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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 305

[Docket No. APHIS-2006-0143]

RIN 0579-AC54

Potato Cyst Nematode; Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining parts of Bingham and Bonneville Counties, ID, due to the discovery of the potato cyst nematode there and establishing restrictions on the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the potato cyst nematode to noninfested areas of the United States.

DATES: This interim rule is effective on November 1, 2007. We will consider all comments that we receive on or before November 13, 2007.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS-2006-0143 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- *Postal Mail/Commercial Delivery:*

Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2006-0143, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2006-0143.

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: Mr. Osama El-Lissy, Director, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737-1236; (301) 734-8676.

SUPPLEMENTARY INFORMATION:

Background

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart, "Potato Cyst Nematode" (§§ 301.86 through 301.86-9, referred to below as the regulations). The regulations quarantine parts of Bingham and Bonneville Counties, ID, due to the discovery of the potato cyst nematode there and restrict the interstate movement of regulated articles from the quarantined area.

The potato cyst nematode (PCN) (*Globodera pallida*) is a major pest of potato crops in cool-temperature areas. Other solanaceous hosts include tomatoes, eggplants, peppers, tomatillos, and some weeds. The PCN is thought to have originated in Peru and is now widely distributed in many potato-growing regions of the world. PCN infestations may be expressed as patches of poor growth. Affected potato plants may exhibit yellowing, wilting, or death of foliage. Even with only minor symptoms on the foliage, potato tuber size can be affected. Unmanaged infestations can cause potato yield loss

ranging from 20 to 70 percent. The spread of this pest in the United States could result in a loss of domestic or foreign markets for U.S. potatoes and other commodities.

PCN is a soil-borne pest and is typically spread by the movement of infested soil, either soil itself or soil adhering to plants, farm equipment, or other articles. In some cases, PCN may be transported by wind and flood water.

In the absence of host plants on which to feed, PCN survives in soil as cysts. Mature brown cysts are the desiccated bodies of female nematodes, which contain eggs bearing juvenile nematodes. Each cyst may contain as many as 500 eggs. These durable cysts protect the eggs from physical damage, making it possible for the eggs to survive periods when host plants are not present. When host crops are present, PCN eggs are stimulated to hatch in the spring by chemicals exuded from the roots of the host crops. Once hatched, the juvenile nematode moves between soil particles and locates and invades host plant roots. The larvae will undergo three additional larval stages; the third and fourth stages occur inside the plant root. Once the larvae have entered the host plant root (usually at or near the growing point), they become sedentary. The females eventually become "sac-like," with their posteriors protruding from the root, and can be seen as tiny white embedded objects along the host plant's roots. When the females die, their body walls gradually harden and darken to form the cysts.

When the nematode eggs are in the cysts, they are able to withstand chemical treatment. Since the cysts can survive in the absence of host plants for up to 30 years under ideal conditions, eradication of PCN has typically required long-term efforts. However, fumigants have been found to be effective at significantly reducing nematode cyst population levels in the absence of host plants, and repeated fumigations over a period of years can be used as an eradication tool.

On April 13, 2006, nematode cysts from a sample of soil from a potato grading station in Idaho were confirmed to be PCN. Extensive traceback activities have determined that at least seven fields located in Bingham and Bonneville Counties, ID, are infested. Cysts recovered from a field were officially confirmed to be PCN by the

Animal and Plant Health Inspection Service's (APHIS) Plant Protection and Quarantine (PPQ) program on June 12, 2006. This is the first detection of PCN in the United States.

APHIS and the Idaho State Department of Agriculture are conducting ongoing detection and delimiting surveys of all fields adjacent to or otherwise potentially infested with PCN. A robust survey of fields where potatoes have been grown is currently taking place throughout the State of Idaho. Idaho has restricted the intrastate movement of certain articles from the infested area to prevent the spread of PCN within Idaho. However, Federal regulations are necessary to restrict the interstate movement of certain articles from the infested area to prevent the spread of PCN to noninfested areas of the United States. This interim rule establishes those Federal regulations, which are described below.

Restrictions on Interstate Movement of Regulated Articles (§ 301.86)

Section 301.86 prohibits the interstate movement of regulated articles from quarantined areas except in accordance with the regulations.

Definitions (§ 301.86-1)

Section 301.86-1 contains definitions of the following terms: *Administrator, Animal and Plant Health Inspection Service, associated field, certificate, compliance agreement, departmental permit, field, infestation (infested), infested field, inspector, interstate, limited permit, moved (move, movement), nursery stock, person, Plant Protection and Quarantine, potato cyst nematode, quarantined area, regulated article, and State.*

Regulated Articles (§ 301.86-2)

Certain articles present a risk of spreading PCN if they are moved from quarantined areas without restrictions. We call these articles regulated articles. Paragraphs (a) through (h) of § 301.86-2 list the following as regulated articles:

- Potato cyst nematodes;
- PCN host crops: Potato, eggplant, pepper, tomatillos, and tomato;
- Root crops;
- Garden and dry beans and peas;
- All nursery stock;
- Soil, compost, humus, muck, peat, and manure, and products on or in which soil is commonly found, including grass sod and plant litter;
- Hay, straw, and fodder;
- Any equipment or conveyance used in an infested or associated field that could carry soil if moved out of the field; and
- Any other product, article, or means of conveyance that an inspector

determines presents a risk of spreading the potato cyst nematode, after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of the regulations.

