

**§ 52.38 Sampling plans and procedures for determining lot compliance.**

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<sup>2</sup> When a standard sample size is not specified in the U.S. grade standards, the sample units for the various container size groups are as follows: Groups 1 and 2—1 container and its entire contents. Group 3 containers up to 10 pounds—1 container and its entire contents. Group 3 containers over 10 pounds—approximately three pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit or 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds<sup>2</sup>.

Dated: September 17, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

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**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Parts 301 and 319**

[Docket No. 96-016-32]

RIN 0579-AA83

**Karnal Bunt; Movement From Regulated Areas**

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the Karnal bunt regulations to allow, under certain conditions, commercial lots of seed to move from restricted areas for seed. We are also amending the testing requirements for regulated articles other than seed, removing certain articles from the list of articles regulated because of Karnal bunt, clarifying the terms "used mechanized harvesting equipment" and "used seed conditioning equipment", and clarifying requirements for soil movement with vegetables. These changes relieve restrictions on the movement of articles from areas regulated because of Karnal bunt. We are also requiring the moist heat treatment of millfeed produced from grain that tests positive for Karnal bunt, adding a moisture condition to the methyl bromide treatment of soil, and removing the methyl bromide treatment alternative for decorative articles. We are also amending the description of surveillance areas to more clearly distinguish between surveillance areas and restricted areas. In addition, we are amending the regulations governing the importation of wheat into the United States to make the definition of the term "Karnal bunt" consistent with the definition of that term in the Karnal bunt regulations.

**EFFECTIVE DATE:** September 23, 1998.

**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, 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 in the United States are set forth in 7 CFR 301.89-1 through 301.89-14.

On January 28, 1998, we published in the **Federal Register** (63 FR 4198-4204, Docket No. 96-016-22) a proposal to amend the regulations by allowing, under certain conditions, commercial lots of seed to move from restricted areas for seed; amending the testing requirements for regulated articles other than seed; removing certain articles from the list of articles regulated because of Karnal bunt; clarifying the terms "used mechanized harvesting equipment" and "used seed conditioning equipment"; clarifying requirements for soil movement with vegetables; requiring the moist heat treatment of millfeed produced from grain that tests positive for Karnal bunt; adding a moisture condition to the methyl bromide treatment of soil; removing the methyl bromide treatment alternative for decorative articles; and amending the description of surveillance areas. We also proposed to amend the regulations governing the importation of wheat into the United States to make the definition of the term "Karnal bunt" consistent with the definition of that term in the Karnal bunt regulations.

We solicited comments concerning our proposal for 60 days ending March 30, 1998. We received nine comments by that date. They were from representatives of industry in, and State governments of, States with areas regulated because of Karnal bunt. Two commenters supported the proposed rule as written. The remaining commenters expressed concerns about certain portions of the proposed rule.

Their concerns are discussed below by issue.

**Movement of Commercial Lots of Seed**

*Comment:* One of the proposed conditions for the movement of commercial lots of seed from a regulated area is that the most recent previous Karnal bunt host crop grown in the field or fields where the seed intended for movement was grown must have tested negative for Karnal bunt (spores and bunted kernels). We suggest, as an alternative, that commercial lots of seed also be eligible for movement if the field or fields where the seed was grown were not used for any Karnal bunt host crops during the past 5 years.

*Response:* We agree that a field that has not been planted with Karnal bunt host crops for the past 5 years should be eligible to produce seed for movement in commercial lots from a regulated area. Five years of non-host status would verify a production area's freedom from Karnal bunt. Therefore, in response to this comment, this final rule provides that the seed may come either from a field or fields where the most recent previous Karnal bunt host crop tested negative for Karnal bunt (spores and bunted kernels) or where Karnal bunt host crops have not been grown during the past 5 years.

