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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 02–056–2]

#### Karnal Bunt; Revision of Domestic Regulations

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

**ACTION:** Final rule.

**SUMMARY:** We are amending our Karnal bunt regulations to incorporate updates and improvements identified as a result of our review of their provisions. The changes include clarifying our method for determining Karnal bunt infestation and the circumstances under which a field or area is classified as a regulated area, as well as adding provisions and criteria for the release of fields or areas from regulation; modifying the restrictions that apply to the planting of wheat, durum wheat, and triticale seed originating in regulated areas; and modifying cleaning and disinfection requirements for certain equipment and storage facilities involved in the harvesting, planting, or storage of Karnal bunt-positive host crops or seeds, as well as providing for the disposal of chemically treated, spore-positive seed. These changes are intended to improve the clarity and effectiveness of the regulations, thus helping to prevent the spread of Karnal bunt within the United States.

**EFFECTIVE DATE:** March 24, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Spaide, Senior Program Manager, 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 primarily through the movement of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine. Therefore, 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 other 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 describe articles and areas regulated for Karnal bunt; criteria for classifying areas or fields as regulated areas; requirements for planting wheat, durum wheat, and triticale in regulated areas; restrictions on movement of regulated articles from regulated areas; permitting, cleaning, disinfection, and treatment requirements; and requirements for growers, handlers, seed companies, and other entities seeking compensation from the USDA to mitigate losses or expenses incurred because of Karnal bunt. The regulations are designed to prevent the artificial spread of Karnal bunt.

Following a review of our regulations, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register**, on July 8, 2003 (68 FR 40534–40541, Docket No. 02–056–1), a proposal to amend them to improve their clarity, transparency, and effectiveness. More specifically, the proposed changes included the following: Clarifying our method for determining Karnal bunt infestation; adding or removing several definitions; adding or removing certain articles from the list of regulated articles; clarifying the circumstances under which a field or area would be classified as a regulated area, as well as adding provisions and criteria for the release of fields or areas from regulation; modifying the restrictions that apply to

the planting of wheat, durum wheat, and triticale seed originating in regulated areas; and modifying cleaning and disinfection requirements for mechanized harvesting equipment, seed conditioning equipment, and storage facilities involved in the harvesting, planting, or storage of Karnal bunt-positive host crops or seed, as well as adding a requirement for the disposal of chemically treated, spore-positive seed.

We solicited comments concerning our proposal for 60 days ending September 8, 2003. We received nine comments by that date. The comments were from State governments and grain producers’ associations. All of the commenters supported the proposed rule, but two suggested some modifications to certain provisions. Specifically, the commenters urged us to: Reconsider our decision to remove manure, soil, and milling products from the list of regulated articles in the existing regulations; clarify a provision pertaining to the regulation of grain elevators, equipment, and structures; modify our criteria for the release of a field from regulation; and develop procedures for seed sampling and analysis and for inspectors to use to determine whether certain regulated articles require disinfection. The comments are discussed below by topic.

The commenters stated that manure should continue to be included on the list of regulated articles. It was recommended that manure from cattle that have been fed unprocessed Karnal bunt-positive host crops or cattle that have been allowed to graze in known infected fields on host crops that have developed past the heading stage should have to remain within the regulated area and that such animals should be subjected to a 5-day clean-out period before being moved outside a regulated area. The commenters suggested that because bunted kernels are not likely to be completely digested by cattle, the Karnal bunt pathogen can survive in their digestive tracts; therefore, some risk exists that bunted kernels could be dispersed through manure.

We will not be making any changes to the final rule in response to these comments. Our decision to remove manure from the list of regulated articles in § 301.89–2 resulted, in part, from a change in our regulatory goals. In 1996, manure was placed under regulation because the goal of the Karnal

bunt regulatory program at that time was eradication, and research had demonstrated that the Karnal bunt spore or pathogen could potentially be spread in manure. The 5-day clean-out period was put into practice—though never specified in the regulations—to mitigate this potential risk. Since 1998, we have changed the focus of the program from eradication to the management of risk associated with the disease, and we have adopted the bunted kernel as the infestation standard.