The last item listed above, which provides for the designation of "any other product, article, or means of conveyance" as a regulated article, is intended to address the risks presented by, for example, a truck with caked soil that could have come from an infested field; under this provision, an inspector would be able to designate that truck as a regulated article. This will allow an inspector to ensure that any measures necessary to mitigate the risk of spreading PCN are carried out.

Quarantined Areas (§ 301.86-3)

Paragraph (a) of § 301.86-3 describes the process by which the quarantined area for PCN is designated. Under this process, the Administrator will designate as a quarantined area each field that has been found to be infested with PCN, each field that has been found to be associated with an infested field, and any area that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from infested or associated fields.

In the past, we have published the description of the quarantined area for our domestic quarantines in the regulations for those quarantines. For the potato cyst nematode, we will instead publish the description of the quarantined area on the PPQ Web site at http://www.aphis.usda.gov/plant_health/plant_pest_info/potato_pcn.shtml. The description of the quarantined area will include the date the description was last updated and a description of the changes that have been made to the quarantined area. The description of the quarantined area may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories. After a change is made to the quarantined area, we will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined area.

Instead of including the description of the quarantined area in the regulations, the regulations set out a description of the criteria APHIS will use to designate a field as infested with PCN (an infested field) or as a field associated with an infested field (an associated field). These criteria are found in paragraph (c) of § 301.86-3. The regulations also state the conditions under which infested and associated fields will be removed

from quarantine in paragraph (d) of § 301.86-3. Because we will not be publishing the description of the quarantined area in the regulations, we will be able to update it more quickly if an infestation of PCN is detected, thus allowing us to take prompt action to prevent the spread of PCN and providing necessary information to affected parties in a more timely manner. We believe our description of the criteria by which infested and associated fields will be designated and how the quarantined area will be determined will provide adequate notice regarding the criteria by which we will make changes to the quarantined area. We invite public comment on this approach to providing the public with a description of the quarantined area.

Paragraph (b) describes the conditions for the designation of an area less than an entire State as a quarantined area. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

- The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles; and
- The designation of less than the entire State as a quarantined area will prevent the interstate spread of PCN.

We have determined that it is not necessary to designate the entire State of Idaho as a quarantined area. PCN has not been found in any area of the State other than portions of Bingham and Bonneville Counties, and Idaho has adopted and is enforcing restrictions on the intrastate movement of regulated articles from that area that are equivalent to those we are imposing on the interstate movement of regulated articles. Therefore, in accordance with the criteria described in the paragraphs (a) through (c) of § 301.86-3, we have designated the following area as a quarantined area:

Idaho. That part of Township 1 North, Range 37 East of the Boise Meridian that lies east and south of the Snake River, and sections 10 through 36 of Township 1 North, Range 37 East.

As mentioned earlier, paragraph (c) of § 301.86-3 sets out the criteria for designating a field as an infested or associated field. Paragraph (c)(1) states that the Administrator will designate a field as an infested field when PCN is found in the field. PCN is difficult to detect with the naked eye. It is typically found through surveys, soil sampling, and microscopic inspection.

Paragraph (c)(2) states that the Administrator will designate a field as

an associated field when PCN host crops, as listed in § 301.86–2(b), have been grown in the field in the last 10 years and:

- The field shares a border with an infested field; or
- The field came into contact with a regulated article from an infested field within the last 10 years; or
- Within the last 10 years, the field shared ownership, tenancy, seed, drainage or runoff, farm machinery, or other elements of shared cultural practices with an infested field that could allow spread of PCN, as determined by the Administrator.

Fields will only be designated as associated fields under the last criterion above if the Administrator determines that one of the circumstances listed means that PCN could have been spread from an infested field to the associated field. If an infested field and a noninfested field share cultural practices, but the Administrator determines that the specific cultural practice that is shared does not pose a risk of spreading PCN, the noninfested field would not be designated as an associated field.

It should be noted that, because soil is a regulated article under § 301.86–2(f), the unauthorized movement of soil from an infested field to another field will cause that field to be designated as an associated field.

Paragraph (d) of § 301.86–3 described the conditions under which fields will be removed from quarantine. Under paragraph (d)(1), an infested field will be removed from quarantine when a 3-year biosurvey protocol approved by APHIS has been completed and the field has been found to be free of PCN.