*Comment:* The treatment proposed for commercial lots of seed moving from a regulated area is the same treatment currently required at § 301.89-13(e) for seed used as germplasm or for research. This protocol is too strict. The proposed chlorine wash will be extremely difficult, if not impossible, to use on large quantities of commercial seed, and the double fungicide treatment will significantly affect the germination of the seed. We feel that the other proposed conditions for the movement of commercial lots of seed from a regulated area are sufficient to assure that any seed moving from a regulated area will be at lower risk of containing Karnal bunt (spores and bunted kernels) than any wheat seed in the world not so tested.

*Response:* We proposed that, to be eligible for movement as seed under certificate, commercial lots of seed grown in a restricted area for seed must:

- originate from a field or fields that are not part of a restricted area for regulated articles other than seed or a surveillance area;
- originate from a field or fields where the most recent previous Karnal bunt host crop tested negative for Karnal bunt;
- test negative for Karnal bunt; and
- be treated in accordance with § 301.89-13(e).

Under § 301.89-13(e), seed to be moved from a regulated area for use as germplasm or for research purposes

must be treated with a chlorine wash, that is, a 1.5 percent aqueous solution of sodium hypochlorite (=30 percent household bleach) containing 2 mL of Tween 20™ per liter agitated for 10 minutes at room temperature followed by a 15-minute rinse with clean, running water and then by drying, and then with a double fungicide treatment of either: (1) 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. active ingredient (ai.) per gallon (gal.)) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed; or (2) 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed. We believe that the treatment of commercial lots of seed moving from a regulated area is a necessary component of a system designed to prevent the spread of Karnal bunt to noninfected areas of the United States.

However, in response to this comment, and after extensive review of current research, we are making a change to the treatment required for commercial lots of seed moving from a regulated area. This final rule requires a combination of the chlorine wash and a single fungicide treatment, instead of the proposed double fungicide treatment. The single fungicide treatment may be with either Carboxin thiram or pentachloronitrobenzene, as follows: (1) With 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid per 100 pounds of seed; (2) with 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. ai./gal.) flowable liquid per 100 pounds of seed; or (3) with 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed. We are offering these single fungicide treatment options based on research<sup>1</sup> performed at the International Center for Maize and Wheat Improvement (CIMMYT) in Mexico, in cooperation with Gustafson, Inc. The research protocol involved adding *Tilletia indica* teliospores uniformly to a wheat seed source, applying the fungicides at the specified concentrations, and plating teliospores recovered from the wheat samples onto growth media to assess teliospore viability at 15, 60, 120, and 180 days after treatment. The results indicated that treatment with either of the fungicides Carboxin thiram or pentachloronitrobenzene was

comparable in effectiveness to the double treatment using both.

We are retaining the requirement for the chlorine wash. Although the application of the chlorine wash may be challenging, available data demonstrates that it is an effective method for helping to inactivate Karnal bunt. Until we have data demonstrating otherwise, we believe the combination of the chlorine wash and fungicide treatment is necessary to ensure that seed planted outside regulated areas for commercial production of wheat does not contain any viable Karnal bunt material.

The single fungicide treatment options will offer more flexibility to wheat growers and other affected entities in regulated areas, and will also help minimize the use of pesticides and reduce the costs associated with treating seed originating in a regulated area that will move from a regulated area in commercial lots. This action will continue to prevent the spread of Karnal bunt through planted seed while addressing a concern that some growers have regarding a possible reduction in germination of seed treated with a double fungicide treatment.

#### Definition of Surveillance Area

*Comment:* The proposed definition of surveillance area is too vague, providing the Animal and Plant Health Inspection Service (APHIS) latitude to continue expansion of the regulated area. We recommend that surveillance areas be limited to those production fields that are adjacent to fields designated as restricted areas for regulated articles other than seed. We also recommend that areas currently designated as surveillance areas because they are associated with a lot of seed found to contain a bunted kernel, or because they were found during a survey to contain spores consistent with Karnal bunt and were determined to be associated with grain at a handling facility containing a bunted wheat kernel, should be redesignated as restricted areas for seed.

