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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 05–078–1]

Karnal Bunt; Addition and Removal of Regulated Areas in Arizona

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations to make changes to the list of areas or fields regulated because of Karnal bunt, a fungal disease of wheat. We are adding certain areas in Maricopa and Pinal Counties, AZ, to the list of regulated areas either because they were found during surveys to contain a bunted wheat kernel, or because they are within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. We are also removing certain areas or fields in Maricopa County, AZ, from the list of regulated areas based on our determination that those fields or areas meet our criteria for release from regulation. These actions are necessary to prevent the spread of Karnal bunt to noninfected areas of the United States and to relieve restrictions on certain areas that are no longer necessary.

DATES: This interim rule is effective December 7, 2005. We will consider all comments that we receive on or before February 13, 2006.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the “Search for Open Regulations” box, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click on “Submit.” In the Docket ID column,

select APHIS–2005–0110 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the “Advanced Search” function in Regulations.gov.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–078–1, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.08, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–078–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal Malik, Karnal Bunt Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–3769.

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, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

Upon detection of Karnal bunt in Arizona in March of 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat producing areas in the United States. The quarantine continues in effect, although it has since been modified, both in terms of its physical boundaries and in terms of its restrictions on the production and movement of regulated articles from regulated areas. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations).

The regulations in § 301.89–3(e) provide that we will classify a field or area as a regulated area when it is:

- A field planted with seed from a lot found to contain a bunted wheat kernel;
- A distinct definable area that

contains at least one field that was found during survey to contain a bunted wheat kernel. 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 a field found during survey to contain a bunted kernel; or

- 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.

The boundaries of distinct definable areas are determined using the criteria in paragraphs (b) through (d) of § 301.89–3, which provide for the regulation of less than an entire State, the inclusion of noninfected acreage within a regulated area, and the temporary designation of nonregulated areas as regulated areas. Paragraph (c) of § 301.89–3 states that the Administrator may include noninfected acreage within a regulated area due to its proximity to an infestation or inseparability from the infected locality for regulatory purposes, as determined by:

- Projections of the spread of Karnal bunt along the periphery of the infestation;
- The availability of natural habitats and host materials within the

noninfected acreage that are suitable for establishment and survival of Karnal bunt; and

- The necessity of including noninfected acreage within the regulated area in order to establish readily identifiable boundaries.

When we include noninfected acreage in a regulated area for one or more of the reasons previously listed, the noninfected acreage, along with the rest of the acreage in the regulated area, is intensively surveyed. Negative results from surveys of the noninfected acreage provide assurance that all infected acreage is within the regulated area. In effect, the noninfected acreage serves as a buffer zone between fields or areas affected with Karnal bunt and areas outside of the regulated area.

Under the regulations in § 301.89–3(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:

- The field is no longer being used for crop production; or
- Each year for a period of 5 consecutive¹ years, the field is subjected to any one of the following management practices (the practice used may vary from year to year): (1) Planted with a cultivated non-host crop, (2) tilled once annually, or (3) planted with a host crop that tests negative, through the absence of bunted kernels, for Karnal bunt.

The regulations in § 301.89–3(g) describe the boundaries of the regulated areas in Arizona, California, and Texas. In this interim rule, we are amending § 301.89–3(g) by adding 5,215 acres (36 fields) in Maricopa County, AZ, and 5,085 acres (approximately 15 to 20 fields) in Pinal County, AZ, to the list of regulated areas either because the fields within those areas were found during detection and delineating surveys to contain a bunted wheat kernel, or because the fields within those areas fall within the 3-mile-wide buffer zone around fields affected with Karnal bunt. This action is necessary in order to help prevent the spread of Karnal bunt into noninfected areas of the United States.

We are also removing 3,802 acres (37 fields) in Maricopa County, AZ, from the list of regulated areas based on our determination that these fields or areas are eligible for release from regulation under the criteria in § 301.89–3(f). This action relieves restrictions on fields

within those areas that are no longer warranted.

Immediate Action

Immediate action is necessary to help prevent Karnal bunt from spreading to noninfected areas of the United States. This rule will also relieve restrictions on certain fields or areas that are no longer warranted. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the Karnal bunt regulations to make changes to the list of areas or fields regulated because of Karnal bunt, a fungal disease of wheat. We are adding certain areas in Maricopa and Pinal Counties, AZ, to the list of regulated areas either because they were found during surveys to contain a bunted wheat kernel, or because they are within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. We are also removing certain areas or fields in Maricopa County, AZ, from the list of regulated areas based on our determination that those fields or areas meet our criteria for release from regulation. These actions are necessary to prevent the spread of Karnal bunt to noninfected areas of the United States and to relieve restrictions on certain areas that are no longer necessary.

