

Proposed Rules

Federal Register

Vol. 63, No. 242

Thursday, December 17, 1998

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. 96-016-31]

RIN 0579-AA83

Karnal Bunt; Compensation for the 1997-1998 Crop Season

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Karnal bunt regulations to provide compensation for certain growers, handlers, seed companies, 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 1997-1998 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 efforts to contain and reduce the prevalence of Karnal bunt.

DATES: Consideration will be given only to comments received on or before February 16, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96-016-31, 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. 96-016-31. 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; or E-mail: michael.b.stefan@usda.gov.

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, primarily through the movement of infected seed. 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 301.89-16 (referred to below as the regulations). 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 a final rule published in the **Federal Register** and effective on June 10, 1998 (63 FR 31593-31601, Docket No. 96-016-29), the Animal and Plant Health Inspection Service (APHIS) amended the regulations by adding compensation provisions for 1996-1997 crop season wheat.¹ The final rule provides compensation for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey who incurred losses and expenses because of Karnal bunt in the 1996-1997 crop season. These provisions are in § 301.89-15, "Compensation for growers, handlers, and seed companies in the 1996-1997 crop season," and § 301.89-16, "Compensation for grain storage facilities, flour millers, and National Survey participants for the 1996-1997 crop season."

¹The 1996-1997 crop season is that season in which wheat was harvested in 1997. The 1997-1998 crop season is that season in which wheat is harvested in 1998.

APHIS' regulatory program to control the spread of Karnal bunt is a continuing program. We expect that any costs to growers and other entities related to the Karnal bunt program in the 1997-1998 crop season will be similar to those incurred in the 1996-1997 crop season. Therefore, we are proposing to amend the regulations to provide the same compensation for the 1997-1998 crop season as was provided in the 1996-1997 crop season.

Compensation for Growers and Handlers

Section 301.89-15 of the regulations provides compensation to growers and handlers for the loss in value of 1996-1997 crop season wheat seed and grain due to Karnal bunt. We are proposing to make these provisions apply also to growers, handlers, and seed companies in the 1997-1998 crop season.

The compensation in § 301.89-15 is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed. The compensation calculation for certified wheat seed and wheat grown with the intention of producing certified wheat seed is the same as that offered for wheat grain. Requiring that wheat seed be certified or grown with the intention of producing certified wheat seed ensures that the compensation is limited to market-ready seed and will not be paid for seed in other stages of development. Further, the compensation in § 301.89-15 is only for wheat that was tested by APHIS and found positive for Karnal bunt.

For the 1996-1997 crop season, § 301.89-15 provides two different levels of compensation for growers and handlers of positive wheat, depending on which of the following two sets of 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. These

areas are called "areas under the first regulated crop season" and "areas under the second regulated crop season," respectively. Growers, handlers, and seed companies 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, handlers, and seed companies 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, handlers, and seed companies could have chosen to alter their planting or contract decisions to avoid experiencing losses due to Karnal bunt. The compensation provisions for areas under the first regulated crop season are in § 301.89-15(a); the compensation provisions for areas under the second regulated crop season are in § 301.89-15(b).

The 1997-1998 crop season is the third regulated crop season for most regulated areas. In order to make the compensation in § 301.89-15 also apply to growers, handlers, and seed companies in the 1997-1998 crop season, we would remove the designation of "areas under the second regulated crop season" in paragraph (b) and refer instead to "previously regulated areas."

First Regulated Crop Season

At the present time, there are no areas under the first regulated crop season for 1997-1998. We would consider all areas that are currently regulated to be previously regulated areas for the 1997-1998 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 areas during the 1997-1998 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 provisions for areas under the first regulated crop season.

Under § 301.89-15(a), growers, handlers, and seed companies 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. For the 1997-1998 crop season, we would likewise state that growers, handlers, and seed companies

in areas under the first regulated crop season are eligible for compensation for 1997-1998 crop season wheat and for wheat inventories in their possession that were unsold at the time the area became regulated for Karnal bunt.

