(actual))].

2. If the wheat was grown under contract and a price was determined in the contract after March 1, 1996, the compensation rate would equal the estimated market price for grain (EMP) plus the seed premium specified in the contract (SP)(contract) minus the higher of either the salvage value (SV) plus the actual seed premium received by the grower (SP)(actual), or the actual price received by the grower (AP) plus the actual seed premium received by the grower (SP)(actual). The equation for this compensation would be as follows: Compensation rate = [EMP + SP(contract)]—[higher of (SV + SP(actual)) or (AP + SP(actual))].

Compensation for growers of propagative wheat who sold their wheat under contract to a seed company would not exceed \$2.80 per bushel under any circumstances. This maximum compensation amount

represents the maximum \$2.50 per bushel compensation for nonpropagative wheat provided in the regulations (see § 301.89-14(b)) plus a \$.30 seed premium.

The salvage value used in the calculations described above is intended to represent the actual value of wheat from the regulated areas as a result of Karnal bunt. The salvage values used for propagative wheat would be the same as those used for nonpropagative wheat compensation in the 1995-1996 crop season (see § 301.89-14(b)(3)). As with nonpropagative wheat, the salvage values for propagative wheat would vary depending on whether or not the wheat was positive or negative for Karnal bunt, and the use for which the wheat was sold. In each case, the amount of the actual price or the salvage value of the propagative wheat would include the value of any proceeds accrued through insurance claims, judgments, or from any other source. However, the minimum salvage value under any circumstances would be \$3.60 per bushel.

The estimated market price used in the calculations described above is intended to represent what the value of the wheat would have been if there were no regulations for Karnal bunt. Estimated market prices were used in calculating compensation for nonpropagative wheat in the 1995-1996 crop season. Estimated market prices were calculated for nonpropagative durum wheat and nonpropagative 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 areas 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 areas 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 areas 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 areas for 1995. We would use the same estimated market prices that were calculated for nonpropagative wheat for the propagative wheat compensation calculations in this proposed rule.

Growers of 1995-1996 crop season wheat grown for propagative purposes who sold the wheat for nonpropagative purposes would be eligible to receive compensation as follows:

1. If the grower has not claimed compensation under the regulations for nonpropagative wheat, the compensation rate would equal the estimated market price for grain (EMP) minus the actual price received by the grower (AP), plus the seed premium specified in the contract the grower had with a seed company (SP). The equation for this compensation would be as follows: Compensation rate = (EMP - AP) + SP.

2. If the grower has claimed compensation under the regulations for nonpropagative wheat (§ 301.89-14(b)), the compensation rate would be equal to the seed premium specified in the contract the grower had with a seed company.

#### **Compensation for Seed Companies That Sold Propagative Wheat**

As discussed previously in this document, seed companies experienced a loss in the expected value of propagative wheat produced in the regulated areas because, under the Karnal bunt regulations, they were unable to move their wheat to intended markets outside the regulated areas. Seed companies could have sold their wheat as grain, for milling or to make animal feed. However, they would have lost the seed margin, and they would have had to sell the seed for the reduced prices offered for wheat grain from the regulated areas in the 1995-1996 crop season.

Unlike growers, who typically sell their wheat seed at harvest, seed companies sometimes keep wheat seed inventories from past crop seasons on hand. These wheat inventories were subject to the same restrictions on movement as 1995-1996 crop season wheat. For this reason, we are proposing that seed companies with 1995-1996 crop season wheat grown for propagative purposes and seed companies with propagative wheat inventories in their possession that were unsold as of March 1, 1996, be eligible to receive compensation.

Further, as discussed previously in this document, an interim rule effective on April 25, 1997, and published in the **Federal Register** on May 1, 1997, amended the regulated areas so that

some areas that were regulated for Karnal bunt in the 1995-1996 crop season are no longer regulated for Karnal bunt. Many seed companies in the previously regulated areas had held their 1995-1996 crop season wheat seed. These seed companies are now able to move their wheat for propagative purposes without restriction. However, because the wheat seed market is down this year as compared to last year, and because the regulations prevented them from marketing their wheat last year when they may have received a higher price, the seed companies will probably still experience a loss in value of their propagative wheat.