The biosurvey protocol involves planting PCN host crops in soil from a field and sampling the soil for PCN. This process must be repeated three times, over three crop cycles, with negative results in order for APHIS to declare the field to be free of PCN and thus to remove the quarantine from an infested field. We are confident that such a process will be sufficient to establish freedom from PCN.

One means to ensure that a field is free of PCN is to avoid planting host crops in it for at least 30 years; as noted earlier, PCN can survive for up to 30 years in a dormant state without any host crops to feed on. PPQ is also developing a plan for eradicating PCN in infested fields. A draft of the eradication plan has guided our initial eradication efforts. We will use the data we gather from these efforts to further refine the eradication plan. When the plan is finalized, we will make it available to the public. Regardless of the

eradication means used to ensure that a field is free from PCN, however, we would require the 3-year bioassay protocol to confirm that freedom.

Under paragraph (d)(2), an associated field will be removed from quarantine when the field has been found to be free of PCN according to a survey protocol approved by the Administrator as sufficient to support removal from quarantine. The survey protocol to designate an associated field as free of PCN is more thorough than the sampling process by which APHIS determines that PCN is not known to occur in a field, although not as intensive as the biosurvey protocol for infested fields. The additional steps required by the survey protocol to determine freedom are appropriate prior to releasing a field from quarantine entirely.

Paragraph (d)(3) states that if the Administrator has quarantined any area other than infested, adjacent, or associated fields because of its inseparability for quarantine enforcement purposes from infested or associated fields, as provided in paragraph (a) of this section, that area will be removed from quarantine when the relevant infested or associated fields are removed from quarantine.

Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas (§ 301.86–4)

This section requires most regulated articles moving interstate from quarantined areas to be accompanied by a certificate or a limited permit. The articles must be moved in accordance with §§ 301.86–5 and 301.86–8 and under any additional conditions issued by the Administrator to prevent the spread of PCN. The U.S. Department of Agriculture (USDA or the Department) may move regulated articles interstate without a certificate or limited permit if the articles are moved for experimental or scientific purposes.

Except for articles moved by APHIS or the Department, only a regulated article that is moved into the quarantined area from outside the quarantined area and that is accompanied by a waybill that indicates the point of origin may be moved interstate from the quarantined area without a certificate or limited permit. The article may not have been combined or commingled with other articles so as to lose its individual identity. Additionally, the article must be moved through the quarantined area without stopping (except for refueling and for traffic conditions such as traffic lights and stop signs), and the regulated article must not be unpacked or unloaded in the quarantined area.

Issuance and Cancellation of Certificates and Limited Permits (§ 301.86–5)

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles when an inspector finds that, because of certain conditions (e.g., the article is from a field that has been surveyed for PCN by an inspector in the last 3 years and in which PCN has not been found, and no more than one PCN host crop has been grown in the field in the last 3 years), the regulated articles can be moved safely from the quarantined area without spreading PCN. Regulated articles accompanied by a certificate may be moved interstate without further restrictions. Limited permits are issued for regulated articles when an inspector finds that, because of a possible pest risk, the articles may be safely moved interstate only subject to further restrictions, such as movement to specified destinations and movement for limited purposes. Section 301.86–5 explains the conditions for issuing a certificate or limited permit.

Paragraph (a) of § 301.86–5 sets out the conditions under which an inspector or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article. Paragraph (a)(1) provides that, to be eligible for a certificate, all regulated articles must be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of PCN. In addition, all regulated articles must be eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article. We have included a footnote (number 3) that provides an address for securing the addresses and telephone numbers of the local PPQ offices at which services of inspectors may be requested. We have also included a footnote (number 4) that explains that the Secretary of Agriculture may, under the Plant Protection Act, take emergency actions to seize, quarantine, treat, destroy, or apply other remedial measures to articles that are, or that he or she has reason to believe are plants pests or are infested, infected by, or contain plant pests.

Specific requirements apply to the movement of certain other regulated articles. These requirements are listed in paragraphs (a)(2) through (a)(7) of § 301.86–5.

Paragraph (a)(2) contains specific requirements that must be fulfilled for an inspector to issue a certificate for the movement of nursery stock. This paragraph addresses three classes of nursery stock:

- *Potatoes intended for use as nursery stock* (i.e., seed potatoes) are prohibited from moving interstate from the quarantined area. Because potatoes are the primary host of PCN, the interstate movement of living potatoes for planting would pose an extremely high risk of spreading PCN if we allowed it to occur.

- *Nursery stock of PCN host crops other than potatoes*, as listed in § 301.86–2(b), must have been grown in a field that meets the following requirements:

- The field has been surveyed by an inspector for PCN at least once in the last 3 years;

- PCN has not been found in the field; and

- No more than one PCN host crop has been grown in the field in the last 3 years.