*Response:* As proposed, we are amending the description of surveillance area at § 301.89-3(e)(4) to clarify that a surveillance area is an area where Karnal bunt is not known to occur but where, for various reasons, intensive surveys are necessary. This action will help differentiate between the status of a restricted area for regulated articles other than seed and the status of a surveillance area. We did not, however, propose any changes to the criteria for designating an area as a surveillance area, and we are not prepared to make such changes now. At this time, we continue to believe that fields associated with a bunted kernel

present a greater risk than other fields. We, therefore, identify them and impose certain restrictions on the movement of regulated articles from them.

#### Removal of Certain Articles from the List of Regulated Articles

*Comment:* We agree that used bags, sacks, and containers; used farm tools; used mechanized cultivating equipment; and used soil moving equipment should be removed from the list of regulated articles, but we believe that harvesting and seed conditioning equipment should also be removed from that list.

*Response:* Because of the way that mechanized harvesting equipment and seed conditioning equipment are constructed, it is extremely difficult to remove all of the plant parts, including wheat seeds or other parts of wheat plants, from the cracks and crevices of this type of equipment after it has been used. Therefore, when this equipment is used in a regulated area in the production of Karnal bunt host crops, it presents a risk of spreading Karnal bunt if moved from a regulated area without being cleaned and disinfected as required by the regulations. Therefore, we are making no changes to the proposed rule in response to this comment.

#### Deregulation

*Comment:* The proposed rule does not provide information on when and how APHIS plans to accomplish the complete deregulation of Karnal bunt. APHIS needs to provide affected entities with its plan for deregulation, including information on how many harvests must be tested before an area can be deregulated.

*Response:* The complete deregulation of the areas regulated because of Karnal bunt is outside of the scope of our proposed rule. As Karnal bunt is eliminated, and as we gather research and data to support deregulation, we will continue to take appropriate action through future rulemaking.

*Comment:* In Docket No. 97-060-1, APHIS proposed to declare the Mexicali Valley of Mexico free from Karnal bunt and to allow wheat seed to move into the United States from that area. APHIS cannot justify declaring the Mexicali Valley free from Karnal bunt as long as the Agency continues to regulate adjacent areas of Arizona and California for the same disease. Given that Karnal bunt can spread by natural, as well as artificial, means, one cannot expect that the Mexicali Valley could escape inoculation by the disease during the period that contiguous areas became infected.

<sup>1</sup> Information on this research is available from the person listed under FOR FURTHER INFORMATION CONTACT.

*Response:* January 27, 1998, we published in the **Federal Register** (63 FR 3844-3848, Docket No. 97-060-1) a proposal to amend the wheat diseases regulations in 7 CFR part 319.59 by recognizing a wheat-growing area within the Mexicali Valley of Mexico as being free from the wheat disease Karnal bunt. We will consider this comment as a comment on Docket No. 97-060-1 and will address the issue raised by the commenter as part of that rulemaking.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

**Effective Date**

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and,

therefore, has been reviewed by the Office of Management and Budget.

The Karnal bunt regulations were established under the Plant Quarantine Act (7 U.S.C. 151-165 and 167) and the Federal Plant Pest Act (7 U.S.C. 150aa-150jj), which authorize the Secretary of Agriculture to take measures necessary to prevent the spread of plant pests, including diseases, that are new to, or not widely prevalent in, the United States.

We are amending the Karnal bunt regulations to allow, under certain conditions, commercial lots of seed to move out of a restricted area for seed and to amend the testing requirements for regulated articles other than seed. We are also removing certain articles from the list of articles regulated because of Karnal bunt, clarifying the terms "used mechanized harvesting equipment" and "used seed conditioning equipment," and clarifying requirements for soil movement with vegetables. These changes relieve restrictions on the movement of articles from areas regulated because of Karnal bunt. We are also requiring the moist heat treatment of millfeed produced from grain that tests positive for Karnal bunt, adding a moisture condition to the methyl bromide treatment of soil, and removing the methyl bromide treatment alternative for decorative articles.