Seed companies handling propagative wheat grown in areas that remain regulated with regard to seed would continue to be subject to the restrictions on moving wheat outside of the regulated areas that apply to commercial shipments of seed, and will likely sell their wheat as grain. We are proposing separate compensation for seed companies depending on whether the propagative wheat is sold for nonpropagative purposes (such as milling or animal feed) or for propagative purposes (planting). We are also proposing different compensation for seed companies that sold propagative wheat for nonpropagative purposes depending on whether or not they have already claimed compensation under the regulations for nonpropagative wheat (see § 301.89-14(b)).

Compensation for seed companies that have sold propagative wheat for nonpropagative purposes, and that have not claimed compensation under the regulations for nonpropagative wheat, would be as follows:

1. If the wheat was grown in the 1995-1996 crop season, was under contract, and the seed company honored the contract by paying the grower the full contract price, including the seed premium, the compensation rate would equal the estimated market price for grain (EMP) plus the seed margin (SM) minus the higher of either the actual price received by the seed company (AP) or the salvage value (SV). The equation for this compensation would be as follows: Compensation rate = EMP + SM - (higher of AP or SV). The seed margin would be set at \$4.50 per bushel for private variety seed and set at \$2.40 per bushel for public variety seed. However, compensation would not exceed \$7.00 per bushel for private variety seed and \$4.90 per bushel for public variety seed under any circumstances. (The maximum compensation amounts represent the seed margins plus the maximum \$2.50

compensation for nonpropagative wheat provided in the regulations (see § 301.89–14(b)).

2. If a seed company had wheat inventories from past crop seasons on hand as of March 1, 1996, the compensation rate would equal the estimated market price for grain (EMP) plus the seed margin (SM) minus the higher of either the actual price received by the seed company (AP) or the salvage value (SV). The equation for this compensation would be as follows: Compensation rate = EMP + SM—(higher of AP or SV). The seed margin would be set at \$4.50 per bushel for private variety seed and set at \$2.40 per bushel for public variety seed. However, compensation would not exceed \$7.00 per bushel for private variety seed and \$4.90 per bushel for public variety seed under any circumstances.

Seed companies that have sold propagative wheat for nonpropagative purposes, and that have claimed compensation under the regulations for nonpropagative wheat, would be eligible for a compensation rate equal to the seed margin. The seed margin would be \$4.50 per bushel for private variety seed and \$2.40 per bushel for public variety seed.

The compensation we are proposing for seed companies that sold propagative wheat for propagative purposes would be as follows: The compensation rate would equal the estimated market price for grain (EMP) plus the seed margin (SM) minus the higher of either the actual price received by the seed company (AP), or the salvage value (SV). The equation for this compensation would be as follows: Compensation rate = (EMP + SM)—(higher of AP or SV). The seed margin would be \$4.50 per bushel for private variety seed and \$2.40 per bushel for public variety seed. However, compensation would not exceed \$7.00 per bushel for private variety seed and \$4.90 per bushel for public variety seed under any circumstances.

The salvage values and estimated market prices used in the calculations described above for seed companies would be the same as discussed previously in this document for growers of propagative wheat. In each case, the amount of the actual price or the salvage value of the propagative wheat would include the value of any proceeds accrued through insurance claims, judgments, or from any other source.

#### **Growers and Seed Companies—To Claim Compensation**

We are proposing that compensation payments for the loss in value of propagative wheat would be issued by

the Farm Service Agency (FSA) of the U.S. Department of Agriculture. Growers and seed companies that are eligible for compensation under this proposed rule would have to submit the same documents to the local FSA county office, as follows: A grower or seed company would have to 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 EAN for Karnal bunt has been issued, the grower or seed company would have to submit a copy of the EAN. A grower or seed company would also have to submit a copy of the contract under which the wheat was grown; a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results; a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold, total bushels sold, and the total price received by the grower or seed company; and verification as to the actual (not estimated) weight of the wheat for which compensation is being claimed (such as a copy of the limited permit under which the wheat is being moved, or other verification). In addition, a seed company that is claiming compensation on seed inventories would have to certify to FSA that the propagative wheat was in the seed company's possession as of March 1, 1996.