While these crops are not primary hosts, they could still serve as pathways for the spread of PCN; allowing their movement only from fields that have been surveyed and found to be free of PCN will effectively mitigate this risk.

- *Nursery stock of non-host crops* that is moved with soil (for example, nursery stock grown and moved in potting soil) must have been grown in a field that meets the requirements for nursery stock of PCN host crops listed above. The regulations include this requirement because the interstate movement of soil poses a high risk of spreading PCN, since PCN dwells in soil before infesting a host. Nursery stock of non-host crops that is moved without soil must have been found by an inspector to be free of soil on its roots and on all other parts of the plant, in order to ensure that the movement of nursery stock of these non-host crops poses no risk.

Paragraph (a)(3) addresses the movement of potatoes and root crops for consumption. Uses of potatoes and root crops produced for consumption include both table consumption and processing into products such as frozen french fries. Both potatoes and root crops moved for consumption are likely to carry soil, which poses a risk of spreading PCN. (Potatoes grown for use as nursery stock [seed potatoes] cannot be easily converted into potatoes grown for consumption.) Under paragraph (a)(3), an inspector may issue a certificate for the movement of potatoes or root crops intended for consumption from the quarantined area only if the

field in which the potatoes or root crops have been grown meets the following requirements:

- The field has been surveyed by an inspector for PCN at least once in the last 3 years and prior to the planting of the potatoes or root crops;

- PCN has not been found in the field; and

- No more than one PCN host crop has been grown in the field the last 3 years.

Paragraph (a)(4) addresses soil and associated products. An inspector may issue a certificate for the interstate movement of a regulated article listed in § 301.86–2(e), which includes soil, compost, humus, muck, peat, and decomposed manure, and products on or in which soil is commonly found, including grass sod and plant litter, only if the article originated in a field that meets the following requirements:

- The field has been surveyed by an inspector for PCN at least once in the last 3 years;

- PCN has not been found in the field; and

- No more than one PCN host crop has been grown in the field the last 3 years.

Paragraph (a)(5) addresses hay, straw, and fodder. These commodities also pose a risk because they may have soil attached. Accordingly, an inspector may issue a certificate for the movement of hay, straw, or fodder from the quarantined area only if the field where the hay, straw, or fodder was produced meets the following requirements:

- The field has been surveyed by an inspector for PCN at least once in the last 3 years;

- PCN has not been found in the field; and

- No more than one PCN host crop has been grown in the field the last 3 years.

Alternatively, an inspector may issue a certificate for the interstate movement of hay, straw, or fodder if it is produced according to procedures judged by an inspector to be sufficient to isolate it from soil throughout its production and handling. Isolation of stored hay, straw, or fodder from soil is commonly accomplished by using asphalt, gravel, concrete, tarpaulins or pallets.

Paragraph (a)(6) addresses equipment used in infested or associated fields. An inspector may issue a certificate for the interstate movement of equipment that has been used in an infested or associated field and that could carry soil if moved out of the field only after the equipment has been pressure-washed under the supervision of an inspector to remove all soil or steam-treated in accordance with 7 CFR part 305. If

properly performed, the pressure-washing will remove all soil from the farm equipment, and the soil adhering to the farm equipment is what poses a risk of spreading PCN from the quarantined area. Properly performed steam treatment kills PCN.

Paragraph (b)(1) of § 301.86–5 sets out general conditions for the issuance of a limited permit. An inspector may issue a limited permit for the interstate movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization, or processing, and that the movement will not result in the spread of PCN because life stages of PCN will be destroyed by the specified handling, processing, or utilization. A limited permit will only be issued if the regulated article will be moved in compliance with any additional emergency conditions imposed by the Administrator under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of PCN, and if the regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

Paragraph (b)(2) sets out specific conditions for the issuance of a limited permit for the interstate movement from the quarantined area of potatoes intended for consumption. We anticipate that potatoes intended for consumption that are not eligible to move from the quarantined area with a certificate under paragraph (a)(3) may nonetheless need to be moved from the quarantined area for packing or processing. This paragraph sets out specific conditions under which they may be moved. An inspector may issue a limited permit to allow the interstate movement of potatoes from the quarantined area for packing or processing only if:

- The potatoes are transported in a manner that prevents the potatoes and soil attached to the potatoes from coming into contact with agricultural premises outside the quarantined area; and

- The potatoes are processed and packed at facilities that handle potatoes, waste, and waste water in a manner approved by APHIS to prevent the spread of PCN.

As a matter of policy, we will not issue limited permits for potatoes grown in an infested field if they are grown in any year following the year in which PCN is initially detected in the field.

Paragraph (c) of § 301.86–5 allows any person who has entered into and is operating under a compliance agreement to issue a certificate or

limited permit for the interstate movement of a regulated article after an inspector has determined that the article is eligible for a certificate or limited permit under § 301.86–5(a) or (b).

