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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–057–2]

RIN 0579–AB74

Karnal Bunt; Revision of Regulations for Importing Wheat

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations regarding the importation of wheat from regions affected with Karnal bunt. Our amendments, among other things, list such regions, as well as articles regulated for Karnal bunt; increase the flexibility of the regulations so that they provide more readily for the recognition of areas where Karnal bunt is not known to occur within regions where Karnal bunt is known to be present; describe conditions, including requirements for phytosanitary certificates, under which wheat and related articles from regions affected with Karnal bunt are imported into the United States; and specify cleaning and/or disinfection requirements for imported farm machinery and other equipment used to handle or store Karnal bunt-positive seed or host crops. The changes make our regulations regarding the importation of wheat and related articles from regions affected with Karnal bunt substantively equivalent to our domestic Karnal bunt regulations and make the former consistent with international agreements to which the United States is a party.

EFFECTIVE DATE: March 21, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Van Dersal, Import Specialist, Phytosanitary Issues Management Team,

PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* × *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. Our Karnal bunt-related import regulations are contained in Subpart—Wheat Diseases (7 CFR 319.59 through 319.59–2).

On March 3, 2004, we published in the **Federal Register** (69 FR 9976–9982, Docket No. 02–057–1) a proposal to amend the regulations by listing regions affected with Karnal bunt, as well as articles that would be regulated for Karnal bunt; increasing the flexibility of the regulations so that they could provide more readily for the recognition of areas where Karnal bunt is not known to occur within regions where Karnal bunt is known to be present; describing conditions, including requirements for phytosanitary certificates, under which wheat and related articles from regions affected with Karnal bunt could be imported into the United States; and specifying cleaning and/or disinfection requirements for imported farm machinery and other equipment used to handle or store Karnal bunt-positive seed or host crops. The proposed changes would make our regulations regarding the importation of wheat and related articles from regions affected with Karnal bunt substantively equivalent to our domestic Karnal bunt regulations and would make the former consistent with international agreements to which the United States is a party.

We solicited comments concerning our proposal for 60 days ending May 3, 2004. We received two comments by that date, both from representatives of domestic wheat industry groups. Both commenters were in favor of the proposed rule.

However, one commenter offered suggestions for changes to the background information contained in the preamble of the proposed rule. These suggestions are discussed below.

The commenter noted that the proposed rule's economic analysis mentioned, but did not identify, five durum-producing Mexican States in addition to the States of Sonora and Baja California (*i.e.*, the States where the Mexicali Valley, a Karnal bunt-free area already recognized in the regulations, is located). The commenter identified four of the five Mexican States and offered relative per-State percentages for durum production in Mexico and suggested that, due to transportation costs and other considerations within Mexico, more wheat originating in the Mexican State of Sonora may be exported to the United States than had been explored in the economic analysis.

While increased Mexican wheat imports from Mexico may occur, as the commenter suggests, our economic analysis concludes that the effects are likely to be small relative to the value of the domestic industry. The commenter did not provide evidence to the contrary. We are making no changes in response to this comment.

With respect to the five durum-producing Mexican States mentioned but not specifically identified in the proposed rule, we have updated the economic analysis for this final rule to identify these five States, which are Chihuahua, Guanajuato, Jalisco, Michoacan, and Queretaro.

The commenter pointed out that Karnal bunt has been reported in additional countries not mentioned in the background information in the preamble of the proposed rule. These countries are Nepal, Iran, and South Africa.

The countries we mentioned in the proposed rule are those countries that have been listed in the wheat import regulations as countries where Karnal bunt is known to exist. In this final rule, we have updated the regulatory text of § 319.59–4(b)(1) to include those additional countries on that paragraph's list of countries where Karnal bunt is known to occur.

In addition to that change, we are also amending the definition of *inspector* in this final rule to reflect the reassignment of certain responsibilities from the Animal and Plant Health Inspection Service to the Department of Homeland Security's Bureau of Customs and Border Protection by the Homeland Security Act of 2002.