#### **Other Seed Company Compensation**

The compensation for seed companies with propagative wheat proposed above applies only to seed companies that sold their wheat. We are proposing that seed companies would be eligible to receive compensation under an additional circumstance: If a seed company is not able to or elects not to sell 1995–1996 crop season wheat grown for propagative purposes or propagative wheat inventories in their possession that were unsold as of March 1, 1996, the compensation rate would equal \$7.00 per bushel for private variety seed and \$4.90 per bushel for public variety seed. These amounts represent the seed margins of \$4.50 for private variety seed and \$2.40 for public variety seed plus the maximum \$2.50 per bushel compensation for nonpropagative wheat provided in the regulations (see § 301.89–14(b)). Compensation would only be paid if the seed company has destroyed the wheat by burying it in a sanitary landfill or other site that has been approved by APHIS.

Compensation for seed companies under this additional circumstance would be necessary in a small number of cases where seed companies had their seed treated with a fungicide and

bagged. Such treatment is typical in seed production to make it suitable for planting and so that it can be stored for extended periods, but it renders the wheat unusable for nonpropagative purposes. Most seed companies did not treat and bag their 1995–1996 crop season wheat seed. Some seed companies, however, had wheat seed from past crop seasons on hand that had already been treated in this manner. If these seed companies choose not to or are unable to market their wheat for planting within the regulated areas, then they may bury their wheat and qualify for the compensation described above.

To claim compensation under this additional circumstance, a seed company would have to submit documents to the local FSA county office, as follows: A seed company would have to 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 EAN for Karnal bunt has been issued, the seed company would have to submit a copy of the EAN. A seed company would also have to submit a copy of the contract under which the wheat was grown and verification of how much wheat was buried, in the form of a receipt from the sanitary landfill or verification signed by an APHIS inspector. In addition, a seed company that is claiming compensation on seed inventories would have to certify to FSA that the propagative wheat was in the seed company's possession as of March 1, 1996.

#### **Compensation for Straw**

Some growers contract to sell wheat straw to supplement their wheat grain income. Straw is sold for use at places such as racetracks, highway shoulders, feed yards, and parks for erosion control and to minimize muddy conditions. Wheat straw is listed in the Karnal bunt regulations as a regulated article. In the 1995–1996 crop season, wheat straw could not move outside of the regulated areas because it could not meet the conditions in the regulations for moving regulated articles outside the regulated areas (see § 301.89–5). This prevented wheat straw producers in the regulated areas from shipping their 1995–1996 crop season wheat straw to the intended markets. Some wheat straw was sold to alternative markets within the regulated areas for a lower price. However, most wheat straw was not able to be sold.

We are adding a new § 301.89–14(i) to provide compensation for wheat straw producers for the losses experienced because of the Karnal bunt regulations. We would define wheat straw producers to include either growers who bale their

own wheat straw or individuals contracted by growers to remove wheat straw from the growers' fields. We would require that the wheat straw producers must have produced the straw under contract. This would ensure that compensation is not claimed by individuals who did not intend to sell their straw, but produced it for their own use. Producers of wheat straw made from wheat grown in the regulated areas in the 1995-1996 crop season would be eligible to receive compensation on a one-time-only basis at the rate of \$1.00 per 80-pound bale or \$1.25 per hundredweight. Producers of straw contracted for sale would be eligible for compensation regardless of whether or not the straw was delivered to the contractee. Compensation payments would be issued by the Farm Service Agency (FSA). To claim compensation, a wheat straw producer would have to submit a Karnal Bunt Compensation Claim form, provided by FSA, and a copy of the contract under which the straw was produced to the local FSA county office.

**Deadline for Claiming Compensation**

We are proposing to set a deadline for claiming compensation under this proposed rule. Claims for either seed or straw compensation would have to be received by FSA on or before 60 days after the date that the provisions of this proposed rule are made final. The Administrator could extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation prior to that date.