Under § 301.89-15(a)(1), growers of wheat in an area under the first regulated crop season who sell wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or that 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 follows:

- 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 will equal the contract price minus the actual price received by the grower; or
- 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 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.

For both situations described above, compensation for positive-testing wheat will not exceed \$1.80 per bushel under any circumstances.

Under § 301.89-15(a)(2), handlers and seed companies who sell 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 or seed company, but was tested by APHIS and found positive for Karnal bunt after purchase by the handler or seed company, 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 minus the actual price received by the handler or seed company. However, compensation for positive-testing wheat will not exceed \$1.80 per bushel under any circumstances.

Estimated market prices used in the compensation calculations described above for growers and handlers are 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 are calculated for certified wheat seed and wheat grown with the

intention of producing certified wheat seed, and wheat grain.

This proposal would make the provisions in § 301.89-15(a)(1) and (a)(2) apply to growers, handlers, and seed companies in the 1997-1998 crop season if they have wheat grown in areas under the first regulated crop season.

Previously Regulated Areas

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 EAN's, would be considered to be previously regulated areas for the 1997-1998 crop season.

Under § 301.89-15(b), growers, handlers, and seed companies in areas under the second regulated crop season are eligible for compensation only for 1996-1997 crop season wheat. We would amend § 301.89-15(b) to state that growers, handlers, and seed companies in previously regulated areas would be eligible for compensation under paragraph (b) only for 1996-1997 and 1997-1998 crop season wheat.

Under § 301.89-15(b), growers who sell 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 will be at the rate of \$.60 per bushel of positive testing wheat. Handlers and seed companies who sell wheat 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 will be at the rate of \$.60 per bushel of positive testing wheat. This proposal would make this same compensation available to growers, handlers, and seed companies in the 1997-1998 crop season.

Growers, Handlers, and Seed Companies—To Claim Compensation

In past crop seasons, the Farm Service Agency (FSA) of USDA has processed Karnal bunt compensation claims from growers, handlers, and seed companies for the loss in value of their wheat. Under this proposal, FSA would continue to process such claims in the 1997-1998 crop season.

Under § 301.89-15(c), we require 1996-1997 crop season claimants to submit a number of documents in support of their claim. We would

require the same documents to be submitted for 1997–1998 crop season compensation. The requirements in paragraph (c) are as follows:

Growers, handlers, and seed companies who are eligible for compensation under either the first regulated crop season compensation or under the second regulated crop season compensation (proposed to be designated as “previously regulated areas”) need to provide the same documents for claiming compensation, with a few exceptions. Growers, handlers, and seed companies 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 EAN has been issued, the grower, handler, or seed company must submit a copy of the EAN. Growers, handlers, and seed companies 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 a facility weigh ticket, or other verification). For compensation claims for wheat seed, a grower or seed company must submit documentation showing that the wheat is either certified seed or was grown with the intention of producing certified seed. This documentation may include one or more of the following types of documents: an application to the State seed certification agency for field inspection; a bulk sale certificate; certification tags or labels issued by the State seed certification agency; or a document issued by the State seed certification agency verifying that the wheat is certified seed.

In addition, 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 the regulations for areas in the 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 the regulations for the second regulated crop season (proposed to be designated as “previously regulated areas”) who sold wheat that was not yet tested by APHIS must 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, handlers and seed companies must provide the FSA office with a copy of the receipt for the final

sale of the wheat. The handler or seed company must 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 June 1998 final rule (Docket No. 96–016–29) also added a new § 301.89–16 to the regulations. This section sets forth compensation provisions for the decontamination of grain storage facilities, heat treatment of millfeed, and losses to National Karnal Bunt Survey participants whose wheat or grain storage facility tests positive for Karnal bunt in the 1996–1997 crop season. We are proposing to amend § 301.89–16 to make its provisions also apply to the 1997–1998 crop season.