In addition, in contrast to the commenters, we view the risk of disseminating Karnal bunt through manure as very small. Cattle are grazed on wheat and removed from the fields prior to the soft-dough stage of plant growth. These cattle are not routinely fed bunted kernels. A review of our regulatory records for the past 2 seasons indicate less than 0.5 percent of the 186,500 head of cattle moved under limited permits from regulated areas were required to undergo the 5-day clean-out. These cattle were subjected to the clean-out because they had grazed in fields that were past the soft-dough stage and that were within the regulated area; however, there are no records to confirm the presence of the disease in the fields where the cattle grazed. The percentage of cattle that actually grazed in infected fields is likely to be much lower than the 0.5 percent figure, as known infected fields represent a very small portion of the regulated areas in the United States. We believe that there is a very minimal risk of the spread of Karnal bunt spores through manure and an even smaller risk—if any—that bunted kernels may be spread that way. One commenter cited research indicating that 25 percent to 35 percent of healthy kernels pass through the ruminant digestive tract without being completely digested. A bunted kernel is not a healthy kernel of wheat, however, and the structural integrity of the former is not equivalent to that of the latter. Bunted kernels are very fragile and are easily ruptured, and, thus, are less likely than healthy grain to pass through the digestive tract of ruminant animals without being completely digested.

The commenters also stated that soil in quantities sufficient to harbor bunted kernels should continue to be listed among the regulated articles for Karnal bunt. It was suggested that soil could not only contain bunted kernels but could also serve as a mechanism for spreading both the disease and the pathogen.

We have not observed soil originating in regulated areas being moved in significant volumes. We have seen limited movement of soil throughout a

regulated area for use as fill, road construction, and housing in areas. Soil moved and used in this way presents a minimal risk of spreading Karnal bunt. Smaller quantities of soil have also been permitted to move to approved laboratories for analytical purposes. Such movement and processing present little risk of disseminating the Karnal bunt pathogen. Finally, soil movement has also been associated with the movement of harvesting equipment. All equipment used to harvest bunted-kernel-positive wheat is required to be cleaned prior to leaving a regulated area. The cleaning process includes the removal of any soil on the equipment being cleaned, thus minimizing any pest risk associated with the movement outside of a regulated area of bunted kernels in soil. In addition, harvesting equipment that is moving across State lines usually requires cleaning for noxious weed seed, which also entails the removal of any soil on the equipment. Therefore, we will not be making any changes to the final rule in response to these comments.

The commenters also stated that certain milling products or byproducts, such as screenings, should continue to be regulated, since they may present a risk of spreading Karnal bunt. Such products or byproducts, if produced from host crops within a regulated area, should have to be handled, stored, and used within the regulated area, according to the commenters.

We will not be making any changes to the final rule in response to these comments. Bunted or damaged kernels are likely to be susceptible to the milling process, *i.e.*, unlikely to survive it intact. Moreover, the screenings that result from the milling process are routinely used for animal feed. In order for the animals to receive the maximum benefit from this feed source, the screenings are routinely steam-rolled or used in a pellet formulation. Both of these processes mitigate the risk of transmitting the Karnal bunt pathogen.

The commenters also stated that proposed § 301.89–2(b), which listed as regulated articles grain elevators, equipment, and structures used to store and handle Karnal bunt-positive host crops, needed clarification. It was suggested that the paragraph could be interpreted to apply only to those regulated articles used to store or handle grain, since only bunted kernels are mentioned. One commenter noted that proposed § 301.89–12(c) addressed the cleaning and disinfection requirements for facilities that stored either spore-positive seed or bunted-kernel-positive grain, suggesting that, in the final rule, the list of regulated articles in § 301.89–

2(b) should also include storage facilities for seed that has tested positive for spores.

As noted in our definition of infestation (infected) in proposed § 301.89–1, we regulate grain and seed according to different criteria. Proposed § 301.89–2(b) was intended to apply only to articles used to store or handle grain that has tested positive for bunted kernels; we addressed seed conditioning equipment and storage/handling equipment separately in proposed § 301.89–2(f). To eliminate any possible confusion on the part of users of the regulations, we have decided to rearrange § 301.89–2 in the final rule to place the provisions for grain and seed equipment adjacent to one another. Proposed § 301.89–2(f) will become § 301.89–2(c) in the final rule, with the remainder of the section reordered accordingly, and a reference to structures will be added to better align the paragraph with § 301.89–2(b).