Also, § 301.86–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector if the inspector determines that the holder of the certificate or limited permit has not complied with all of the provisions for the use of the document or with all the conditions contained in the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact in the event that the person wishes to appeal the cancellation.

Compliance Agreements and Cancellation (§ 301.86–6)

Section 301.86–6 provides for the use of and cancellation of compliance agreements. Compliance agreements are provided for the convenience of persons who are involved in the growing, handling, or moving of regulated articles from quarantined areas. A person may enter into a compliance agreement when an inspector has determined that the person requesting the compliance agreement has been made aware of the requirements of the regulations and the person has agreed to comply with the requirements of the regulations and the provisions of the compliance agreement. This section contains a footnote (number 7) that explains where compliance agreement forms may be obtained.

Section 301.86–6 also provides that an inspector may cancel the compliance agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact in the event that the person wishes to appeal the cancellation.

Assembly and Inspection of Regulated Articles (§ 301.86–7)

Section 301.86–7 provides that any person (other than a person authorized to issue certificates or limited permits under § 301.86–5(c)) who desires a certificate or limited permit to move regulated articles must request, at least 48 hours before the desired interstate movement, that an inspector issue a certificate or limited permit. The regulated articles must be assembled in a place and manner directed by the inspector.

Attachment and Disposition of Certificates and Limited Permits (§ 301.86–8)

Section 301.86–8 requires the certificate or limited permit issued for movement of the regulated article to be attached, during the interstate movement, to the regulated article, or to a container carrying the regulated article, or to the consignee's copy of the accompanying waybill. Further, the section requires that the carrier or the carrier's representative must furnish the certificate or limited permit to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

Costs and Charges (§ 301.86–9)

Section 301.86–9 explains the APHIS policy that the services of an inspector that are needed to comply with the regulations are provided without cost between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, to persons requiring those services, but that APHIS will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

Treatments in 7 CFR Part 305

The phytosanitary treatments regulations contained in 7 CFR part 305 set out standards and schedules for treatments required in 7 CFR parts 301, 318, and 319 for fruits, vegetables, and articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States. Within 7 CFR part 305, § 305.2 lists approved treatments for pests associated with certain articles regulated in 7 CFR parts 301, 318, and 319.

Certain treatments listed in § 305.2 are approved for treating the golden nematode (*G. rostochiensis*) but not PCN. Due to the similar biology of these two pests, we believe that treatments approved to treat the golden nematode will be effective at treating PCN. Accordingly, we are amending § 305.2 to amend certain treatments for the golden nematode to approve their use on PCN as well. These treatments are:

- Steam sterilization treatment T–406d, used for construction equipment without cabs, used farm equipment without cabs, and used containers; and
- Steam cleaning treatment T–406c, used for automobiles and used farm equipment with cabs.

Section 305.2 also contains treatments for soil products that are approved to treat *G. rostochiensis*. However, the risk

associated with moving soil from the PCN quarantined area is such that we are only allowing soil and soil products to move from the quarantined area with a certificate if they are from a field that has been surveyed by an inspector and found to be free of PCN. Therefore, we are not approving any of the treatments for soil products in § 305.2 to be used to treat PCN.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of PCN to noninfested areas of the United States.

This rule is being made effective on November 1, 2007, because the potato harvesting season in Idaho ends on that date, and regulated parties will need time to prepare for the changes in operations that will become necessary when this rule becomes effective. 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 rule 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. 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 quarantining part of Bingham and Bonneville Counties, ID, because of the presence there of PCN and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of PCN to noninfested areas of the United States.

Tests conducted by PPQ on June 12 and July 13, 2006, confirmed the presence of PCN in soil samples taken from two fields in Bingham County. Subsequently, four additional fields in Bingham County and one field in Bonneville County were found to be infested. This is the first detection of PCN from fields in the United States.

In addition to potatoes, tomatoes, eggplant, peppers, tomatillos, and some

weeds also serve as host to the potato cyst nematode. The interim rule regulates the movement of potatoes and other host crops, as well as plants with roots, root crops, soil, any equipment used on farms that can carry soil, and any other products, articles, or means of conveyance when determined by an inspector to present a hazard of spread of PCN.

Three different classes of nursery stock are regulated under the rule:

- Seed potatoes;
- Other host nursery stock (i.e. tomatoes, eggplant, peppers, and tomatillos); and
- Non-host nursery stock that is moved with soil.

Seed potatoes are prohibited from moving interstate from the quarantined area since this would pose a high risk of spreading PCN. Other host nursery stock and non-host nursery stock in soil may be moved out of the quarantined area if either originates from a field that has been inspected at least once in the last three years, the field has been found to be free of PCN, and no more than one PCN host crop has been grown in the field in the last three years. Non-host nursery stock that is bare-rooted may be moved from the quarantined area after inspection to ensure the roots and all other plant parts are free of soil.