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. For the 1996–1997 crop season, § 301.89–16(a) provides that 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 either an EAN issued by an inspector or a letter issued by an inspector ordering decontamination of the facilities, 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. General cleanup, repair, and refurbishment costs are excluded from compensation. Under this proposed rule, this same compensation would be available to owners of grain storage facilities in the 1997–1998 crop season.

Paragraph (a) also states that compensation payments will be issued by APHIS and sets forth provisions for claiming compensation. 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 by APHIS to be decontaminated. The records must

include a copy of the EAN or the letter from an inspector ordering decontamination, 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. These provisions would also apply to compensation claims in the 1997–1998 crop season.

Treatment of Millfeed

In the 1996–1997 crop season, millfeed made from wheat produced in certain regulated areas was required to be heat treated in order to help prevent the spread of Karnal bunt. Under the June 1998 final rule, § 301.89–16(b) provides that flour millers who, in accordance with a compliance agreement with APHIS, heat treat millfeed that is required by APHIS to be heat treated are eligible to be compensated at the rate of \$35.00 per short ton of millfeed.

Under a final rule published in the **Federal Register** and effective on September 23, 1998 (63 FR 50747–50752, Docket No. 96–016–32), the requirement for heat treating millfeed was revised, so that only millfeed resulting from the milling of wheat, durum wheat, or triticale that tested positive for Karnal bunt will require heat treatment. Therefore, because heat treatment of millfeed continues to be a requirement in the regulations, albeit under different criteria than in previous crop seasons, we are proposing that the compensation in § 301.89–16(b) for the 1996–1997 crop season would also be available to flour millers in the 1997–1998 crop season.

Paragraph (b) provides for the 1996–1997 crop season that 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 a facility weigh ticket 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). This proposed rule would make these same provisions apply to compensation claims for heat treatment of millfeed in the 1997–1998 crop season.

National Karnal Bunt Survey Participants

Each year since 1996, APHIS has conducted a National Karnal Bunt Survey to demonstrate to our trading partners that areas producing wheat for export are free of the disease. In past crop seasons, we offered compensation to participants in the Survey whose wheat or grain storage facility tests positive for Karnal bunt, if the participant is in a State in which the Secretary of Agriculture has declared an extraordinary emergency for Karnal bunt. For the 1996–1997 crop season, the provisions for this compensation are in § 301.89–16(c). We are proposing to make these provisions also apply to participants in the National Karnal Bunt Survey in the 1997–1998 crop season.

For the 1996–1997 crop season, paragraph (c) provides that, 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 either an EAN issued by an inspector or a letter issued by an inspector ordering decontamination of the facility. 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:

- 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 or letter from an inspector under which the facility is or was quarantined; verification as to the actual (not estimated) weight of the wheat (such as a copy of a facility weigh ticket 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.

- 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 § 301.89–16(a) (discussed earlier) (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 § 301.89–16(a).

Under this proposed rule, the compensation in § 301.89–16(c) described above would also be available to National Karnal Bunt Survey participants in the 1997–1998 crop season.

For the 1996–1997 crop season, claims for compensation under §§ 301.89–15 and 301.89–16 must be received by FSA or APHIS on or before October 8, 1998. This is 120 days after the date the June 1998 final rule was published in the **Federal Register**. For the 1997–1998 crop season, we would likewise require that claims for compensation be received by APHIS on or before the date that is 120 days after a final rule for this proposal is published in the **Federal Register**. The Administrator may extend this deadline, upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before that date.

Executive Order 12866 and Regulatory Flexibility Act

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

This proposed rule would establish compensation provisions for certain growers, handlers, seed companies, owners of grain storage facilities, flour

millers, and participants in the National Karnal Bunt Survey to mitigate losses and expenses incurred in the 1997–1998 crop season because of the Karnal bunt quarantine and emergency actions.

In accordance with Executive Order 12866, this analysis examines the economic impact of providing such compensation. The wheat industry within the regulated area is largely composed of businesses that can be considered as “small” according to guidelines established by the Small Business Administration. Therefore, this analysis also fulfills the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), which require agencies to consider the economic impact of rule changes on small entities.