Other Changes

In addition to the changes discussed above, we have also made two other changes in this final rule in order to ensure that the regulations are internally consistent. First, in § 319.59–4(a)(2) of the proposed rule, we listed *Triticum* spp. (wheat) plants among the articles designated as regulated articles for Karnal bunt, and in paragraph (c) of that section we described the conditions under which regulated articles could be imported from regions where Karnal bunt is known to occur. However, under § 319.59–2(a), the importation of *Triticum* spp. plants into the United States from any country except Canada is prohibited. In order to avoid any potential confusion between the provisions in §§ 319.59–2 and 319.59–4, we have removed wheat plants from the list of regulated articles for Karnal bunt so it does not appear that wheat plants could be imported into the United States under the conditions described in § 319.59–4(c).

The other change is similar in nature. Specifically, in § 319.59–4(b)(1) we list regions where Karnal bunt is known to occur, and paragraph (c) of that section describes the conditions under which regulated articles, including articles of *Triticum* spp., could be imported from those regions. However, several of the regions listed in § 319.59–4(b)(1) are also listed in § 319.59–3(b) as regions from which the importation of certain articles, including articles of *Triticum* spp., is prohibited due to flag smut. In order to prevent a conflict between those two sets of provisions, we have amended the conditions for the importation of regulated articles from regions where Karnal bunt exists (§ 319.59–4(c)) to provide that the regulated articles will be eligible for importation only if they are not otherwise prohibited under § 319.59–3.

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 rule amends the import regulations pertaining to Karnal bunt to make them substantively equivalent to the domestic Karnal bunt regulations and will help the United States meet its

obligations under international agreements to which it is a party.

For this rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic effects of this rule on small entities, as required under the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by writing or calling the person listed under **FOR FURTHER INFORMATION CONTACT**.

The economic analysis investigates the potential economic effects in the United States that may result from the removal of Karnal bunt-related restrictions on wheat imports. It is anticipated that any additional wheat imports that do occur as a result of this rule would be from Mexico. There are five Mexican States that appear to meet the requirements in this rule for Karnal bunt-free status. These States are Chihuahua, Guanajuato, Jalisco, Michoacan, and Queretaro. The Mexicali Valley in Sonora¹ and Baja California was declared Karnal bunt-free in 1998 and is therefore not directly affected by this rule. Other countries affected with Karnal bunt which may be eligible to export wheat to the United States under the regulations may still be precluded from doing so for a number of reasons, including the presence of other wheat pests.

Any new wheat imports into the United States from Mexico are likely to be durum wheat. In Mexico, demand for durum wheat is limited because the demand for pasta is limited. However, Mexican wheat producers favor durum wheat due to its higher yield and disease resistance, creating a small surplus of durum for export. Mexican wheat exports since 1995 have been almost exclusively durum wheat. Because Mexican wheat exports have been so concentrated in durum wheat, it is expected that any additional imports into the United States from any new Karnal bunt-free areas in Mexico would also be durum wheat. For the period 1998–2001, the annual average durum wheat production in the United States was about 3 million metric tons (MT). Imports of durum wheat from all sources averaged about 458,000 MT. Approximately 2 percent of those imports were from the Karnal bunt-free area of Mexico.²

¹ Total Mexican wheat production and exports declined considerably in 2002 and 2003 due to a severe water shortage for crop irrigation in the principal wheat producing State of Sonora.

² Sources: Economic Research Service, USDA, Department of Commerce (DOC), U.S. Census

Our economic analysis considers two scenarios for expanded U.S. wheat imports from Mexico, assuming no displacement of other imports. The first scenario analyzes the impact of additional Mexican durum wheat exports to the United States of an amount equal to 1 percent of total wheat production in the five additional Mexican States cited previously (about 7,000 MT). This reflects the fact that about 1 percent of the wheat production in the Mexicali Valley, which is already eligible to be shipped to the United States, is indeed exported to the United States.³ The second scenario analyzes the impact of additional Mexican durum wheat exports of an amount equal to 12 percent of total wheat production in those five States (about 87,000 MT). For the period 1998–2001, Mexican wheat exports to the world represented on average approximately 11.6 percent of total Mexican wheat production annually.⁴

There are reasons to believe that new imports would be limited and that the first scenario more closely approximates the amount of Mexican wheat that may eventually enter the U.S. market. Under this scenario, the new imports are estimated to be an addition of 7,280 MT, which approximates the 1 percent share of Mexican wheat production in the Mexicali Valley that was exported to the United States between 1998 and 2001. The Mexicali Valley is one of Mexico's largest wheat producing areas. It is also closer to the United States than the Mexican population centers in central and southern Mexico. Transportation costs to the Mexican population centers from this area are high because rail lines must traverse mountains. Despite the fact that the U.S. market has been open to imports of wheat from this area since 1998, Mexican wheat exports directed to the United States between 1998 and 2001 have averaged less than 5 percent of all Mexican wheat exports.