Potatoes and root crops for consumption are allowed to move interstate from the quarantined area if the articles originate from a field found to be free of PCN, potatoes were grown in a field in which no more than one potato crop was grown in the previous

3 years, and articles are accompanied by a certificate. Soil, compost, humus, muck, peat, and manure, and products on or in which soil is commonly found, as well as hay, straw, or fodder may also move interstate from the quarantined area following the same criteria as that for potatoes and root crops for consumption. Interstate movement of equipment that has been used in an infested or associated field is allowed after the equipment has been pressure-washed under the supervision of an inspector to remove all soil or after it has been steam-treated.

Potatoes for consumption that are not eligible to move from the quarantined area with a certificate are allowed to move from the quarantined area under limited permit if they are moved and processed under conditions designed to prevent the spread of PCN. APHIS will not issue limited permits for potatoes grown in an infested field if they are grown in any year following the year in which PCN is initially detected in the field. There are no domestic restrictions against the movement of processed products.

APHIS is adding provisions for compliance agreements for entities operating inside the quarantined area to issue certificates and limited permits. An infested field will only be removed from quarantine after the completion of a 3-year biosurvey protocol approved by APHIS to determine whether the field is free of PCN. One means to ensure freedom of a field from PCN is not planting host crops in the area for at

least 30 years; another is following the APHIS eradication plan. The list of quarantined areas will be maintained on the PPQ Web site.

*U.S. production and exports.*¹

Potatoes, excluding sweet potatoes, are a staple crop grown in a majority of U.S. States. They are also the lead vegetable crop in the United States. The Russet variety, which is planted in the spring and harvested in the fall, accounts for approximately 75 percent of the total U.S. acreage planted to potatoes. Ninety percent of all potatoes are harvested in the fall, with the remaining 10 percent harvested in the other three seasons. This 10 percent of production accounts for specialty varieties that typically command higher prices, such as round white, red, yellow, and purple potatoes.

From 2000 to 2005, acreage planted to fall potatoes and production of this variety decreased by 9 percent throughout the United States. The decline in Idaho's acreage and production was sharper, falling by 22 percent and 23 percent, respectively. Yields over the same period remained relatively stable in the United States as a whole and Idaho in particular. Fall potatoes are marketed year-round from July (early harvest areas) through June. Potatoes can be stored for long periods of time. This storage capability allows flexibility in marketing; sellers can hold their crop until more favorable prices prevail on the market. Fresh potatoes are mainly sold on the open market, not contracted. Processing potatoes, on the other hand, are typically contracted.

TABLE 1.—PRODUCTION AND FARM PRICES OF FALL POTATOES IN THE UNITED STATES, IDAHO, BINGHAM COUNTY, IDAHO, AND BONNEVILLE COUNTY, IDAHO, 2000–2005

	United States			Idaho				Bingham County, ID		Bonneville County, ID	
	Production	Farm price		Production	Farm price			Production	Farm price	Production	Farm price
		Table stock	processing		Table stock	Processing	All uses				
	1,000 Cwt.	\$ per Cwt.		1,000 Cwt.	\$ per Cwt.			1,000 Cwt.	\$ per Cwt.	1,000 Cwt.	\$ per Cwt.
2000	467,529	\$5.27	\$4.70	152,320	(a)	(a)	\$4.00	25,104	(b)	9,000	(b)
2001	393,631	10.79	5.05	120,200	(a)	(a)	6.15	18,330	(b)	8,136	(b)
2002	413,581	9.59	5.16	133,385	(a)	(a)	5.00	20,000	(b)	9,204	(b)
2003	410,588	7.32	5.10	123,180	\$3.85	\$4.30	4.40	19,598	(b)	8,537	(b)
2004	410,253	6.76	5.06	131,970	3.40	4.50	4.25	20,740	(b)	9,070	(b)
2005	423,926	10.04	5.21	118,288	6.90	4.90	5.70	18,080	(b)	8,250	(b)

^a Prices by use not available for these years.

^b No data available for prices at the county level.

Source: USDA, NASS, *Potatoes: 2005 Summary*, September 2006 and USDA, NASS, Idaho Office, *County Estimates: Potatoes 2005*, September 2006.

The United States ranks fourth in the world in potato production, trailing China, Russia, and India. Historically, the United States has been a net exporter of potatoes in value terms, with

exports of processed potatoes accounting for a large portion of this surplus. In 2003 and 2004, an increase in imports of processed products from Canada tipped this balance so that the

United States ran a trade deficit in those years. However, the imports of Canadian goods returned to historical levels in 2005, and the United States regained its status as a net exporter. Exports of

¹ Most information in this section is derived from the Economic Research Service's Potato Briefing

Room, available online at: <http://www.ers.usda.gov/Briefing/Potatoes/>.

potatoes are on the rise and now account for approximately one-third of the value of farm sales. Over half of these exports are processed products, primarily frozen french fries. Japan is the United States' largest importer of frozen fries, followed by Mexico and Canada. Canada is the largest supplier of U.S. potato imports.