Upon detection of Karnal bunt in Arizona in March 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat producing areas in the United States. The unexpected discovery of Karnal bunt and subsequent Federal emergency actions disrupted the production and marketing flows of wheat in the quarantined areas. It was estimated that the impact of Karnal bunt and subsequent Federal actions on the wheat industry totaled \$44 million in the 1995–1996 crop season.

In order to alleviate some of the economic hardships and to ensure full and effective compliance with the quarantine program, compensation to mitigate certain losses has been offered to growers, handlers, seed companies, and other affected persons in the areas regulated for Karnal bunt in the 1995–1996 and 1996–1997 crop seasons. The payment of compensation is in recognition of the fact that, while benefits from regulation accrue to a large portion of the wheat industry outside the regulated areas, the regulatory burden falls predominately on a small segment of the affected wheat industry within the regulated areas. A final rule promulgating compensation regulations for the 1996–1997 crop season was effective and published in the **Federal Register** on June 10, 1998 (63 FR 31593–31601, Docket No. 96–016–29). The compensation proposed in this document for the 1997–1998 crop season is the same as the compensation offered in the 1996–1997 crop season.

We are proposing that growers, handlers, and seed companies would be eligible for compensation for losses in the 1997–1998 crop season due to wheat grain or seed that tested positive for Karnal bunt. Only positive-testing wheat would be eligible for compensation because of the lack of restrictions on the movement of negative testing wheat. As

in the 1996–1997 crop season, we are proposing different levels of compensation depending on whether the wheat was grown in an area under the first regulated crop season or in a previously regulated area. An area in the first regulated crop season is an area that became regulated for Karnal bunt after the 1997–1998 crop was planted. A previously regulated area is an area that became regulated for Karnal bunt before the 1997–1998 crop was planted. Currently, there are no regulated areas in the first regulated crop season.

For growers, handlers, and seed companies in previously regulated areas, the proposed compensation for positive grain or seed would be \$.60 per bushel. Growers, handlers, and seed companies in the first regulated crop season would be eligible for compensation at a rate not to exceed \$1.80 per bushel. These compensation rates would apply to both wheat grain and seed. The difference in compensation rates reflects the fact that affected entities 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 that they made planting and contracting decisions, and would not have been prepared for the loss in value of their wheat due to Karnal bunt. Growers and handlers in previously regulated areas knew they were in an area regulated for Karnal bunt at the time that they made planting and contracting decisions for the 1997–1998 crop season. Given the restrictions, growers and handlers could have chosen to alter planting or contract decisions to avoid experiencing potential losses due to Karnal bunt. The proposed compensation rates are the same as those offered in the 1996–1997 crop season.

At this time, all areas that are regulated for Karnal bunt are previously regulated areas. We estimate that approximately 181,000 acres of wheat will be harvested in 1998 from the regulated areas. In the 1996–1997 crop season, less than 1 percent of wheat grown in the regulated areas tested positive for Karnal bunt. If we assume that 1 percent of wheat harvested from the regulated areas will test positive for Karnal bunt in the 1997–1998 crop season, compensation for wheat grain and seed grown in currently regulated areas would total approximately \$87,000 (1 percent of 181,000 acres equals 1,810 acres; using an estimate of 80 bushels per acre crop yield, 1,810 acres multiplied by 80 equals 144,800 bushels; 144,800 bushels multiplied by \$.60 per bushel equals \$86,880). This positive-testing wheat would have a

market value of approximately \$724,000 in the absence of Karnal bunt.

To compare, compensation for wheat grain and seed in the 1996–1997 crop season is expected to total about \$149,000. Approximately 122,000 acres of wheat were harvested from regulated areas in the 1996–1997 crop season, with a Karnal bunt infection rate of 0.8 percent. Seventy-nine percent of the positive wheat was harvested from an area in San Saba County, TX, which was in the first regulated crop season; this positive wheat will receive a maximum of \$1.80 per bushel for the 1996–1997 crop season. The remaining 21 percent of positive wheat was from an area in the second crop season of regulation; this positive wheat will receive \$.60 per bushel compensation for the 1996–1997 crop season.