**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.

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. A final rule effective on April 30, 1997, and published in the **Federal Register** on May 6, 1997, amended the regulations to provide compensation for certain wheat grain 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 in the 1995-1996 crop season because of actions taken by the Secretary of Agriculture to prevent

the spread of Karnal bunt. The economic impact of the series of interim rules and the October 1996 final rule establishing the Karnal bunt quarantine and regulations, and the May 1997 final rule on compensation, was discussed in a regulatory flexibility analysis and regulatory impact analysis also published in the **Federal Register** on May 6, 1997 (62 FR 24753-24765, Docket No. 96-016-20). The analyses estimate that losses due to the discovery of Karnal bunt and the subsequent emergency regulatory actions amounted to \$44 million (see table below). These losses were associated with the plowdown of fields in New Mexico and Texas that were known to be planted with Karnal bunt-infected seed, decontamination of grain storage facilities, the decline in market value of wheat grain testing either positive or negative for Karnal bunt, treatment of millfeed required by the regulations, the decline in market value of wheat seed and straw, and damages to combine harvesters due to required disinfection treatment.

In order to alleviate some of the economic hardships caused by the Karnal bunt regulations, and to ensure full and effective compliance with the regulatory program, compensation to mitigate certain losses was offered to affected parties in the regulated areas. A discussion of losses and the rationale for compensation can be found in the regulatory flexibility analysis and regulatory impact analysis cited above. Funding for compensation in the amount of \$39 million has been made available through apportionment action (transfers from the Commodity Credit Corporation). Of the \$39 million, \$26.5 million has been allocated specifically for compensation for plowdown, decontaminating grain storage facilities, loss in value of grain, and millfeed treatment.

This proposed rule would amend the Karnal bunt regulations by adding compensation provisions for wheat straw producers and wheat seed growers and seed companies for the loss in value of their straw and seed due to the regulations for Karnal bunt. As discussed in the regulatory impact analysis referred to above, losses to seed growers were estimated to be about \$6 million; losses to straw producers were estimated at about \$200,000. The regulatory flexibility analysis referred to above discusses the impact of the Karnal bunt regulations on small entities. The majority of the affected entities in the regulated areas have been determined to be small entities. Compensation in the amount of \$10.8 million has been apportioned for compensation to seed

producers and companies for the loss in value of their seed. Straw compensation was made available through funds appropriated for the loss in value of grain (see table below).

**ESTIMATED LOSS IN VALUE DUE TO KARNAL BUNT REGULATIONS, 1995-96 CROP YEAR**

[In million dollars]

Action	Estimated loss in value
1. Plowdown of NM and TX fields planted with infected seed .....	\$1.2
2. KB-positive grain diverted to animal feed market .....	4.2
3. KB-negative grain that experienced loss in value .....	128.0
4. Cost of sanitizing storage facilities .....	0.3
5. Millfeed treatment of KB-negative grain .....	1.6
6. Loss in value of seed .....	6.0
7. Loss in value of straw .....	0.2
8. Loss related to cleaning and disinfecting of combine harvesters .....	2.0
<b>Total .....</b>	<b>44.0</b>

<sup>1</sup>\$28 million is the potential *maximum* amount of loss in value of uninfected wheat.

**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 section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under OMB control number 0579-0121 in conjunction with APHIS Dockets 96-016-15 and 96-016-17, with two exceptions.

The first exception is the proposed requirement that growers and handlers submit to FSA a Karnal Bunt

Compensation Claim form. This information collection was submitted for approval to OMB in conjunction with Docket 96-016-15 for 1996-1997 compensation claims, but not for 1995-1996 compensation claims (the crop season covered by this docket). The second exception is that, in order for FSA to complete the Karnal Bunt Compensation Claim form, the local FSA office would have to complete a Karnal Bunt Compensation Worksheet for 1995-1996 Propagative Wheat (PPQ Form 928). Completion of the worksheet would be necessary in order to calculate the rate of compensation in accordance with the regulations proposed in this docket. This worksheet would be completed using the information collected by FSA in completing the Karnal Bunt Compensation Claim form. This information collection was not submitted to OMB in conjunction with APHIS Dockets 96-016-15 and 96-016-17 because the need for FSA to complete a Karnal Bunt Compensation Worksheet for 1995-1996 Propagative Wheat is particular to this proposed rule.

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average .46 hours per response.

*Respondents:* Growers and seed companies.

*Estimated number of respondents:* 122.

*Estimated number of responses per respondent:* 3.9.