Deregulating certain areas or fields in Maricopa County, AZ, will benefit producers in these areas who wish to produce host crops in the future. Deregulation will allow producers to move wheat grain and seed with no restrictions. Prior to this rule, any wheat, durum wheat, or triticale grown in those areas or fields could be moved into or through a non-regulated area without restriction only if it first tested negative for bunted kernels. In addition, any wheat, durum wheat, or triticale

grown in those fields could not be used as seed within or outside a regulated area unless it was tested and found free of bunted kernels and spores. Thus, deregulation allows for freer movement of grain and seed from those areas that are affected by this aspect of the interim rule.

The impact of this aspect of the rule on individual producers is not likely to be significant. The elimination of restrictions will increase marketing opportunities for producers, with impacts on prices those producers may set for their wheat, durum wheat, or triticale. Producers whose fields are deregulated may enjoy increased market opportunities for any wheat, durum wheat, or triticale they grow in the future (e.g. the availability of export markets). They may also receive a higher commodity price for their wheat, durum wheat, or triticale, although any price changes would most likely be small. This is due in part to the perceived notion that wheat produced in a regulated area is of lower quality. Deregulation may remove this stigma.

Despite the increased ability to move grain and seed, as well as a potential increase in the price received for wheat, the benefits to individual producers are not likely to be significant. There are several reasons for this. First, grain in regulated areas is tested for Karnal bunt at no charge to the producer. Thus, removing this testing requirement does not translate into a cost savings for producers, but merely eliminates an inconvenience. Second, little to no wheat seed will be grown in the affected areas of Maricopa County, AZ. In 2004, seed demand accounted for approximately 5 percent of total domestic wheat production. Given such a small percentage and the small size of the area in question relative to other wheat producing regions, it is not expected that this region will grow a significant amount of wheat for seed. Thus, the benefits associated with removing restrictions on the movement of seed are expected to be minimal in this area. Finally, in 2004, Maricopa County accounted for only 0.07 percent of total U.S. wheat production. Therefore, deregulation of these fields or areas would not influence the price of wheat to a significant degree if at all.

Regulation of certain areas in Maricopa and Pinal Counties, AZ, is also unlikely to have a profound effect on individual producers. In this case, producers will still be allowed to transport and market their grain in non-regulated areas if it tests negative for bunted kernels. As stated above, this cost is borne by the government and not by individual producers, so producers

¹ On October 5, 2005, we published a proposed rule in the **Federal Register** (70 FR 58084–58086; Docket 04–134–1) in which we proposed to, among other things, amend the regulations to refer to 5 cumulative years rather than 5 consecutive years.

are only affected by the inconvenience of testing. Further, little or no wheat seed is expected to be produced in these areas, so the restrictions on seed movement should be negligible. Finally, although producers may see a more limited market for their product and face lower prices, the influence of this wheat producing area is small. In 2004, the counties mentioned above together accounted for only 0.15 percent of total U.S. wheat production. Thus, any price changes would be very small.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. Those most likely affected by this interim rule are producers whose fields have been added to the list of regulated areas. Additionally, those farmers whose fields have been removed from the list of regulated areas and plan to grow wheat in the future will also be affected. The number of producers likely to be affected by this interim rule is not expected to be large. Also, it is not expected that the interim rule will have a significant impact on the affected producers. The reasons for this are presented in the preceding paragraphs.

Producers affected by the interim rule are likely to be small in size based on the U.S. Small Business Administration (SBA) standards for wheat farmers, with supporting data from the 2002 Census of Agriculture (2002 Census), which is the most recent census available. The SBA classifies wheat producers with total annual sales of not more than \$750,000 as small entities. According to 2002 Census data, there were a total of 232 wheat-for-grain (all kind of wheat) farms in Arizona in 2002. Of those, 38 farms were in Maricopa County and 67 farms in Pinal County. Of this number, 91 percent had annual sales in 2002 of less than \$500,000, which is well below the SBA's small entity threshold of \$750,000 for wheat farms. Therefore, these findings, in conjunction with those above, demonstrate that although most of the entities impacted by the rule are expected to be small, the impact on those entities is not expected to be significant.

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 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 interim rule contains no 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 and 7781–7786; 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. In § 301.89–3, paragraph (g) is amended as follows:

■ a. Under the heading “Arizona,” in the entry for Maricopa County, by revising paragraphs (1), (3), and (4) to read as set forth below.

■ b. Under the heading “Arizona,” in the entry for Pinal County, by revising paragraph (2) to read as set forth below.

§ 301.89–3 Regulated areas.