Virtually all of the industries affected are likely to be composed of producers and firms that can be categorized as small according to the Small Business Administration (SBA) size classification. Economic impacts

resulting from this rule will therefore largely affect small entities. The analysis of economic impacts would thus fulfill the requirement of a cost-benefit analysis under Executive Order 12866, as well as the analysis of impacts of small entities required by the Regulatory Flexibility Act. Unless otherwise noted, the SBA's characterization of a small business for the categories of interest in this analysis is a firm that employs at most 500 employees, or has annual sales of \$5 million or less.

The change to allow, under certain conditions, commercial lots of seed to move out of a restricted area for seed will benefit regulated growers of wheat seed and other affected entities. For the first time since regulated areas were established, commercial lots of wheat seed will be eligible to move out of a regulated area, if, among other things, the seed is grown in a restricted area for seed that is not also part of a restricted area for regulated articles other than seed or a surveillance area. Those regulated areas that are restricted areas for seed, but that are not also part of a restricted area for regulated articles other than seed or a surveillance area, amount to an estimated 727,335 acres of regulated land in four States (Arizona, California, New Mexico, and Texas). These 727,335 acres represent 75 percent of the combined regulated areas in those four States. The change will, therefore, open up a substantial volume of regulated acreage to export sales of wheat seed. The estimated current regulated acreage, by State and regulatory designation, is as follows:

	Arizona	California	New Mexico	Texas <sup>1</sup>	Total
Restricted area for seed .....	797,000	100,000	58,650	<sup>2</sup> 20,469	976,119
Restricted area for regulated articles other than seed .....	6,162	3,113	3,990	1,519	14,784
Surveillance area .....	135,000	84,000	0	15,000	234,000
Portion of restricted area for seed that could grow wheat seed eligible for movement in commercial lots from the regulated area .....	655,838	12,887	54,660	3,950	727,335

<sup>1</sup> The acreage for Texas is comprised of two regulated areas, one in El Paso and the other in San Saba. The regulated area in San Saba was established in the latter part of 1997, as a result of Karnal Bunt National Survey findings.

<sup>2</sup> For El Paso, restricted area for seed includes only acreage for the plowdown fields.

The opportunity for export sales of seed should have a positive impact on seed planting in the regulated area. The magnitude of that impact is difficult to measure, however, because year-to-year changes in seed planting are a function of many factors, including factors not related to the regulatory environment (e.g., prices). The impact of this rule will likely be most noticeable 1 to 2 years after its effective date; by that time, growers will have had the chance to adjust planting schedules to take advantage of the amended restrictions and will have had the opportunity to

satisfy other provisions of the rule (i.e., the requirement that commercial lots of seed intended for movement from a regulated area must come either from a field or fields where the most recent previous Karnal bunt host crop tested negative for Karnal bunt (spores and bunted kernels), or where Karnal bunt host crops have not been grown during the past 5 years).

Another of the rule's requirements, that seed be treated prior to movement, may limit the amount of seed that can be moved in the short term and may also discourage some growers from

planting seed. Under the rule, in addition to fungicide treatments, commercial lots of seed must be treated with sodium hyperchlorite (chlorine). Because of the corrosive nature of chlorine, stainless steel vats or containers may need to be installed for treating the seed. Thus, in addition to expenditures for chemicals, some producers who choose to produce wheat seed for commercial use may incur costs for special equipment. However, the treatment for commercial seed is necessary to reduce the risk of the

spread of Karnal bunt to noninfected areas of the United States.

Notwithstanding these requirements, the positive potential of the changes on seed plantings could be considerable. As indicated above, an estimated 727,335 acres of regulated land will be eligible to grow wheat seed that may, under certain conditions, move in commercial lots out of the regulated area. It is estimated that only about 15 percent of those 727,335 acres are currently planted with wheat, leaving the remaining 85 percent (approximately 618,235 acres) potentially available for wheat seed planting in the future. Even if only 5 percent of the 618,235 acres were planted for seed as a result of this rule, an additional 30,912 acres in the regulated area would be planted for seed. By comparison, approximately 122,000 acres<sup>2</sup> of wheat were planted in the entire regulated area in the 1996-97 growing season.