The commenters generally welcomed our efforts to develop uniform criteria for removing fields from regulation, but took issue with some parts of our list of acceptable field management practices in proposed § 301.89–3. Proposed § 301.89–3 stated that a known infected field, as well as surrounding non-infected acreage, could be released from regulation if the field was no longer being used for crop production or if it had been subjected each year, for 5 consecutive years, to any one of the following management practices: Planting with a cultivated non-host crop; tilling once annually; or planting with a host crop that tests negative, through the absence of bunted kernels, for Karnal bunt. The commenters argued that we should eliminate tilling from the list because it does not prevent Karnal bunt infection if a crop is allowed to head. The commenters also recommended that fields planted with non-host crops be planted with ones that are not cultivated annually, such as alfalfa; that if no crop is planted in a regulated field during the first year of the 5-year period preceding deregulation, the field should be required to undergo cultivation or chemical fallow; and that the list of acceptable management practices should be expanded to include planting the field with a host crop for grazing, while ensuring the destruction of the crop prior to the boot stage, and enrolling the field in the Conservation Reserve Program.

We will not be making any changes to the final rule in response to these comments. Tillage is a proven method of reducing the spore load in the soil. Tillage exposes spores to the

environment, which in turn causes the spores to deteriorate, resulting in a decrease of the spore load in the soil. In addition, exposing the spores to the surface without a host promotes "suicidal germination" of the teliospores, which also contributes to a decrease in the spore load. Spores germinate when the environmental conditions are favorable, regardless of whether there is a susceptible host plant. Suicidal germination reduces the spore load and the probability of infection. Another advantage of tilling is that it also prevents volunteer host material from reaching the heading stage of growth. We do not agree with the recommendation to plant non-host crops that are not cultivated annually. If a field is not cultivated annually, spore longevity is likely to increase. We do not believe chemical fallow should qualify as an independent practice during the 5-consecutive-year period, as its value, if any, in reducing the spore load in the soil is undetermined. Planting a host crop for grazing is also problematic as a management strategy. Many times, wheat is planted for grazing, and, depending on the price of wheat, the crop is allowed to mature. We do not have the authority to dictate what a wheat producer may plant on his farm, nor may we condemn or require destruction of a crop without evidence of the Karnal bunt pathogen. Finally, because a field enrolled in the Conservation Reserve Program is not likely to undergo annual tilling, spore longevity in the field is not likely to decrease.

One commenter criticized the proposed rule for not stating how seed will be sampled and analyzed under the regulations. It was argued that APHIS must develop, publish, and distribute procedures for these tasks, adopt procedures to protect the seed supply from both bunted kernels and teliospores, and develop procedures to deal with seed that tests positive for bunted kernels or teliospores and for the facility in which the seed was stored and the field in which it was produced.

We will not be making any changes to the final rule in response to these comments. Procedures for seed sampling and analysis do exist and are contained in APHIS's Karnal Bunt Manual, available on the Internet at [http://www.aphis.usda.gov/ppq/manuals/online\\_manuals.html#Karnal](http://www.aphis.usda.gov/ppq/manuals/online_manuals.html#Karnal). Protecting the seed supply from bunted kernels is not a concern because, as noted earlier, if grain tests positive for bunted kernels, it does not qualify as seed and could never be used as such. Procedures to deal with seed that tests positive for teliospores, the facility in

which such seed was stored, and the field in which it was produced are contained in various places in this final rule, including §§ 301.89–3, 301.89–12, and 310.89–13.

One commenter took issue with some provisions of the cleaning, disinfection, and disposal requirements that were contained in § 301.89–12 of the proposed rule. Proposed paragraphs (a) and (c) stated that an inspector may determine whether to require disinfection of certain regulated articles. The commenter argued that since § 301.89–12 does not include criteria for inspectors to use in making such determinations, APHIS needed to develop such criteria and train its staff in their use. The commenter also suggested that APHIS needed to consider pertinent environmental factors, such as soil type, depth of the water table, and the potential for product leaching and movement in the soil, in regard to the burial of chemically treated seed that has tested positive for Karnal bunt. Due to these and other factors, meeting the 24-inch minimum depth requirement for burial that is specified in § 319.89–12(e) may not always be possible.

We will not be making any changes to the final rule in response to these comments. The regulations address how APHIS will handle Karnal bunt-negative grain, Karnal bunt-positive grain, and seed produced in a regulated area. Any machinery or equipment associated with the production of Karnal bunt host material will fall into one of these three categories and be handled accordingly. Specific guidance will be provided in the Karnal Bunt Manual, and staff training will be given. Regarding the burial provision, our current practices and this rulemaking do reflect our consideration of the environmental factors cited by the commenter. We only allow burial of treated seed in landfills approved by the U.S. Environmental Protection Agency or on privately owned property with the owner's consent. We do not allow burial in areas that are currently cultivated or in areas subject to cultivation in the future. We do not allow burial of seed in areas where the minimum 24-inch depth is not attainable.