Although historically Japan has been the largest importer of U.S. frozen potato products, that country banned imports of fresh potatoes from the United States starting in the 1950s. However, in February of 2006, Japan opened its market to the importation of fresh potatoes from approved facilities in 14 States: Arizona, California, Colorado, Florida, Idaho, Maine, Michigan, Minnesota, New Mexico, North Dakota, Texas, Oregon, Washington, and Wisconsin. The outbreak of PCN in Idaho led to Japan's reimplementing of its ban on fresh potatoes from the United States.

Idaho production and exports. Idaho specializes in production of fall potatoes. According to National Agricultural Statistics Service (NASS) data, there were no spring, summer, or winter potatoes produced in Idaho from 2000 to 2005. Over 65 percent of U.S. fall potatoes are grown in the Western States. Idaho and Washington account for 50 percent of the U.S. total, where planted acreage in Idaho is more than double that in Washington. Idaho's importance to the domestic potato industry also makes this State influential in the world market for potatoes. Idaho exports a substantial amount of potatoes on a yearly basis. However, the majority of these exports is in a processed form rather than fresh. This analysis only focuses on the fresh market since this is the portion that will be affected by the interim rule.

From 2001 to 2006, Idaho exported on average \$6.2 million worth of table potatoes to countries around the world.

On average, a large portion, 67 percent, of Idaho's fresh exports was destined for Canada. Mexico also imported potatoes from Idaho, accounting for 23 percent of Idaho exports. Japan, as mentioned previously, historically has prohibited imports of fresh potatoes from the United States. Thus, although Japan is a substantial importer of processed products, its imports of fresh potatoes are negligible or nonexistent. Together, Canada and Mexico accounted for approximately 90 percent of Idaho exports between 2001 and 2006, although Idaho's fresh potato sales worldwide and the combined share exported to Canada and Mexico have fluctuated substantially (table 2). Mexico has been an expanding market, with sales increasing 90-fold over this 6-year period, while exports to Canada have declined by more than half. In 2005, Idaho's potato exports to Mexico exceeded its potato exports to Canada for the first time.

TABLE 2.—IDAHO EXPORTS OF FRESH POTATOES BY COUNTRY, 2001–2006

	World	Canada		Mexico		Japan	
	Exports (\$1,000)	Exports (\$1,000)	Percentage of total	Exports (\$1,000)	Percentage of total	Exports (\$1,000)	Percentage of total
2001	\$3,622	\$3,209	88.6	\$34	0.9	\$43	1.2
2002	3,472	3,200	92.2	12	0.3	0	0.0
2003	1,988	1,988	100.0	0	0.0	0	0.0
2004	1,485	1,096	73.8	338	22.8	0	0.0
2005	6,643	1,485	22.4	2,967	44.7	0	0.0
2006	4,518	1,190	26.3	3,086	68.3	0	0.0

Source: Global Trade Information Services, *World Trade Atlas: U.S. State Export Edition*, April 2007.

Alternatives available to producers. Under the interim rule, producers have two options for dealing with an infestation of PCN. The first of these is a quarantine program. Under this program, producers are prohibited from planting potatoes or any other host crop in the quarantined area for a minimum of 30 years. APHIS has determined that not planting host material for this amount of time will ensure that the PCN infestation has died out before the quarantine is lifted. This is based on the fact that PCN can survive for up to 30 years in a dormant state without any host crops on which to feed.

Eradication is the second option available to affected potato producers. APHIS is currently working on a PCN eradication protocol. However, an approved protocol is not yet available. The eradication protocol will prevent producers from planting any crops on PCN affected and associated fields for a specified amount of time. However, APHIS will assume the costs of eradication for those producers wishing

to participate in this program, to the extent that funds are available.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small businesses, organizations, and governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the expected impact of rules on small entities. Sections 603(b) and 603(c) of the Act specify the content of an IRFA. In this section, we address these IRFA requirements.

Reasons for Action

APHIS is taking these actions based on the finding of PCN in Idaho. The quarantine measures are intended to curtail the spread of PCN to other areas of Idaho and the United States. The rule is likely to benefit a majority of potato producers in that it safeguards their fields from infestation. Additionally, declines in production resulting from

the quarantine are not expected to be significant since the number of acres on which potatoes would not be grown accounts for only 0.3 percent of Idaho's potato acreage.²

Objectives and Legal Basis for Rule

The objective of the interim rule is to prevent the spread of PCN by quarantining infested or associated fields or implementing APHIS approved eradication protocols for these fields. A widespread outbreak of PCN in Idaho could have devastating consequences for the U.S. potato industry. APHIS believes the implementation of the quarantine or eradication program and related movement restrictions will prevent the pest from spreading to other areas in Idaho and the rest of the United States.