We are also amending the testing requirements for grain used other than for seed. Under the rule, such grain must be tested and found free of bunted kernels, rather than spores and bunted kernels, prior to movement from the regulated area. Growers and handlers of grain will benefit from this change in the testing requirements.

As much as 90 percent of the acreage of surveillance areas that is planted with wheat is devoted to the production of grain. This rule, therefore, has the potential to affect most of the wheat grown in surveillance areas. Because grain intended for movement from the regulated area will be surveyed for bunted kernels only, and because those surveys will be conducted at the field rather than at the conveyance, we expect that the new testing procedures will save time for grain handlers. In addition, because laboratory analyses for spores will no longer be required, the U.S. Department of Agriculture will save money as a result of the new testing procedures. However, it is difficult to predict the savings in time or money, or if there will be an increase in the number of shipments that will move from regulated areas, before the new testing procedures are in place. Nevertheless, this change will likely have a positive impact on the movement of grain and other regulated articles other than seed from regulated areas.

For both of these changes (i.e., to allow, under certain conditions, the

movement of commercial lots of seed from restricted areas for seed and to amend the testing requirements for regulated articles other than seed), the entities that will likely be most affected will be wheat producers. It is estimated that there are currently a total of 373 wheat growers in the regulated areas: 248 in Arizona, 21 in California, 23 in New Mexico, and 81 in Texas.<sup>3</sup> Of those, the number of wheat growers in surveillance areas is estimated to be 99, with 21 in Arizona, 18 in California, and 60 in Texas, and the number of wheat growers in restricted areas for seed (not including restricted areas for regulated articles other than seed or surveillance areas) is estimated to be 274, with 227 in Arizona, 3 in California, 23 in New Mexico and 21 in Texas. Most of these wheat growers are assumed to have gross annual receipts of less than \$0.5 million, the SBA's threshold for classifying wheat producers as small entities. Accordingly, these changes will positively impact primarily small entities. Growers will benefit from fewer restrictions on the movement of regulated articles, which will enable growers to reach new markets for their products. In addition, wheat seed dealers, harvesters, transporters, and processors may also benefit from the changes to the regulations, but the magnitude of the impact on these entities cannot be determined.

Regarding the remainder of the actions in this document, three main parties will be affected by these amendments: vegetable growers, millers, and decorative wheat product makers.

This rule will amend the requirements for soil movement with vegetables to clarify that vegetables must be cleaned prior to movement from a regulated area if the vegetables were grown in a restricted area for regulated articles other than seed. Previously, the regulations required all vegetables grown in a regulated area to be cleaned prior to movement. Although this action will relieve restrictions, we do not expect this action to have a significant impact on affected entities in regulated areas because few fields will be affected by this rule change and because cleaning soil from vegetables during harvest is a standard business practice.

This rule will require millfeed to be treated if it is produced from grain that tests positive for Karnal bunt. There are fewer than 30 millers who will potentially be affected by this change. The exact number of millers who elect

to mill wheat that has tested positive for Karnal bunt is unknown at this time. However, it is anticipated that very little wheat that tests positive for Karnal bunt will be present and thus available for milling. Also, it is likely that any wheat that tests positive for Karnal bunt will be channeled into animal feed uses. Because of the manner in which it is processed, wheat used for animal feed does not require treatment.

It is expected that most millers who must handle millfeed produced from wheat that tests positive for Karnal bunt have the facilities or access to facilities to treat it at this time. Cost estimates on a per establishment basis are not available because the Karnal bunt contamination rate and the amount of wheat that tests positive for Karnal bunt to be milled is not known.