#### *Miscellaneous*

Because we included tilling on our list of acceptable crop management practices in proposed § 301.89–3, we determined that we needed to define the term. Section 301.89–1 of this final rule defines *tilling* as the turning of a minimum of the top 6 inches of soil.

Therefore, for the reasons given in the proposed rule and in this document, we

are adopting the proposed rule as a final rule, with the changes discussed in this document.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule 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.

This final rule is intended to improve the clarity, transparency, and effectiveness of our Karnal bunt regulations. This rulemaking is the result of a review of the regulations.

Of the substantive changes to the regulations contained in this final rule, four stand out as having the potential to have the most economic impact: (1) Adding provisions for removing fields or areas from the list of regulated areas, (2) modifying seed planting restrictions, (3) removing animal manure from the list of regulated articles, and (4) modifying cleaning and disinfecting requirements for seed conditioning equipment. These four changes—all of which are expected to have a favorable impact on any affected entities—are discussed individually in the paragraphs that follow.

#### *Adding Provisions for Removing Fields or Areas From the List of Regulated Areas*

The regulations have not contained criteria for the removal of fields or areas from the list of regulated areas, although we have removed some fields or areas from regulation in the past on a case-by-case basis. This rule establishes uniform criteria for the removal of fields or areas from regulation.

Even wheat testing Karnal bunt-negative has not been eligible for a phytosanitary certificate with an additional declaration if it was grown in fields that previously tested Karnal bunt-positive—a situation that adversely impacts the wheat's marketability and value.<sup>1</sup> By allowing wheat from those fields to become eligible for such a certificate (if certain conditions are met), this rule will yield potential—and in some cases immediate—economic benefits for affected producers.

In San Saba and McCulloch Counties, TX, there are approximately 28 producers with fields that previously tested positive for Karnal bunt—including about 8 that will be

<sup>1</sup> Major foreign importers will not accept wheat from the United States that does not have such an additional declaration. Furthermore, many U.S. elevators will not commingle wheat from previously tested positive fields with wheat destined for the export market.

immediately eligible for deregulation since they have already satisfied the conditions for release. It is estimated that these 28 producers would have received, collectively, at least about \$295,000 more for their wheat this past crop season if it had been eligible for export—an average of about \$10,500 per producer. These dollar estimates are based on a price differential of at least \$1.80 per bushel between uncertified wheat sold for animal feed and certified wheat in Texas sold for the export market.<sup>2</sup>

This final rule also has the potential to enable the approximately 25 producers in 4 north Texas counties (Young, Throckmorton, Archer, and Baylor) with fields in a regulated area to recover lost revenues. Based on their estimated production capacity of about 81,000 bushels of wheat per crop season, this rule, by allowing the 25 growers to obtain the phytosanitary certificate with the additional declaration needed to market their wheat for export, has the potential to enable them to recover \$145,000 or more in annual revenues, based on current prices.<sup>3</sup>

Growers in Arizona and California will also benefit. This rule will enable the approximately 67 producers in Arizona with fields that previously tested Karnal bunt-positive, to recover, collectively, revenues estimated at about \$1,433,000 per year. The four producers in California with fields that previously tested positive stand to recover, collectively, about \$210,000 per year in lost revenues.<sup>4</sup>

#### *Modifying Seed Planting Requirements*

The regulations have provided that wheat, durum wheat, or triticale that is grown in regulated areas and intended for use as seed cannot be planted outside those areas. Under this final rule, wheat, durum wheat, or triticale grown in regulated areas will be eligible for planting outside the regulated areas if it is tested and found free of bunted kernels and spores.

Seed producers in regulated areas will benefit because they will be able to sell their seed outside those areas, recapturing markets that they had previously lost. Furthermore, by removing a disincentive for certified seed producers to operate in regulated

areas, the rule also has the potential to benefit owners of seed conditioning equipment who operate in those areas.

Even producers who do not sell seed outside the regulated area stand to benefit. In Texas, for example, it is not uncommon for producers to hold back a quantity of grain for use as seed in the next planting season. With the regulatory changes in effect, producers in regulated areas will be able to use their grain as seed in fields that they operate outside the regulated area—instead of having to purchase higher-priced commercial seed for use in those fields. In San Saba and McCulloch Counties, TX, it is estimated that 14 producers would have saved a total of about \$60,000 this past crop season if they had been able to use their grain as seed in fields that they operated outside the regulated area.<sup>5</sup> It is estimated that about half of the approximately 450 wheat producers in the regulated areas of northern Texas will benefit to at least some extent from this aspect of the final rule.