We cannot determine at this time whether there will be areas eligible for compensation under the provisions for first regulated crop season areas in the 1997–1998 crop season. APHIS is in the process of conducting the 1998 National Karnal Bunt Survey in wheat producing areas throughout the United States. Any areas that become regulated in the 1997–1998 crop season as a result of the 1998 National Survey would be eligible for first regulated crop season compensation. During the 1997 National Survey for Karnal bunt, only 2 of approximately 12,000 wheat samples tested positive for Karnal bunt.

This proposed rule would also provide compensation for the decontamination of grain storage facilities found with positive wheat, the treatment of millfeed, and participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found to be positive for Karnal bunt. Compensation for decontamination of grain storage facilities will be on a one-time-only basis for up to 50 percent of the cost of decontamination, not to exceed \$20,000. We cannot determine at this time how many, if any, grain storage facilities in currently regulated areas will store positive wheat in the 1997–1998 crop season, or how many, if any, will be found to contain positive wheat during the 1998 National Survey for Karnal bunt. In the 1996–1997 crop season, 10 facilities that stored seed testing positive for Karnal bunt were found in San Saba County, TX, and we estimate that compensation for the decontamination of these facilities will total a maximum of \$120,000.

We are also proposing compensation for the cost of heat treating millfeed that APHIS requires to be treated, at the rate of \$35.00 per short ton of millfeed. No millfeed made from wheat grown in the regulated area was required to be heat

treated in the 1996–1997 crop season. Under current regulations, APHIS requires heat treatment of millfeed made from wheat that tested positive for Karnal bunt. Since little or no positive wheat is expected to be used for milling in the 1997–1998 crop season, compensation for the heat treatment of millfeed in the 1997–1998 crop season would be minimal or unnecessary.

There are approximately 15,000 acres within the areas regulated for Karnal bunt where planting of wheat was prohibited in the 1997–1998 crop season. This proposed rule does not contain provisions for compensating growers in areas where wheat planting is prohibited, since many of these growers rotate wheat with other crops that are not prohibited from being planted. These growers generate revenue from these other crops, effectively minimizing the impact of the prohibition on planting wheat.

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small businesses, organizations, and governmental jurisdictions. Growers and handlers of wheat grain and seed, and wheat seed companies, are those most affected by this proposed rule. It is estimated that there are a total of 712 wheat growers in the regulated areas: 378 in Arizona, 48 in California, 200 in New Mexico, and 86 in Texas. There are 149 growers in surveillance areas, and 563 growers in regulated areas lying beyond surveillance areas.² Most of these entities have total sales of less than \$0.5 million, the Small Business Administration's threshold for classifying wheat producers as small entities. Accordingly, the economic impact of this proposed rule would largely be on small entities.

This proposed rule is expected to have a positive economic impact on all affected entities, large and small. Compensation for the loss in value of wheat that tests positive for Karnal bunt serves to encourage compliance with testing requirements within the regulated area, thereby aiding in the preservation of an important wheat growing region in the United States. It also serves to encourage participation in the National Karnal Bunt Survey.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not

² The 149 growers in surveillance areas are distributed as follows: 54 in Arizona, 27 in California, 68 in Texas, and none in New Mexico. The 563 growers in regulated areas lying beyond surveillance areas are distributed as follows: 324 in Arizona, 21 in California, 200 in New Mexico, and 18 in Texas.

have a significant economic impact on a substantial number of small entities.

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). 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. 96-016-31. Please send a copy of your comments to: (1) Docket No. 96-016-31, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, 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.

This proposed rule would require that growers, handlers, and seed companies provide certain records and documents to a local Farm Service Agency (FSA) office in order to claim compensation. Growers, handlers, and seed companies would also have to sign a Karnal Bunt Compensation Claim form (completed by an employee of FSA using the information provided by the claimant) to attest that the information on the form is accurate and to demonstrate acceptance of the compensation. This proposal 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. This information collection is necessary in

order to verify a claimant's eligibility for compensation and to provide documentation of compensation claims and payments.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. 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; and
- (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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .506 hours per response.

