

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 01–118–2]

#### Karnal Bunt; Restrictions on the Use of Grain Originating in a Regulated Area

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by prohibiting grain grown in a regulated area from being used as seed outside the regulated areas and by removing the requirement that wheat seed, durum wheat seed, and triticale seed that originates within a regulated area be treated with a fungicide before it may be planted within a regulated area. The interim rule was necessary to help to prevent the artificial spread of Karnal bunt to fields outside the regulated area and to remove a treatment requirement that we determined to be unnecessary.

**EFFECTIVE DATE:** The interim rule became effective on April 25, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Spaide, Director, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–7819.

#### 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 domestic quarantine and regulations regarding Karnal bunt are set forth in “Subpart—Karnal Bunt” (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 regulated articles, including wheat seed and grain, from the regulated areas. Those movement restrictions are designed to prevent the artificial spread of Karnal bunt.

In an interim rule effective April 25, 2002, and published in the **Federal Register** on April 30, 2002 (67 FR 21159–21161, Docket No. 01–118–1), we amended the regulations by prohibiting grain grown in a regulated area from being used as seed outside the regulated areas and by removing the requirement that wheat seed, durum wheat seed, and triticale seed that originates within a regulated area be treated with a fungicide before it may be planted within a regulated area. The interim rule was necessary to prevent the artificial spread of Karnal bunt to fields outside the regulated area by prohibiting the use of potentially spore-positive grain as seed in those fields and to remove a treatment requirement that we determined to be unnecessary.

Comments on the interim rule were required to be received on or before July 1, 2002. We received three comments by that date. The comments were from a State agricultural agency and two industry organizations. All three commenters supported the interim rule. One commenter did, however, state that the regulations should provide growers and seed companies in nonregulated areas with the ability to voluntarily test their seed for Karnal bunt without the possibility of regulatory restrictions being imposed on their farms or businesses if the seed is found positive.

The regulations are intended to prevent the artificial spread of Karnal bunt into noninfected areas, so their focus is on the movement of regulated articles from and through regulated

areas. The seed testing provisions of § 301.89–4 are limited to seed that originates within a regulated area; those provisions do not place any limitations or reporting requirements on the voluntary testing of seed by growers or seed companies located outside the regulated areas. It is not, therefore, necessary to amend the regulations to provide for the voluntary seed testing discussed by the commenter.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, this action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

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

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

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 21159–21161 on April 30, 2002.

**Authority:** 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 30th day of January 2003.

**Kevin Shea,**

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

[FR Doc. 03–2684 Filed 2–4–03; 8:45 am]

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