Another reason to believe that the quantity of new wheat imports from Mexico that may occur as a result of this rule would be small is due to the fact that the five additional Mexican States identified previously are producing less than 25 percent of all Mexican wheat, and little durum wheat. At present,

Bureau, Foreign Trade Statistics, and Food and Agriculture Organization of the United Nations (FAO).

³ Mexico produced an average annual 3.2 million MT of wheat for the period 1998–2001. Wheat grown in the Mexicali Valley in Sonora and Baja California accounted for about 18.6 percent of that total. Over the same time period, an average of 8,754 MT of durum wheat was exported to the United States annually, presumably from the Karnal bunt-free Mexicali Valley. Sources: DOC and FAO.

⁴ FAO.

durum wheat production in Mexico is concentrated in the northwestern portion of the country. It has been estimated that 75 percent of Mexican durum wheat production occurs in Sonora, 13 percent in Baja California, and 5 percent in Sinoloa.⁵

In addition, Mexico's population consumes far more wheat than the country produces, as is evident in its status as a net importer. The Mexican population is concentrated in the central and southern part of the country. With the exception of Chihuahua, the five Mexican States considered in the analysis are in the central part of Mexico. The transportation of wheat from these States to the United States would be more difficult and more costly than to closer Mexican population centers. This makes it likely that the shift to production for export in the five States will be limited.

The entry of additional durum wheat from Mexico into U.S. markets would induce producer losses for U.S. producers of durum wheat and consumer gains. Under the most likely scenario of new wheat imports of 7,280 MT, and assuming a demand elasticity of -0.35 and a supply elasticity of 0.34, prices of durum wheat could potentially decrease by about 0.3 percent. Producers would potentially lose about \$1.122 million while consumers potentially gain \$1.123 million. The net benefit in this scenario would be about \$1,000. Under the less likely scenario of a new import quantity of approximately 87,000 MT, durum wheat prices could decline by 4 percent. Consumer gains of \$13.539 million would offset producer losses of \$13.353 million, resulting in a net benefit of \$186,000. In both cases, consumer benefits would be slightly higher than producer losses, which would lead to a net positive impact on the overall economy. To put the producer surplus reductions in perspective, the average annual value of durum wheat production in the United States for 1998–2001 was \$326.3 million. Thus, while the additional imports from Mexico would affect domestic producers of durum wheat, those effects are expected to be small relative to the value of the industry. It should also be noted that the actual loss to domestic producers is likely to be smaller than the magnitudes estimated, as the analysis does not consider the displacement of other imports.

The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small under the Regulatory Flexibility Act. According to

the standard established by the SBA for agricultural producers, a producer with less than \$0.75 million in annual sales is considered a small entity. Of the 241,334 U.S. wheat farms in 1997, at least 92 percent were considered small.⁶ The number of durum wheat producers is not known. It is likely that durum wheat producers affected by the rule would be considered small entities. However, as was discussed above, increased Mexican wheat imports from Mexico would likely have a small adverse impact on domestic producers.

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 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

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0240.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

n Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

n 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

n 2. Subpart—Wheat Diseases, §§ 319.59 through 319.59–2, is revised to read as follows:

Subpart—Wheat Diseases

Sec.

319.59–1 Definitions.

319.59–2 General import prohibitions; exceptions.

319.59–3 Flag smut.

319.59–4 Karnal bunt.

§ 319.59–1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Foreign strains of flag smut. Plant diseases caused by foreign strains of highly infective fungi, *Urocystis agropyri* (Preuss) Schroet., which attack wheat and substantially reduce its yield, and which are new to, or not widely prevalent or distributed within and throughout, the United States.

From. An article is considered to be “from” any country or locality in which it was grown.

Grain. Wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*) 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 (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*).

Inspector. Any individual authorized by the Administrator of APHIS or the Commissioner of the Bureau of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this subpart.

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

Plant. Any plant (including any plant part) for or capable of propagation,

⁵ U.S. Wheat Associates.

⁶ 1997 Census of Agriculture, USDA–NASS. Breakdown shows 2.4 percent of wheat farms with sales in excess of \$1 million, and 5.2 percent with sales between \$0.5 and \$0.999 million.