Respondents: Wheat growers, handlers, seed companies, owners of grain storage facilities, flour millers, FSA personnel.

Estimated annual number of respondents: 38.

Estimated annual number of responses per respondent: 1.921.

Estimated annual number of responses: 73.

Estimated total annual burden on respondents: 37 hours.

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

List of Subjects in 7 CFR Part 301

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

Accordingly, we propose to amend 7 CFR part 301 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. Section 301.89-15 would be amended by revising the section heading, the introductory text to the section, the introductory text to paragraph (a), paragraph (b), the introductory text to paragraph (c), and the last sentence of paragraph (c)(2), to read as follows:

§ 301.89-15 Compensation for growers, handlers, and seed companies in the 1996-1997 and 1997-1998 crop seasons.

Growers, handlers, and seed companies are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1996-1997 and 1997-1998 crop seasons to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Growers, handlers, and seed companies in areas under first regulated crop season.* Growers, handlers, and seed companies 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 crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued after the 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, handlers, and seed companies in areas under the first regulated crop season are eligible for compensation for 1996-1997 crop season wheat or 1997-1998 crop season wheat (as appropriate) and for wheat inventories in their possession that were unsold at the time the area became regulated. The compensation provided in this section is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed.

* * * * *

(b) *Growers, handlers, and seed companies in previously regulated areas.* Growers, handlers, and seed companies 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 crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued before the 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, handlers, and seed companies in previously regulated areas are eligible for compensation only for 1996–1997 or 1997–1998 crop season wheat. The compensation provided in this section is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed.

(1) *Growers.* Growers of wheat in a previously regulated area who sell wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or that 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 and seed companies.* Handlers and seed companies who sell wheat grown in a previously regulated area 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 or seed company, as long as the price to be paid by the handler or seed company 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, handlers, and seed companies under paragraphs (a) and (b) of this section will be issued by the Farm Service Agency (FSA). Claims for compensation for the 1996–1997 crop season must be received by FSA on or before October 8, 1998. Claims for compensation for the 1997–1998 crop season must be received by FSA on or before [the date 120 days after the final rule is published in the Federal Register]. 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 these dates. To claim compensation, a grower, handler, or seed company must complete and submit to the local FSA county office the following documents:

* * * * *

(2) *Growers.* * * * Growers compensated under paragraph (b)(1) of this section (previously regulated areas) 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).

* * * * *

§ 301.89–16 [Amended]

3. Section 301.89–16 would be amended as follows:

a. In the heading, by removing the words “1996–1997 crop season” and adding the words “1996–1997 and 1997–1998 crop seasons” in their place.

b. In the introductory text, by removing the words “1996–1997 crop season” and adding the words “1996–1997 and 1997–1998 crop seasons” in their place.

c. In paragraphs (a), (b), (c)(1), and (c)(2), by removing the last two sentences in each paragraph and by adding three sentences in their place to read as follows: “Claims for compensation for the 1996–1997 crop season must be received by APHIS on or before October 8, 1998. Claims for compensation for the 1997–1998 crop season must be received by APHIS on or before [the date 120 days after the final rule is published in the Federal Register]. The Administrator may extend these deadlines upon written request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before these dates.”

Done in Washington, DC, this 14th day of December 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–33434 Filed 12–16–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–238–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain 757–200 series airplanes. This proposal would require replacement of

the stringer clip(s) with a new stringer clip(s), and modification of the life raft support structure and/or life raft doors, as applicable. This proposal is prompted by a report that certain life raft stowage compartments and certain life raft doors are understrength. The actions specified by the proposed AD are intended to prevent a life raft falling from its stowage compartment, and consequently injuring nearby occupants or delaying or impeding the evacuation of passengers during an emergency landing.

DATES: Comments must be received by February 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–238–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

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 for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report