#### *Removing Animal Manure From the List of Regulated Articles*

The regulations have listed manure from animals that have fed on untreated or raw wheat as a regulated article under § 301.89–2. Although not set forth in the regulations, it has been our practice to require a 5-day “clean-out” period for livestock that have been fed untreated or raw wheat before the animals can be moved from the regulated area. During the clean-out period, livestock can be fed only Karnal bunt-negative wheat or a non-host crop. This final rule removes animal manure from the list of regulated articles in § 301.89–2, effectively eliminating the clean-out policy.

This aspect of the rule will benefit livestock producers, since the clean-out policy may compel them to switch their animals to an alternative, but less desirable, feed crop during the 5-day period. A change in feeding rations during the clean-out period can adversely impact weight gain, which, in turn, can adversely affect animal prices. In northern Texas, where this rule has the potential to have the most impact, it has been estimated that cattle can lose up to 20 percent of their weight in the first week following a feed-crop change. For a single head of cattle weighing 700 lbs. before clean out, therefore, the clean-out requirement can translate into a loss of up to \$109 (based on the current price of about \$0.78/lb).

Livestock producers will further benefit because clean-out can also

involve gathering the animals and transporting them to a new location, such as a new pasture, during the 5-day period. The time and expense associated with gathering and transporting cattle to a new location for clean-out may vary among individual livestock producers, depending on such factors as the distance to the new location, the cost for the use of the new location, and the equipment needed for transport to the new location.

To date in northern Texas, only a few cattle producers have had to clean out their animals, since most moved their animals before the wheat reached the soft dough stage. However, there are at least 500 cattle producers in northern Texas who will potentially benefit from this aspect of the final rule, including some who move up to about 25,000 head annually.<sup>6</sup>

#### *Modifying Cleaning and Disinfecting Requirements for Seed Conditioning Equipment*

The regulations have provided that seed conditioning equipment used in the production of any host crop must be cleaned and disinfected (using USDA-approved methods) prior to being moved from the regulated area. (Cleaning means the removal of all soil and plant debris, and disinfecting means the treatment by one of three approved methods, including steam and hot water and detergent.)

Under this final rule, only seed conditioning equipment that was used to condition seed that was tested and found to contain spores or bunted kernels will have to be cleaned and disinfected prior to being moved from a regulated area (or prior to handling spore-negative seed).

As a result of this rule, fewer pieces of portable seed conditioning equipment will have to be cleaned and disinfected. The affected entities will benefit, because a single cleaning and disinfecting is estimated to cost at least \$150. However, the number of entities potentially affected by this aspect of the rule, and the potential impact on each, is unknown.

#### **Economic Impact on Small Entities**

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. This rule is expected to have an overall beneficial impact on the entities affected by the regulations, especially wheat producers. However, we do not expect that the rule will have a significant economic impact

<sup>2</sup> Source: George Nash (APHIS). Approximately 70 percent of the wheat produced in Texas is exported.

<sup>3</sup> Source: Barte Smith (APHIS).

<sup>4</sup> Dollar estimates are derived from data provided by Michael Hennessey and Cindy Umbdenstock (APHIS). Dollar estimates assume a price differential of \$1.80/bushel between uncertified and certified wheat.

<sup>5</sup> George Nash (APHIS).

<sup>6</sup> Source: Barte Smith (APHIS).

on a substantial number of entities, large or small.

Parts of three States (Texas, Arizona, and California) are currently regulated for Karnal bunt. In Texas, there are approximately 285,000 agricultural acres and about 550 wheat producers under regulation. The equivalent figures for Arizona and California are, respectively, 465,000 acres (120 producers) and 105,000 acres (18 producers).

Wheat producers that will be affected by this rule are likely to be small in size, when judged by the U.S. Small Business Administration's (SBA's) standards. This assumption is based on composite data for providers of the same and similar services. In 1997, Arizona had a total of 6,135 farms of all types. Of those farms, 89 percent had annual sales that year of less than \$500,000, well below the SBA's small entity threshold of \$750,000 for wheat farms. Similarly, the comparable percentages of small entities for Texas (194,301 total farms) and California (74,126 total farms) were 98 percent and 89 percent, respectively.

For some of the affected entities, especially the smaller ones, the benefits of this rule may be substantial. However, the number of entities that will experience substantial benefits is expected to be small relative to all entities potentially affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not 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 final 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 final 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 in 7 CFR Part 301

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

■ Accordingly, we are amending 7 CFR part 301 as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772; 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).