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 (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* × *Secale cereale*) used for propagation.

Spp. (species). All species, clones, cultivars, strains, varieties, and hybrids, of a genus.

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

United States. The States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

§ 319.59–2 General import prohibitions; exceptions.

(a) Except as provided in paragraph (b) of this section, importation of *Triticum* spp. plants into the United States from any country except Canada is prohibited. This prohibition does not include seed.

(b) *Triticum* spp. plants, articles prohibited because of flag smut in § 319.59–3(a), and articles regulated for Karnal bunt in § 319.59–4(a) may be imported by the U.S. Department of Agriculture for experimental or scientific purposes if:

(1) Imported at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Center East, Beltsville, MD 20705, or at any port of entry with an asterisk listed in § 319.37–14(b) of this part;

(2) Imported pursuant to a departmental permit issued for such article and kept on file at the Plant Germplasm Quarantine Center;

(3) Imported under conditions of treatment, processing, growing, shipment, or disposal specified on the departmental permit and found by the Administrator to be adequate to prevent the introduction into the United States of tree, plant, or fruit diseases (including foreign strains of flag smut), injurious insects, and other plant pests, and

(4) Imported with a departmental tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a departmental permit number corresponding to the number of the departmental permit issued for such article.

§ 319.59–3 Flag smut.

The articles listed in paragraph (a) of this section from the regions listed in paragraph (b) of this section are prohibited articles because of foreign strains of flag smut and are prohibited from being imported or offered for entry into the United States except as provided in § 319.59–2(b).

(a) The following articles of *Triticum* spp. (wheat) or of *Aegilops* spp. (barb goatgrass, goatgrass):

(1) Seeds, plants, and straw (other than straw, with or without heads, which has been processed or manufactured for use indoors, such as for decorative purposes or for use in toys); chaff; and products of the milling process (*i.e.*, bran, shorts, thistle sharps, and pollards) other than flour; and

(2) Seeds of *Melilotus indica* (annual yellow sweetclover) and seeds of any other field crops that have been separated from wheat during the screening process.

(b) Afghanistan, Algeria, Armenia, Australia, Azerbaijan, Bangladesh, Belarus, Bulgaria, Chile, China, Cyprus, Egypt, Estonia, Falkland Islands, Georgia, Greece, Guatemala, Hungary, India, Iran, Iraq, Israel, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Libya, Lithuania, Moldova, Morocco, Nepal, North Korea, Oman, Pakistan, Portugal, Romania, Russia, Spain, Tajikistan, Tanzania, Tunisia, Turkey, Turkmenistan, South Africa, South Korea, Ukraine, Uzbekistan, and Venezuela.

§ 319.59–4 Karnal bunt.

(a) **Regulated articles.** The following are regulated articles for Karnal bunt:

(1) Conveyances, including trucks, railroad cars, and other containers used to move host crops from a region listed in paragraph (b)(1) of this section that test positive for Karnal bunt through the presence of bunted kernels;

(2) Plant parts, including grain, seed, straw, or hay, of all varieties of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* × *Secale cereale*) from a region listed in paragraph (b)(1) of this section, except for straw/stalks/seed heads for decorative purposes that have been processed or manufactured prior to movement and are intended for use indoors;

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

(4) 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

(5) Seed conditioning equipment and storage/handling equipment that has

been used in the production of wheat, durum wheat, or triticale seed found to contain the spores of *Tilletia indica*.

(b)(1) Karnal bunt is known to occur in the following regions: Afghanistan, India, Iran, Iraq, Mexico, Nepal, Pakistan, and South Africa.

(2) The Administrator may recognize an area within a region listed in paragraph (b)(1) of this section as an area free of Karnal bunt whenever he or she determines that the area meets the requirements of the International Standard for Phytosanitary Measures (ISPM) No. 4, “Requirements for the establishment of pest free areas.” The international standard was established by the International Plant Protection Convention of the United Nations’ Food and Agriculture Organization and is incorporated by reference in § 300.5 of this chapter. APHIS will publish a notice in the **Federal Register** and maintain on an APHIS Web site a list of the specific areas that are approved as areas in which Karnal bunt is not known to occur in order to provide the public with current, valid information. Areas listed as being free from Karnal bunt are subject to audit by APHIS to verify that they continue to merit such listing.