*Estimated total annual burden on respondents:* 216 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).

Information collection in support of the National Karnal Bunt Survey:

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. 96-016-21. Please send a copy of your comments to: (1) Docket No. 96-016-21, 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: Ms. Cheryl Jenkins, APHIS Information Collection Coordinator, (301)734-5360.

#### 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 § 301.89-14, paragraph (f)(2), the reference to "paragraph (d)" would be removed both times it appears and a reference to "paragraph (f)" would be added in its place.

3. In § 301.89-14, paragraphs (d), (e), and (f) would be redesignated as paragraphs (f), (g), and (h) respectively; and new paragraphs (d), (e), and (i) would be added to read as set forth below.

#### § 301.89-14 Compensation for the 1995-1996 crop season.

\* \* \* \* \*

(d) *Growers and seed companies that sold propagative wheat.* Growers of and seed companies with wheat grown for propagative purposes are eligible for compensation for the loss in value of their wheat, in accordance with this section, if the wheat was grown in a State where the Secretary has declared an extraordinary emergency, and if the wheat was grown in an area of that State

that was regulated for Karnal bunt or under Emergency Action Notification (PPQ Form 523) for Karnal bunt during the 1995-1996 crop season.

(1) *Growers who sold propagative wheat under contract.* Growers of 1995-1996 crop season wheat grown for propagative purposes are eligible to receive compensation as described in paragraphs (d)(1)(i) and (d)(1)(ii) of this section if they sold the wheat under contract to a seed company. However, compensation will not exceed \$2.80 per bushel under any circumstances.

(i) If the wheat was grown under contract and a price was determined in the contract on or before March 1, 1996, and the contract price was not honored by the seed company, the compensation rate will equal the contract price (CP) including the seed premium specified in the contract (SP)(contract) minus the higher of either the salvage value (SV), as described in paragraph (d)(6) of this section, plus the actual seed premium received by the grower (SP(actual)), or the actual price received by the grower (AP) plus the actual seed premium received by the grower (SP(actual)). In each case, the amount of the actual price or the salvage value of the propagative wheat will include the value of any proceeds accrued through insurance claims, judgments, or from any other source. The equation for this compensation is: Compensation rate = [CP + SP(contract)]—[higher of (SV + SP(actual)) or (AP + SP(actual))].

(ii) If the wheat was grown under contract and a price was determined in the contract after March 1, 1996, the compensation rate will equal the estimated market price for grain (EMP) plus the seed premium specified in the contract (SP)(contract) minus the higher of either the salvage value (SV), as described in paragraph (d)(6) of this section, plus the actual seed premium received by the grower (SP(actual)), or the actual price received by the grower (AP) plus the actual seed premium received by the grower (SP(actual)). In each case, the amount of the actual price or the salvage value of the propagative wheat will include the value of any proceeds accrued through insurance claims, judgments, or from any other source. The equation for this compensation is: Compensation rate = [EMP + SP(contract)]—[higher of (SV + SP(actual)) or (AP + SP(actual))]. 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) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs.

(2) *Growers who sold propagative wheat for nonpropagative purposes.* Growers of 1995–1996 crop season wheat grown for propagative purposes who sold the wheat for nonpropagative purposes are eligible to receive compensation in accordance with paragraphs (d)(2)(i) and (d)(2)(ii) of this section.

(i) If the grower has not claimed compensation under paragraph (b) of this section, the compensation rate will equal the estimated market price for grain (EMP) minus the actual price received by the grower (AP), plus the seed premium specified in the contract the grower had with a seed company (SP). In each case, the amount of the actual price of the propagative wheat will include the value of any proceeds accrued through insurance claims, judgments, or from any other source. The equation for this compensation is: Compensation rate = (EMP—AP) + SP. Growers who claim compensation under this paragraph may not claim compensation under paragraph (b) of this section.

(ii) If the grower has claimed compensation under paragraph (b) of this section, the compensation rate will equal the premium specified in the contract the grower had with a seed company.

