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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04-134-2]

Karnal Bunt; Criteria for Releasing Fields From Regulation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Karnal bunt regulations regarding the requirements that must be met in order for a field or area to be removed from the list of regulated areas. The changes will allow a field to qualify for release after 5 cumulative years of specified management practices, rather than 5 consecutive years as the regulations have provided, and reorganize the manner in which those management practices are described. These changes will clarify the existing regulations and provide growers in regulated areas with greater flexibility in their planting decisions.

DATES: *Effective Date:* April 13, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal Malik, Agriculturalist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-6774.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 2005, we published in the **Federal Register** (70 FR 58084-58086, Docket No. 04-134-1) a proposal to amend the regulations in "Subpart-Karnal Bunt" (7 CFR 301.89-1 through 301.89-16) regarding the requirements that must be met in order for a field or area to be removed from the list of regulated areas. These changes would

allow a field to qualify for release after 5 cumulative years of specified management practices, rather than 5 consecutive years as the regulations have provided, and reorganize the manner in which those management practices are described. Our proposed changes were intended to clarify the existing regulations and provide growers in regulated areas with greater flexibility in their planting decisions.

We solicited comments on the proposed rule for 60 days ending on December 5, 2005. We received four comments by that date. Of those comments, three fully supported the proposed changes. The fourth commenter requested clarification on one of the criteria for removing fields from regulation, specifically the criterion that a field may be removed from the list of regulated areas if it has been permanently removed from crop production. The commenter stated that there are a number of regulated fields in California whose owners have recently sold their water rights to the city of Los Angeles for an extended period of time (over 10 years). The commenter suggested that these fields should be removed from regulation, an action which would substantially reduce the size of the regulated area in California.

In the proposed rule, we noted that the regulations have provided that a field will be released from regulation for Karnal bunt when it is "no longer being used for crop production," and that this criterion has normally applied when land is removed from agricultural use (e.g., the land is sold and subdivided for home construction). To make it clear that this criterion applies to land permanently removed from agricultural use, rather than land that may have been only temporarily taken out of production, we proposed to amend the regulations to specifically state that the field must have been permanently removed from crop production in order to be released from regulation for Karnal bunt.

In the scenario described by the commenter, the fields would not have been permanently removed from agricultural use and thus would not qualify for deregulation under the amended regulations. Further, unless those fields were tilled at least once per year for a total of 5 years, there may be only a minimal reduction in the spore load in the soil, so once the fields were

put back into production, even after 10 years, it is possible that Karnal bunt could once again be present in a host crop grown on that land. We will not, therefore, be making any changes in response to the commenter's suggestion.

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

Executive Order 12866 and Regulatory Flexibility Act

This final 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.

We are amending the Karnal bunt regulations regarding the requirements that must be met in order for a field or area to be removed from the list of regulated areas. The changes will allow a field to qualify for release after 5 cumulative years of specified management practices, rather than 5 consecutive years as the regulations have provided. These changes will clarify the existing regulations and provide growers in regulated areas with greater flexibility in their planting decisions.

The change to 5 cumulative years using the specified management practices will afford regulated wheat producers greater flexibility in the planting cycle; they can elect not to till in a particular year without having to start over to satisfy the 5 consecutive years requirement for deregulation that has been in place. However, as a practical matter, the change should have little or no impact, as the "consecutive years" criterion has been in effect only since March 2004, near the end of the 2003-2004 crop season, and has not prevented any fields from being released that APHIS field personnel and managers determined were otherwise eligible for release from regulation.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. The Karnal bunt regulations have the potential to have the most impact on wheat producers. At the present time, parts of Texas, Arizona, and California are 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, 278,000 acres (120 producers) and 56,000 acres (18 producers).

As determined by the Small Business Administration (SBA), the small entity size standard for wheat farming, which is defined as farms "primarily engaged in growing wheat and/or producing wheat seeds" (North American Industry Classification System code 11114), is \$750,000 or less in annual receipts. Although the size of regulated wheat producers is unknown, they are likely to be small in size under SBA standards. This assumption is based on composite data for providers of the same and similar services. In 2002, Arizona had a total of 7,294 farms of all types. Of those farms, 91 percent had annual sales that year of less than \$500,000, well below the SBA's small entity threshold. Similarly, the comparable percentages for Texas (228,926 total farms) and California (79,631 total farms) were 99 percent and 90 percent, respectively. (Source: SBA and NASS, 2002 Census of Agriculture.) Although many of these businesses are considered small under SBA standards, given the reason cited above, the proposed change should have little or no economic impact on small entities, wheat producers or otherwise.

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 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 (f) is revised to read as follows:

§ 301.89–3 Regulated areas.

* * * * *

(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 has been permanently removed from crop production; or
- (2) The field is tilled at least once per year for a total of 5 years (the years need not be consecutive). After tilling, the field may be planted with a crop or left fallow. If the field is planted with a host crop, the crop must test negative, through the absence of bunted kernels, for Karnal bunt.

* * * * *

Done in Washington, DC, this 7th day of March 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–2402 Filed 3–13–06; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 05–027–2]

Pine Shoot Beetle; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule

that amended the pine shoot beetle regulations by adding counties in Illinois, Indiana, New York, Ohio, Pennsylvania, and Wisconsin to the list of quarantined areas. In addition, the interim rule designated the States of New Hampshire and Vermont, in their entirety, as quarantined areas based on their decision to no longer enforce intrastate movement restrictions. The interim rule was necessary to prevent the spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

DATES: Effective on March 14, 2006, we are adopting as a final rule the interim rule that became effective on May 26, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

In an interim rule effective and published in the **Federal Register** on May 26, 2005 (70 FR 30329–30330, Docket No. 05–027–1), we amended the regulations in § 301.50–3 by adding Christian, Douglas, and Edgar Counties, IL; Vigo County, IN; Clinton, Essex, Rensselaer, Warren, and Washington Counties, NY; Lawrence and Meigs Counties, OH; Snyder, Sullivan, Union, and Wayne Counties, PA; and Dane, Jackson, Lafayette, Sauk, and Walworth Counties, WI, to the list of quarantined areas in § 301.50–3(c). We took this action based on official surveys which indicated that these counties are infested with PSB. The interim rule also designated the States of New Hampshire and Vermont, in their entirety, as quarantined areas based on their decision to no longer enforce intrastate movement restrictions.

Comments on the interim rule were required to be received on or before July 25, 2005. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.