■ 2. Section 301.89–1 is amended by removing the definitions for *farm tools* and *milling products and byproducts* and by adding, in alphabetical order, definitions for *grain*, *hay*, *host crops*, *plant*, *seed*, *straw*, and *tilling* and revising the definitions for *contaminated seed*, *infestation (infected)*, and *mechanized cultivating equipment and mechanized harvesting equipment* to read as follows:

#### § 301.89–1 Definitions.

\* \* \* \* \*

**Contaminated seed.** Seed from sources in which the Karnal bunt pathogen (*Tilletia indica* (Mitra) Mundkur) has been determined to exist by the presence of bunted kernels or teliospores.

\* \* \* \* \*

**Grain.** Wheat, durum wheat, and triticale used for consumption or processing.

\* \* \* \* \*

**Hay.** Host crops cut and dried for feeding to livestock. Hay cut after reaching the dough stage may contain mature kernels of the host crop.

**Host crops.** Plants or plant parts, including grain, seed, or hay, of wheat, durum wheat, and triticale.

**Infestation (infected).** The presence of Karnal bunt, or any identifiable stage of development (*i.e.*, bunted kernels in grain, bunted kernels or teliospores in seed) of the fungus *Tilletia indica* (Mitra) Mundkur, or the existence of circumstances that make it reasonable to believe that Karnal bunt is present.

\* \* \* \* \*

**Mechanized cultivating equipment and mechanized harvesting equipment.** Mechanized equipment used for soil tillage, including tillage attachments for farm tractors—*e.g.*, tractors, disks, plows, harrows, planters, and

subsoilers; mechanized equipment used for harvesting purposes—*e.g.*, combines, grain buggies, trucks, swathers, and hay balers.

\* \* \* \* \*

**Plant.** 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.

**Seed.** Wheat, durum wheat, and triticale used for propagation.

\* \* \* \* \*

**Straw.** The vegetative material left after the harvest of host crops. Straw is generally used as animal feed, bedding, mulch, or for erosion control.

**Tilling.** The turning of a minimum of the top 6 inches of soil.

■ 3. Section 301.89–2 is revised to read as follows:

#### § 301.89–2 Regulated articles.

The following are regulated articles:

(a) Conveyances, including trucks, railroad cars, and other containers used to move host crops produced in a regulated area that have tested positive for Karnal bunt through the presence of bunted kernels;

(b) Grain elevators/equipment/structures used for storing and handling host crops produced in a regulated area that have tested positive for Karnal bunt through the presence of bunted kernels;

(c) Seed conditioning equipment and storage/handling equipment/structures that have been used in the production of wheat, durum wheat, and triticale found to contain the spores of *Tilletia indica*;

(d) Plants or plant parts (including grain, seed, and straw) and hay cut after reaching the dough stage of all varieties of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*) that are produced in a regulated area, except for straw/stalks/seed heads for decorative purposes that have been processed or manufactured prior to movement and are intended for use indoors;

(e) *Tilletia indica* (Mitra) Mundkur;

(f) Mechanized harvesting equipment that has been used in the production of wheat, durum wheat, or triticale that has tested positive for Karnal bunt through the presence of bunted kernels; and

(g) Any other product, article, or means of conveyance when:

(1) An inspector determines that it presents a risk of spreading Karnal bunt based on appropriate testing and the intended use of the product, article, or means of conveyance; and

(2) The person in possession of the product, article, or means of conveyance has been notified that it is regulated under this subpart.

■ 4. Section 301.89–3 is amended as follows:

■ a. In paragraph (d), by revising the fourth sentence to read as set forth below.

■ b. By revising paragraph (e)(3) to read as set forth below.

■ c. By redesignating paragraph (f) as paragraph (g) and adding a new paragraph (f) to read as set forth below.

■ d. In newly redesignated paragraph (g), by revising the introductory text to read as set forth below.

**§ 301.89–3 Regulated areas.**

\* \* \* \* \*

(d) \* \* \* As soon as practicable, this area either will be added to the list of designated regulated areas in paragraph (g) of this section, or the Administrator will terminate the designation. \* \* \*

(e) \* \* \*

(3) It is a distinct definable area that contains at least one field that has been determined to be associated with grain at a handling facility containing a bunted kernel of a host crop (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to the field associated with the bunted kernel at the handling facility).