In addition, this rule removes an ineffective treatment for decorative straw/stalks/seed heads and adds moisture conditions to the methyl bromide treatment procedures for soil. We expect little impact on affected entities in regulated areas as a result of these changes. Decorative straw/stalks/seed heads will continue to be eligible for movement from regulated areas under limited permit or if the articles have been processed or manufactured prior to movement and are intended for use indoors. Adding water to soil before methyl bromide treatment should have little practical impact on potentially affected entities, such as nurseries, because the need for such treatment is rare. However, if needed, the change to the methyl bromide treatment of soil would not significantly increase the costs associated with that treatment. These actions will help prevent the artificial spread of Karnal bunt in the United States.

We are also amending the description of surveillance areas to more clearly distinguish between surveillance areas and restricted areas. In addition, we are amending the regulations governing the importation of wheat into the United States to make the definition of the term "Karnal bunt" consistent with the definition of that term in the Karnal bunt regulations. We do not anticipate that these changes will have any economic impact.

The changes to the regulations will not result in any new information collection or recordkeeping requirements.

#### **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

<sup>2</sup>This figure includes 20,000 acres planted in the San Saba area of Texas. At the time of those plantings, the San Saba area was not under regulation, but a regulated area was established in San Saba during the latter part of 1997, as a result of Karnal Bunt National Survey findings.

<sup>3</sup>These estimates are for the 1997-1998 crop season, and are based on data available as of December 31, 1997.

State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

**List of Subjects**

7 CFR Part 301

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

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 301 and 319 are amended as follows:

**PART 301—DOMESTIC QUARANTINE NOTICES**

1. The authority citation for part 301 continues 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 301.89–2 is amended as follows:

a. By removing paragraphs (i), (j), (k), and (n).

b. By redesignating paragraphs (l), (m), and (o) as paragraphs (i), (j), and (k), respectively.

c. By revising newly designated paragraphs (i) and (j) to read as set forth below:

**§ 301.89–2 Regulated articles.**

\* \* \* \* \*

(i) Mechanized harvesting equipment that has been used in the production of wheat, durum wheat, and triticale;

(j) Seed conditioning equipment that has been used in the production of wheat, durum wheat, and triticale;

\* \* \* \* \*

3. Section 310.89–3 is amended by revising paragraph (e)(3) to read as follows:

**§ 301.89–3 Regulated areas.**

\* \* \* \* \*

(e) \* \* \*

(3) *Surveillance areas.* A surveillance area is a distinct definable area where Karnal bunt is not known to exist but, because of its proximity to a field found during survey to contain a bunted kernel or because of its association with grain at a handling facility containing a bunted kernel, where intensive surveys are required.

\* \* \* \* \*

4. In § 301.89–5, the period at the end of paragraph (a)(3) is removed and a semicolon added in its place, and a new paragraph (a)(4) is added to read as follows:

**§ 301.89–5 Movement of regulated articles from regulated areas.**

(a) \* \* \*

(4) Without a certificate or limited permit, provided the regulated article is straw/stalks/seed heads for decorative purposes that have been processed or manufactured prior to movement and are intended for use indoors.

\* \* \* \* \*

5. Section 301.89–6 is amended by revising paragraph (b) and by adding a new paragraph (d) to read as follows:

**§ 301.89–6 Issuance of a certificate or limited permit.**

\* \* \* \* \*

(b) To be eligible for movement under a certificate, grain from a field within a surveillance area must be tested prior to its movement from the field or before it is commingled with other grains and must be found free from bunted kernels. If bunted kernels are found, the grain will be eligible for movement only under a limited permit issued in accordance with paragraph (c) of this section.

\* \* \* \* \*

(d) To be eligible for movement as seed under certificate, commercial lots of seed grown in a restricted area for seed must:

(1) Originate from a field or fields that are not part of a restricted area for regulated articles other than seed or a surveillance area;

(2) Originate from a field or fields where the most recent previous Karnal bunt host crop tested negative for Karnal bunt, or from a field or fields where Karnal bunt host crops have not been planted for the previous 5 years;

(3) Test negative for Karnal bunt; and

(4) Be treated in accordance with § 301.89–13(f).

