

We would amend the definition of *contaminated seed* to specify that seed will be determined to be contaminated based on the presence of bunted kernels or teliospores. The regulations in § 301.89–4 currently provide that seed originating in a regulated area must be tested and found free of spores and bunted kernels before it may be planted in a regulated area; our proposed change to the definition of *contaminated seed* would reflect that standard. Similarly, we would amend the definition of *infestation (infected)* to specifically identify bunted kernels in grain and bunted kernels or teliospores in seed as identifiable stages of development of *Tilletia indica*, the presence of which will lead to a determination of infestation. The current definition of *infestation (infested)* would remain the same, but for identifying the stages of development of *Tilletia indica*. Again, including the bunted kernel standard for grain and the bunted kernel/teliospore standards for seed in the definition of *infestation (infected)* would make that definition consistent with the standards used elsewhere in the regulations. We would also amend the definition of *mechanized cultivating equipment and mechanized harvesting equipment* by adding grain buggies, trucks, and swathers as examples of equipment used for harvesting purposes and by removing cotton harvesters as one of those examples. Cotton harvesters are at low risk for becoming contaminated with the Karnal bunt pathogen, whereas grain buggies, trucks, and swathers used in connection with the harvest of wheat, durum wheat, or triticale are at greater risk of contamination.

We would add definitions for *grain*, *hay*, *host crops*, *plant*, *seed*, and *straw*. We are proposing to include all of these articles on the list of regulated articles in § 301.89–2, so including their definitions would aid users in understanding and complying with the regulations. We would define *grain* as wheat, durum wheat, and triticale used for consumption or processing, while *seed* would be defined as wheat, durum wheat, and triticale used for propagation. We propose to define *host crops* as consisting of plants or plant parts, including grain, seed, or hay, of wheat, durum wheat, and triticale. We propose to define *plant* as any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed. This is the definition provided in the Plant Protection Act (7 U.S.C. 7701 *et seq.*). We would define *hay* as consisting of

host crops cut and dried for feeding to livestock. The definition would also note that hay cut after reaching the dough stage may contain mature kernels of the host crop. *Straw* would be defined as the vegetative material left after the harvest of host crops. This proposed definition would also refer to the common uses of straw as animal feed, bedding, mulch, or for erosion control.

Regulated Articles

We are proposing several changes to the list of regulated articles in § 301.89–2 of the regulations. Currently, paragraph (a) of that section identifies conveyances such as trucks, railroad cars, and other containers used to move wheat, durum wheat, or triticale as regulated articles, and paragraph (b) identifies grain elevators, equipment, and structures used to store or handle those commodities as regulated articles. We would amend these paragraphs to specify that the conveyances listed in paragraph (a) and the equipment and structures listed in paragraph (b) would be regulated articles only if used to move or to store and handle the grain of host crops produced in a regulated area that test positive for Karnal bunt due to the presence of bunted kernels.

Current paragraph (c) of § 301.89–2 lists milling products or byproducts other than flour as regulated articles. We would remove this paragraph and would no longer regulate milling products or byproducts. Such products and byproducts are believed to present a low risk of spreading Karnal bunt because the milling process would have eliminated bunted kernels.

We are proposing to add hay cut after the dough stage to the list of regulated plants or plant parts in current paragraph (d). As noted in the proposed definition of *hay* discussed previously, hay cut after reaching the dough stage may contain mature kernels of the host crop and could, therefore, serve as a means of spreading Karnal bunt. We would also amend that paragraph to specify that the listed plants or plant parts would be considered regulated articles only if they were produced in a regulated area, and would provide exceptions for certain straw, stalks, and seed heads that have been processed or manufactured prior to movement and are intended to be used indoors for decorative purposes. We consider these items to present a low risk of transmitting Karnal bunt because of their end use as indoor decorative material and already exempt those articles from the certificate/limited permit requirements of § 301.89–5. Because we would specify that these articles are not regulated articles, it

would no longer be necessary to provide an exemption for them in § 301.89–5.

Current paragraphs (f) through (h), which identify as regulated articles root crops with soil, soil from areas where field crops are produced, and manure from animals that have fed on untreated or raw wheat, durum wheat, or triticale, would be removed. Bunted kernels are not associated with these articles, and while they may contain spores of *Tilletia indica*, we regulate only seed for spores. In addition, the end uses of these articles make them unlikely to transmit Karnal bunt. Root crops, for example, would go to market after harvesting and would not be replanted.

Current paragraph (i) lists mechanized harvesting equipment, when used in the production of wheat, durum wheat, and triticale that tests positive for Karnal bunt, as a regulated article. To reflect the standards used elsewhere in the regulations, as described in the proposed definition of *infestation (infected)* in § 301.89–1, we would amend that paragraph to specify that a positive test result for Karnal bunt would be determined by the presence of bunted kernels. Similarly, we would amend current paragraph (j), which lists seed conditioning equipment used in the production of wheat, durum wheat, and triticale as a regulated article, to specify that the seed conditioning equipment would be considered a regulated article only if it had been used in the production of wheat, durum wheat, and triticale found to contain the spores of *Tilletia indica*. We would also amend this paragraph to include storage/handling equipment.

Current paragraph (k) provides that any product, article, or means of conveyance not covered in the previous paragraphs will be considered to be a regulated article when an inspector determines that the product, article, or means of conveyance presents a risk of spreading Karnal bunt due to its proximity to an infestation of Karnal bunt and the person in possession of the product, article, or means of conveyance has been notified that it is regulated under the regulations. We would amend that paragraph by removing the language pertaining to the proximity of the product, article, or means of conveyance to an infestation of Karnal bunt and would replace it with a statement specifying that the inspector's determination of risk would be based upon appropriate testing and the intended use of the product, article, or means of conveyance.

Because, as discussed previously, we are proposing to remove paragraph (c) and paragraphs (f) through (h), it would be necessary to redesignate paragraphs