(f) A field known to have been infected with Karnal bunt, as well as any non-infected acreage surrounding the field, will be released from regulation if:

(1) The field is no longer being used for crop production; or

(2) Each year for a period of 5 consecutive years, the field is subjected to any one of the following management practices (the practice used may vary from year to year):

(i) Planted with a cultivated non-host crop;

(ii) Tilled once annually; or

(iii) Planted with a host crop that tests negative, through the absence of bunted kernels, for Karnal bunt.

(g) The following areas or fields are designated as regulated areas (maps of the regulated areas may be obtained by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 98, Riverdale, MD 20737–1236):

\* \* \* \* \*

■ 5. Section 301.89–4 is revised to read as follows:

**§ 301.89–4 Planting.**

Any wheat, durum wheat, or triticale that originates within a regulated area

must be tested and found free from bunted wheat kernels and spores before it may be used as seed within or outside a regulated area.

**§ 301.89–5 [Amended]**

■ 6. Section 301.89–5 is amended as follows:

■ a. In paragraph (a)(3), footnote 1, by removing the words “Domestic and Emergency Operations, 4700 River Road Unit 134” and adding the words “Surveillance and Emergency Programs Planning and Coordination, 4700 River Road Unit 98” in their place.

■ b. By removing paragraph (a)(4).

■ 7. Section 301.89–6 is amended as follows:

■ a. In the introductory text of paragraph (a), footnote 2, by removing the words “Domestic and Emergency Operations, 4700 River Road Unit 134” and adding the words “Surveillance and Emergency Programs Planning and Coordination, 4700 River Road Unit 98” in their place and by removing the words “, or from the Karnal Bunt Project, 3658 E. Chipman Rd., Phoenix, Arizona 85040”.

■ b. By revising paragraph (b) and the introductory text of paragraph (c) to read as set forth below.

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

\* \* \* \* \*

(b) To be eligible for movement under a certificate, hay cut after the dough stage or grain from a field within a regulated area must be tested prior to its movement from the field or before it is commingled with similar commodities and must be found free from bunted kernels. If bunted kernels are found, the grain or hay will be eligible for movement only under a limited permit issued in accordance with paragraph (c) of this section, and the field of production will be considered positive for Karnal bunt.

(c) An inspector or a person operating under a compliance agreement will issue a limited permit for the movement outside the regulated area of a regulated article not eligible for a certificate if the inspector determines that the regulated article:

\* \* \* \* \*

■ 8. Section 301.89–7 is amended by revising footnote 4 to read as follows:

**§ 301.89–7 Compliance agreements.**

\* \* \* \* \* 4

<sup>4</sup> Compliance agreements may be initiated by contacting a local office of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices of Plant Protection and Quarantine may also be obtained from the Animal and Plant

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

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

(a) Mechanized harvesting equipment that has been used to harvest host crops that test positive for Karnal bunt based on the presence of bunted kernels must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with § 301.89–13 prior to movement from a regulated area.

(b) Seed conditioning equipment that was used in the conditioning of seed that was tested and found to contain spores or bunted kernels of *Tilletia indica* must be cleaned and disinfected in accordance with § 301.89–13 prior to being used in the conditioning of seed that has tested negative for the spores of *Tilletia indica* or to being moved from a regulated area.

(c) Any grain storage facility, including on-farm storage, that is used to store seed that has tested bunted-kernel or spore positive or grain that has tested bunted-kernel positive must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with § 301.89–13 if the facility will be used to store grain or seed in the future.

(d) Conveyances used to move bunted-kernel-positive host crops, including trucks, railroad cars, and other containers, that have sloping metal sides leading directly to a bottom door or slide chute, are self cleaning, and will not be required to be cleaned and disinfected.

(e) Spore-positive wheat, durum wheat, or triticale seed that has been treated with any chemical that renders it unfit for human or animal consumption must be disposed of by means of burial under a minimum of 24 inches of soil in a nonagricultural area that will not be cultivated or in an approved landfill.

■ 10. Section 301.89–13 is revised to read as follows:

**§ 301.89–13 Treatments.**

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 under this subpart must be cleaned by removing all soil and plant debris. If disinfection is required by an inspector in addition to cleaning, the articles must

Health Inspection Service, Plant Protection and Quarantine, Surveillance and Emergency Program Planning and Coordination, 4700 River Road Unit 98, Riverdale, Maryland 20737–1236.

be disinfected by one of the methods specified in paragraph (a), (b), or (c) of this section, unless a particular treatment is designated by an inspector. The treatment used must be that specified by an inspector:

(a) Wetting all surfaces to the point of runoff with one of the following 1.5 percent sodium hypochlorite solutions and letting stand for 15 minutes, then thoroughly washing down all surfaces after 15 minutes to minimize corrosion:

(1) One part Ultra Clorox brand regular bleach (6 percent sodium hypochlorite; EPA Reg. No. 5813-50) in 3 parts water; or

(2) One part CPPC Ultra Bleach 2 (6.15 percent sodium hypochlorite; EPA Reg. No. 67619-8) in 3.1 parts water.