\* \* \* \* \*

6. Section 301.89–12 is revised to read as follows:

**§ 301.89–12 Cleaning and disinfection.**

(a) Mechanized harvesting equipment and seed conditioning equipment that have been used in the production of Karnal bunt host crops must be cleaned and disinfected in accordance with § 301.89–13(a) prior to movement from a regulated area.

(b) Prior to movement from a regulated area, vegetable crops grown in fields that are in restricted areas for regulated articles other than seed must be cleaned of all soil and plant debris or be moved under limited permit in accordance with § 301.89–6(c).

7. Section 301.89–13 is amended by revising paragraph (a) introductory text, and paragraphs (b), (c), and (f) to read as follows:

**§ 301.89–13 Treatments.**

(a) All conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures used for storing and handling wheat, durum wheat, or triticale required to be cleaned and disinfected under this subpart must be cleaned by removing all soil and plant debris and disinfected by one of the methods specified in paragraphs (a)(1) through (a)(4) of this section, unless a particular treatment is designated by an inspector. The treatment used must be that specified by an inspector if that treatment is deemed most effective in a given situation:

\* \* \* \* \*

(b) Soil must be wet to a depth of 1 inch by water (irrigation or rain) just prior to treatment and must be treated by fumigation with methyl bromide at the dosage of 15 pounds/1000 cubic feet for 96 hours.

(c) Millfeed must be treated with a moist heat treatment of 170 °F for at least 1 minute if the millfeed resulted from the milling of wheat, durum wheat, or triticale that tested positive for Karnal bunt.

\* \* \* \* \*

(f) Commercial lots of seed originating from an eligible restricted area for seed, as described in § 301.89–6(d)(1), must be treated with a 1.5 percent aqueous solution of sodium hypochlorite (=30 percent household bleach) containing 2 mL of Tween 20™ per liter agitated for 10 minutes at room temperature followed by a 15-minute rinse with clean, running water and then by drying, and then with one of the following:

(1) 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid per 100 pounds of seed;

(2) 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. ai./gal.) flowable liquid per 100 pounds of seed; or

(3) 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed.

**PART 319—FOREIGN QUARANTINE NOTICES**

8. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151-167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

9. In § 319.59-1, the definition of “Karnal bunt” is revised to read as follows:

**§ 319.59-1 Definitions.**

\* \* \* \* \*

*Karnal bunt.* A plant disease caused by the fungus *Tilletia indica* (Mitra) Mundkur.

\* \* \* \* \*

Done in Washington, DC, this 17th day of September 1998.

**Joan M. Arnoldi,**

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

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**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**7 CFR Part 457**

**Common Crop Insurance Regulations; Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes the Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions to change the calendar date for the end of the insurance period.

**EFFECTIVE DATE:** This rule is effective September 22, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This rule has been determined to be exempt for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

**Paperwork Reduction Act of 1995**

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), there are no information collection requirements contained in this rule.

**Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Executive Order 12612**

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

**Regulatory Flexibility Act**

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of insurance companies delivering and servicing these policies will not increase from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

**Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance Under No. 10.450.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental

consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988 on Civil Justice Reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

**Environmental Evaluation**

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Background**

On Monday, July 20, 1998, FCIC published a notice of proposed rulemaking in the **Federal Register** at 63 FR 38761-38762 to revise 7 CFR 457.128, Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions, effective for the 1999 and succeeding crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 3 written comments were received from an insurance service organization and reinsured companies. All of the comments received agreed with the proposed changes made to the regulation.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. This rule revises the calendar date for the end of the insurance period for certain states. This rule must be effective prior to the contract change dates for which these provisions are effective. The contract change date is September 30 preceding the cancellation date in counties with a January 15 cancellation date and December 31 preceding the cancellation date in all other counties. Therefore, public interest requires the Agency to act immediately to make these provisions available.

**List of Subjects in 7 CFR Part 457**

Crop insurance, Tomatoes.