(3) *Seed companies that sold propagative wheat for nonpropagative purposes and that have not claimed compensation.* Seed companies with 1995–1996 crop season wheat grown for propagative purposes and seed companies with propagative wheat inventories in their possession that were unsold as of March 1, 1996, are eligible to receive compensation as described in paragraphs (d)(3)(i) and (d)(3)(ii) of this section if the propagative wheat was sold for nonpropagative purposes and if the seed company has not claimed compensation under paragraph (b) of this section. Seed companies that claim compensation under paragraph (d)(3)(i) or (d)(3)(ii) of this section may not claim compensation under paragraph (b) of this section.

(i) If the wheat was grown in the 1995–1996 crop season, was under contract, and the seed company honored the contract by paying the grower the full contract price, including the seed premium, the compensation rate will equal the estimated market price for grain (EMP) plus the seed margin (SM) minus the higher of either the actual price received by the seed company (AP) or the salvage value (SV), as described in paragraph (d)(6) of this section. The equation for this compensation is: Compensation rate = EMP + SM—(higher of AP or SV). The

seed margin is \$4.50 per bushel for private variety seed and \$2.40 per bushel for public variety seed. In each case, the amount of the actual price or the salvage value of the propagative wheat will include the value of any proceeds accrued through insurance claims, judgments, or from any other source. However, compensation will not exceed \$7.00 per bushel for private variety seed and \$4.90 per bushel for public variety seed under any circumstances.

(ii) If a seed company had wheat inventories from past crop seasons on hand as of March 1, 1996, the compensation rate will equal the estimated market price for grain (EMP) plus the seed margin (SM) minus the higher of either the actual price received by the seed company (AP) or the salvage value (SV), as described in paragraph (d)(6) of this section. The equation for this compensation is: Compensation rate = EMP + SM—(higher of AP or SV). The seed margin is \$4.50 per bushel for private variety seed and \$2.40 per bushel for public variety seed. In each case, the amount of the actual price or the salvage value of the propagative wheat will include the value of any proceeds accrued through insurance claims, judgments, or from any other source. However, compensation will not exceed \$7.00 per bushel for private variety seed and \$4.90 per bushel for public variety seed under any circumstances.

(4) *Seed companies that sold propagative wheat for nonpropagative purposes and that have claimed compensation.* Seed companies with 1995–1996 crop season wheat grown for propagative purposes and seed companies with propagative wheat inventories in their possession that were unsold as of March 1, 1996, are eligible to receive compensation as described in this paragraph if the propagative wheat was sold for nonpropagative purposes and if the seed company has claimed compensation under paragraph (b) of this section. The compensation rate will equal the seed margin. The seed margin is \$4.50 per bushel for private variety seed and \$2.40 per bushel for public variety seed.

(5) *Seed companies that sold propagative wheat for propagative purposes.* Seed companies with 1995–1996 crop season wheat grown for propagative purposes and seed companies with propagative wheat inventories in their possession that were unsold as of March 1, 1996, are eligible to receive compensation as described in this paragraph if the propagative wheat was sold for propagative purposes. The compensation rate will equal the

estimated market price for grain (EMP) plus the seed margin (SM) minus the higher of either the actual price received by the seed company (AP) or the salvage value (SV), as described in paragraph (d)(6) of this section. In each case, the amount of the actual price or the salvage value of the propagative wheat will include the value of any proceeds accrued through insurance claims, judgments, or from any other source. The equation for this compensation is: Compensation rate = (EMP + SM)—(higher of AP or SV). The seed margin is \$4.50 per bushel for private variety seed and \$2.40 per bushel for public variety seed. However, compensation will not exceed \$7.00 per bushel for private variety seed and \$4.90 per bushel for public variety seed under any circumstances.

(6) *Salvage value.* Salvage values will be determined as follows:

(i) If the wheat is positive for Karnal bunt and is sold for use as animal feed, salvage value equals \$6.00 per hundredweight or \$3.60 per bushel for all classes of wheat.

(ii) If the wheat is positive for Karnal bunt and is sold for a use other than animal feed, salvage value equals whichever is higher of the following: the average price paid in the region of the regulated areas where the wheat is sold for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) for the period between May 1 and June 30, 1996; or, \$3.60 per bushel.

(iii) If the wheat is negative for Karnal bunt and is sold for any use, salvage value equals whichever is higher of the following: the average price paid in the region of the regulated areas where the wheat is sold for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) for the period between May 1 and June 30, 1996; or, \$3.60 per bushel.