(b) Applying steam to all surfaces until the point of runoff, and so that a critical temperature of 170 °F is reached at the point of contact.

(c) Cleaning with a solution of hot water and detergent, applied under pressure of at least 30 pounds per square inch, at a minimum temperature of 170 °F.

#### § 301.89-14 [Removed and Reserved]

■ 11. Section 301.89-14 is removed and reserved.

Done in Washington, DC, this 17th day of February, 2004.

**Kevin Shea,**

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

[FR Doc. 04-3807 Filed 2-20-04; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 107

RIN 3245-AE70

#### Small Business Investment Companies—Long Term Financing

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule brings the U.S. Small Business Administration's (SBA) regulations concerning the Small Business Investment Company (SBIC) program into conformity with the Small Business Investment Act, as amended (Act). Specifically, the rule would allow an SBIC to extend financings on terms that require a small business concern to repay debt or to redeem equity securities, options, or warrants after a minimum of one year (rather than five years, as currently stated in SBA's regulations).

**DATES:** This rule is effective on May 24, 2004, without further action unless adverse comment is received by March 24, 2004. If adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** Written comments should be sent to Harry Haskins, Deputy Associate Administrator for Investment, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 or [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Carol Fendler, Director, Office of Licensing and Program Standards, Investment Division, Office of Capital Access, (202) 205-7559 or [carol.fendler@sba.gov](mailto:carol.fendler@sba.gov).

**SUPPLEMENTARY INFORMATION:** SBA always has interpreted section 102 of the Act, 15 U.S.C. 681, to require SBICs to provide long term financing, either in the form of loans or equity capital. Because the Act did not define "long term," SBA had administratively defined the term to mean generally a financing with a minimum term of five years. Accordingly, SBA promulgated §§ 107.830, 107.835, 107.845 and 107.850, which generally require that loans and debt securities have a stated term of at least five years prior to maturity, subject to reasonable amortization requirements, and that equity securities be outstanding for at least five years before the issuing small business concern can be required to redeem them.

The Small Business Investment Corrections Act of 2000, Public Law 106-554 (Corrections Act), title IV, section 402(b)(3), added a new section 103(17) to the Act, that effectively overruled SBA's administrative definition by defining "long term" to mean any period of time not less than one year. Each of the regulations affected by this direct final rule contains references to a five-year minimum financing term. It should be emphasized that the Corrections Act established one year as the minimum financing term, but did not affect an SBIC's ability to offer longer term financing. Under this rule, SBICs will continue to be able to structure investments with longer maturities to accommodate the varying financial needs of small businesses.

SBA is aware that the new statutory definition of "long term" from the Corrections Act may require further amendment of some of the affected sections beyond the changes made by this rule. SBA intends to make any such amendments through a proposed rule to be published at a later time. This rule makes no changes to the current

regulations other than technical changes to conform the regulations to the Act, as amended. SBA is publishing this regulation as a direct final rule because it believes the rule is non-controversial since it merely conforms the existing rule to the provisions of the Act that became effective on December 21, 2000. SBA believes that this rule will not elicit any significant adverse comments.

This rule is not intended to affect the rights of any parties to any outstanding financing or commitment whose terms were drafted in accordance with regulations that established a minimum five year term for a financing.

#### Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)

##### *Compliance With Executive Order 12866*

The Office of Management and Budget (OMB) did not determine this rule to be a "significant" regulatory action under Executive Order 12866. This rule only implements technical corrections to the statute authorizing the SBIC program and will not have an annual effect on the economy of \$100 million or more, adversely affect the economy in a material way, create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of loan programs or other governmental programs, or raise novel legal or policy issues arising out of legal mandates or the President's priorities.

##### *Compliance With Executive Order 12988*

For purposes of Executive Order 12988, SBA has determined that this rule was drafted, to the extent practicable, in accordance with the standards set forth in section 3 of that order.

##### *Compliance With Executive Order 13132*

For purposes of Executive Order 13132, SBA has determined that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, SBA has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.