* * * * *

(g) * * *

Arizona

* * * * *

Maricopa County. (1) Beginning at the southeast corner of sec. 17, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 14, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 14, T. 1 S., R. 1 E.; then west to the southwest corner of sec. 9, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 9, T. 1 S., R. 1 E.; then west to the southwest corner of sec. 5, T. 1 S., R. 1

E.; then north to the northwest corner of sec. 5, T. 1 S., R. 1 E.; then west to the northeast corner of sec. 6, T. 1 S., R. 1 W.; then south to the southeast corner of sec. 7, T. 1 S., R. 1 W.; then west to the northeast corner of sec. 14, T. 1 S., R. 2 W.; then south to the southeast corner of sec. 14, T. 1 S., R. 2 W.; then west to the northeast corner of sec. 20, T. 1 S., R. 2 W.; then south to the southeast corner of sec. 20, T. 1 S., R. 2 W.; then west to the northeast corner of sec. 29, T. 1 S., R. 3 W.; then south to the southeast corner of sec. 29, T. 1 S., R. 3 W.; then west to the southwest corner of sec. 26, T. 1 S., R. 5 W.; then north to the northwest corner of sec. 14, T. 1 N., R. 5 W.; then east to the southwest corner of sec. 7, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 7, T. 1 N., R. 2 W.; then east to the northeast corner of sec. 5, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 28, T. 2 N., R. 2 W.; then east to the northeast corner of sec. 1, T. 3 N., R. 1 W.; then south to the northwest corner of sec. 19, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 20, T. 3 N., R. 1 E.; then south to the northeast corner of sec. 29, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 27, T. 3 N., R. 1 E.; then south to the southeast corner of sec. 27, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 35, T. 3 N., R. 1 E.; then south to the southeast corner of sec. 35, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 1, T. 2 N., R. 1 E.; then south to the northeast corner of sec. 1, T. 1 N., R. 1 E.; then east to the northeast corner of sec. 4, T. 1 N., R. 2 E.; then south to the northwest corner of sec. 15, T. 1 N., R. 2 E.; then east to the northeast corner of sec. 15, T. 1 N., R. 2 E.; then south to the southeast corner of sec. 27, T. 1 N., R. 2 E.; then west to the southwest corner of sec. 27, T. 1 N., R. 2 E.; then south to the southeast corner of sec. 33, T. 1 N., R. 2 E.; then west to the northeast corner of sec. 4, T. 1 S., R. 2 E.; then south to the southeast corner of sec. 4, T. 1 S., R. 2 E.; then south to the point of beginning.

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(3) Beginning at the southeast corner of sec. 30, T. 6 S., R. 5 W.; then west to the northeast corner of sec. 33, T. 6 S., R. 6 W.; then south to the southeast corner of sec. 33, T. 6 S., R. 6 W.; then west to the southwest corner of sec. 36,

T. 6 S., R. 7 W.; then north to the northwest corner of sec. 36, T. 6 S., R. 7 W.; then west to the southwest corner of sec. 26, T. 6 S., R. 7 W.; then north to the northwest corner of sec. 23, T. 6 S., R. 7 W.; then west to the southeast corner of sec. 18, T. 6 S., R. 7 W.; then north to the northeast corner of sec. 6, T. 6 S., R. 7 W.; then west to the southeast corner of sec. 31, T. 5 S., R. 7 W.; then north to the northwest corner of sec. 29, T. 5 S., R. 7 W.; then east to the northeast corner of sec. 29, T. 5 S., R. 7 W.; then east to the southwest corner of sec. 22, T. 5 S., R. 7 W.; then north to the northwest corner of sec. 22, T. 5 S., R. 7 W.; then east to the southwest corner of sec. 14, T. 5 S., R. 7 W.; then north to the northwest corner of sec. 14, T. 5 S., R. 7 W.; then east to the northeast corner of sec. 13, T. 5 S., R. 6 W.; then south to the southeast corner of sec. 24, T. 5 S., R. 6 W.; then east to the northeast corner of sec. 30, T. 5 S., R. 5 W.; then south to the southeast corner of sec. 30, T. 5 S., R. 5 W.; then east to the northeast corner of sec. 32, T. 5 S., R. 5 W.; then south to the southeast corner of sec. 32, T. 5 S., R. 5 W.; then east to the northeast corner of sec. 5, T. 6 S., R. 5 W.; then south to the southeast corner of sec. 20, T. 6 S., R. 5 W.; then west to the northeast corner of sec. 30, T. 6 S., R. 5 W.; then south to the point of beginning.