(7) *To claim compensation.*

Compensation payments for claims made under paragraph (d) of this section will be issued by the Farm Service Agency (FSA). Claims for compensation must be received by FSA on or before [date 60 days after effective date of final rule]. 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 that date. To claim compensation, a grower or seed company must submit to the local FSA county office 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) for Karnal bunt has been issued, the grower or seed company must submit a copy of the EAN. A grower or seed company must also submit to the local FSA county office a copy of the contract under which the wheat was grown; a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results; a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold, total bushels sold, and the total price received by the grower or seed company; and verification as to the actual (not estimated) weight of the wheat for which compensation is being claimed (such as a copy of the limited permit under which the wheat is being moved, or other verification). In addition, a seed company that is claiming compensation on seed inventories must certify to FSA that the propagative wheat was in the seed company's possession as of March 1, 1996.

(e) *Other seed company compensation for propagative wheat.* Seed companies are also eligible to receive compensation under the following circumstance: If a seed company is not able to or elects not to sell 1995-1996 crop season wheat grown for propagative purposes or propagative wheat inventories in their possession that were unsold as of March 1, 1996, the compensation rate will equal \$7.00 per bushel for private variety seed and \$4.90 per bushel for public variety seed. Compensation will only be paid if the seed company has destroyed the wheat by burying it in a sanitary landfill or other site that has been approved by APHIS. The compensation will be issued by the Farm Service Agency (FSA). To claim compensation, a seed company must submit to the local FSA county office 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) for Karnal bunt has been issued, the seed company must submit a copy of the EAN. A seed company must also submit to the local FSA county office a copy of the contract under which the wheat was grown and verification of how much wheat was buried, in the form of a receipt from the sanitary landfill or verification signed by an APHIS inspector. In addition, a seed company that is claiming compensation on seed inventories must certify to FSA that the propagative wheat was in the seed company's possession as of March 1, 1996. Claims for compensation must be received by

FSA on or before [date 60 days after effective date of final rule]. 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 that date.

\* \* \* \* \*

(i) *Wheat straw producers.* Producers of wheat straw (either growers who bale their own wheat straw or individuals contracted by growers to remove wheat straw from the growers' fields) made from wheat grown in the regulated areas in the 1995-1996 crop season are eligible to receive compensation on a one-time-only basis at the rate of \$1.00 per 80-pound bale or \$1.25 per hundredweight. Producers are eligible for compensation regardless of whether or not the straw is sold, but the straw must have been produced under contract. Compensation payments will be issued by the Farm Service Agency (FSA). To claim compensation, a wheat straw producer must submit a Karnal Bunt Compensation Claim form, provided by FSA, and a copy of the contract under which the wheat straw was produced to the local FSA county office. Claims for compensation must be received by FSA on or before [date 60 days after effective date of final rule]. 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 prior to that date.

Done in Washington, DC, this 24th day of July 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97-20005 Filed 7-29-97; 8:45 am]

BILLING CODE 3410-34-P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 97-NM-68-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Raytheon (Beech) Model 400, 400A, 400T, MU-300, and MU-300-10 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness

directive (AD), applicable to certain Raytheon (Beech) Model 400, 400A, MU-300-10, and 2000 airplanes, and Model 200, B200, 300, and B300 series airplanes, that currently requires replacement of outflow/safety valves with serviceable valves. That AD was prompted by a report of cracking and consequent failure of outflow safety valves in the pressurization system. The actions specified by that AD are intended to prevent such cracking and consequent failure of the outflow/safety valves, which could result in rapid decompression of the airplane. This action would revise the applicability of the existing AD to add an airplane model and to remove other airplanes, as well as to reference additional service bulletins that identify the serial numbers of affected airplanes.

**DATES:** Comments must be received by September 23, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 97-NM-68-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 am and 3:00 pm, Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Allied Signal Aerospace, Technical Publications, Dept. 65-70, P.O. Box 52170, Phoenix, Arizona 85072-2170. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Imbler, Aerospace Engineer, Systems and Propulsion Branch, ACE-116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4147; fax (316) 946-4407.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date