(c) **Handling, inspection and phytosanitary certificates.** Unless otherwise prohibited under § 319.59–3 of this subpart, any articles described in paragraph (a)(2) of this section that are from a region listed in paragraph (b)(1) of this section may be imported into the United States subject to the following conditions:

(1) The articles must be from an area that has been recognized, in accordance with paragraph (b)(2) of this section, to be an area free of Karnal bunt, or the articles have been tested and found to be free of Karnal bunt;

(2) The articles have not been commingled prior to arrival at a U.S. port of entry with articles from areas where Karnal bunt is known to occur;

(3) The articles offered for entry must be made available to an inspector for examination and remain at the port until released, or authorized further movement pending release, by an inspector; and

(4) The articles must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the region of origin that includes the following additional declaration: “These articles originated in an area where Karnal bunt is not known to occur, as attested to either by survey results or by testing for bunted kernels or spores.”

(d) **Treatments.** (1) Prior to entry into the United States, the following articles

must be cleaned by removing any soil and plant debris that may be present.

(i) All conveyances and mechanized harvesting equipment used for storing and handling wheat, durum wheat, or triticale that tested positive for Karnal bunt based on bunted kernels.

(ii) All grain storage and handling equipment used to store or handle seed that has tested spore positive or grain that has tested bunted-kernel positive.

(iii) All seed-conditioning equipment used to store or handle seed that has tested spore-positive.

(2) Articles listed in paragraphs (d)(1)(i) and (d)(1)(ii) of this section will require disinfection in addition to cleaning prior to entry into the United States if an inspector or an official of the plant protection organization of the country of origin determines that disinfection is necessary to prevent the spread of Karnal bunt. Disinfection is required for all seed conditioning equipment covered under paragraph (d)(1)(iii) prior to entry into the United States.

(3) Items that require disinfection prior to entry into the United States must be disinfected by one of the methods specified in paragraphs (d)(3)(i) through (d)(3)(iii) of this section, unless a particular treatment is designated by an inspector or by an official of the plant protection organization of the country of origin:

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

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

(iii) 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.

(Approved by the Office of Management and Budget under control number 0579-0240.)

Done in Washington, DC, this 14th day of February 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05-3141 Filed 2-17-05; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 810

RIN 580-AA86

United States Standards for Wheat

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising the United States Standards for Wheat. GIPSA is amending the grain standards to change the definition of contrasting classes in Hard Red Winter wheat and Hard Red Spring wheat such that Hard White wheat is not a contrasting class but is considered as wheat of other classes. GIPSA also is amending the grain standards by adding the sample size used to determine sample grade factors, because the standards should transmit this information. These actions are necessary to ensure market-relevant standards and grades and facilitate the marketing of grain.

EFFECTIVE DATE: May 1, 2006.

FOR FURTHER INFORMATION CONTACT:

Patrick McCluskey at GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250-3604; Telephone (202) 720-4684; faxed to (202) 720-7883.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

Executive Order 12988

Executive Order 12988, Civil Justice Reform, instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. The final rule was reviewed under this Executive Order and no additional related information has been obtained since then. This final rule is not intended to have a retroactive effect. The United States Grain Standards Act provides in Section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies, unless they present any irreconcilable conflict with this rule. There are no

administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this final rule.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) requires agencies to consider the economic impact of each rule on small entities. GIPSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. Under the provisions of the United States Grain Standards Act, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA at 33 export facilities. All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration. GIPSA is amending the grain standards to change the definition of contrasting classes in Hard Red Winter wheat and Hard Red Spring wheat such that Hard White wheat is not a contrasting class but is considered as wheat of other classes. GIPSA also is amending the grain standards by adding the sample size used to determine sample grade factors, because the standards should transmit this information. The two changes made to the wheat standards in this final rule are needed to ensure market-relevant standards and grades. Further, the regulations are applied equally to all entities.

The U.S. wheat industry, including producers (approximately 240,000), handlers (approximately 6,800 domestic elevators), traders (approximately 200 active wheat futures traders), processors (approximately 184 flour mills), merchandisers, and exporters, are the primary users of the U.S. Standards for Wheat and utilize the official standards as a common trading language to market wheat. We assume that some of the entities may be small. Further, the United States Grain Standards Act (USGSA) (7 U.S.C. 87f-1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the