(4) Beginning at the southeast corner of sec. 36, T. 2 N., R. 5 E.; then west to the northeast corner of sec. 4, T. 1 N., R. 5 E.; then south to the southeast corner of sec. 4, T. 1 N., R. 5 E.; then west to the southwest corner of sec. 4, T. 1 N., R. 5 E.; then south to the southeast corner of sec. 17, T. 1 N., R. 5 E.; then west to the southwest corner of sec. 17, T. 1 N., R. 5 E.; then north to the northwest corner of sec. 17, T. 1 N., R. 5 E.; then west to the southwest corner of sec. 12, T. 1 N., R. 4 E.; then north to the northwest corner of sec. 12, T. 1 N., R. 4 E.; then east to the northeast corner of sec. 12, T. 1 N., R. 4 E.; then north to the northwest corner of sec. 7, T. 2 N., R. 5 E.; then east to the northeast corner of sec. 12, T. 2 N., R. 5 E.; then south to the point of beginning.

Pinal County:

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(2) Beginning at the southeast corner of sec. 5, T. 6 S., R. 4 E.; then west to the southwest corner of sec. 1, T. 6 S., R. 3 E.; then south to the southeast corner of sec. 14, T. 6 S., R. 3 E.; then west to the southwest corner of sec. 14, T. 6 S., R. 3 E.; then south to the southeast corner of sec. 22, T. 6 S., R. 3 E.; then west to the northeast corner

of sec. 30, T. 6 S., R. 3 E.; then south to the southeast corner of sec. 30, T. 6 S., R. 3 E.; then west to the southwest corner of sec. 30, T. 6 S., R. 3 E.; then north to the southeast corner of sec. 25, T. 6 S., R. 2 E.; then west to the southwest corner of sec. 25, T. 6 S., R. 2 E.; then north to the southeast corner of sec. 11, T. 6 S., R. 2 E.; then west to the southwest corner of sec. 11, T. 6 S., R. 2 E.; then north to the northwest corner of sec. 35, T. 4 S., R. 2 E.; then east to the northeast corner of sec. 35, T. 4 S., R. 2 E.; then north to the northwest corner of sec. 25, T. 4 S., R. 2 E.; then east to the southwest corner of sec. 20, T. 4 S., R. 3 E.; then north to the northwest corner of sec. 20, T. 4 S., R. 3 E.; then east to the northeast corner of sec. 24, T. 4 S., R. 3 E.; then south to the southeast corner of sec. 24, T. 4 S., R. 3 E.; then east to the northeast corner of sec. 28, T. 4 S., R. 4 E.; then south to the northwest corner of sec. 34, T. 4 S., R. 4 E.; then east to the northeast corner of sec. 35, T. 4 S., R. 4 E.; then south to the northwest corner of sec. 1, T. 5 S., R. 4 E.; then east to the northeast corner of sec. 1, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 1, T. 5 S., R. 4 E.; then west to the northeast corner of sec. 12, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 24, T. 5 S., R. 4 E.; then west to the southwest corner of sec. 24, T. 5 S., R. 4 E.; then south to the northeast corner of sec. 35, T. 5 S., R. 4 E.; then west to the northwest corner of sec. 35, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 37, T. 5 S., R. 4 E.; then west to the northwest corner of sec. 50, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 49, T. 6 S., R. 4 E.; then west to the northeast corner of sec. 5, T. 6 S., R. 4 E.; then south to the point of beginning.

* * * * *

Done in Washington, DC, this 7th day of December 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05-23995 Filed 12-12-05; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580-AA87

Export Inspection and Weighing Waiver for High Quality Specialty Grains Transported in Containers

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

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending regulations under the United States Grain Standards Act (USGSA) to waive the mandatory inspection and weighing requirements of the USGSA for high quality specialty grains exported in containers. GIPSA is establishing this waiver to facilitate the marketing of high quality specialty grains exported in containers. This action is consistent with the objectives of the USGSA and will promote the continuing development of the high quality specialty export market. This waiver will be in effect for a maximum of 5 years, and if after this time period GIPSA determines that this waiver continues to advance the objectives of the USGSA, GIPSA will consider making this waiver permanent.

DATES: Effective January 12, 2006

FOR FURTHER INFORMATION CONTACT: John Sharpe, Director, Compliance Division, at his e-mail address:

John.R.Sharpe@usda.gov or telephone him at (202) 720-8262.

SUPPLEMENTARY INFORMATION:

Background

The USGSA authorizes the Department to waive the mandatory inspection and weighing requirements of the USGSA in circumstances when the objectives of the USGSA would not be impaired. Current waivers from the official inspection and Class X weighing requirements for export grain appear in section 7 CFR 800.18 of the regulations. These waivers are provided for grain exported for seeding purposes, grain shipped in bond, grain exported by rail or truck to Canada or Mexico, grain not sold by grade, exporters and individual elevator operators shipping less than 15,000 metric tons during the current and preceding calendar years, and when services are not available or in emergency situations.

This final rule provides a waiver for high quality specialty grains exported in containers.