This rule amends 7 CFR part 301 by adding a new subpart regulating PCN. The legal basis for the implementation

² Currently, 916 acres are considered to be infested and would, therefore, be ineligible for planting host crops.

of a quarantine to prevent the spread of PCN may be found in the Plant Protection Act (7 U.S.C. 7701 *et seq.*), which authorizes the Secretary of Agriculture to implement programs and policies designed to prevent the introduction and spread of plant pests and diseases.

Description and Estimated Number of Small Entities Regulated

The PCN regulations being imposed by APHIS are intended to prevent the spread of the pest to additional areas. Approximately 2,500 of the 330,000 acres planted to potatoes in Idaho are regulated under the current quarantine as imposed by the Federal Order. The potential economic impacts of regulating this area are presented in the following paragraphs.

Given a quarantined area of approximately 2,500 acres, 800,100 pounds of production are estimated to be affected by the rule.³ A reduction in production of this magnitude is not likely to have a significant economic impact on the potato industry. Despite the minimal impacts on domestic production, export markets have been closed due to the PCN outbreak. While Canada and Mexico have banned imports of fresh potatoes from Idaho,

Japan has banned imports of fresh potatoes produced anywhere in the United States. However, export statistics indicate that the vast majority of U.S. potatoes are consumed domestically. From 2000 to 2005, exports of fresh and processed potatoes amounted to approximately 7 percent of domestic production. Based on current restrictions on U.S. imports resulting from the PCN outbreak, we expect exports to decline by approximately 19 percent, accounting for less than 2 percent of domestic production. The reduction in the value of exports is expected to be larger, since the United States exports more processed products than table potatoes. However, given that domestic demand and supply can fluctuate by as much as 4 percent from one year to the next coupled with the potato's storage capability, it is likely that the domestic market will be able to absorb the excess supply created by import bans placed on U.S. potatoes because of the discovery of PCN in certain parts of Idaho.⁴

Producers subject to the quarantine may be negatively impacted by this regulatory action. Those with infested fields will not be able to plant any host crop, including potatoes, tomatoes, or eggplant, for at least 30 years if they are

seeking to remove their fields from quarantine, unless a PCN eradication protocol approved by the Administrator is developed. However, producers may plant non-host crops on the quarantined acreage. In Bingham County, ID, the area planted to potatoes is second only to that planted to wheat. Producers in this county also grow corn, oats, barley, sugarbeets, and alfalfa hay. Based on historical production (table 3) and farmers' desire to make a profit, it is likely that farmers in the quarantined area would choose to plant one of these crops rather than forgo 30 years of revenue which could be generated from the land under quarantine. The planting decision would be a function of market prices, input costs, and expected government payments for those commodities classified as a program crop. Farmers may choose to plant one commodity or multiple commodities depending on these factors. Given alternative production opportunities, it is not clear how producers in the quarantined area would be affected. If the crops mentioned above are viable substitutes in production for the ineligible crops, producers will likely not face substantial impacts due to the quarantine regulations. APHIS welcomes public comment on this issue.

TABLE 3.—HARVESTED ACREAGE AND PRODUCTION OF VARIOUS CROPS IN BINGHAM COUNTY, ID, 2000–2005

	Wheat	Barley	Hay	Potatoes
	Harvested acres			
2000	132,200	22,500	52,300	67,000
2001	117,500	21,300	54,300	55,200
2002	116,500	22,500	67,000	59,700
2003	109,000	28,700	66,900	60,300
2004	117,500	26,900	64,500	56,000
2005	122,200	24,300	61,600	52,200
	Production (1,000 Pounds)			
2000	858,600	104,016	517,600	2,510,400
2001	660,000	95,184	472,800	1,833,000
2002	682,200	100,224	568,400	2,000,000
2003	680,400	123,360	512,000	1,959,800
2004	795,600	133,440	514,000	2,074,000
2005	807,960	121,152	583,800	1,808,000

Source: USDA, NASS, Quick Stats Database, *U.S. and All States County Data—Crops*, October 2006.

³ Estimates are based on historical yields from Bingham and Bonneville Counties and the estimated number of acres quarantined under the rule. An average of the yields from 2000 to 2005 excluding the high and low yields from the period

is multiplied by the number of acres quarantined to estimate the level of production for the quarantined area. The production numbers for the two counties are then averaged to obtain the estimate reported above.

⁴ Only reductions of U.S. potato imports by other countries attributable to the presence of PCN in certain areas of Idaho are considered here.

TABLE 4.—HARVESTED ACREAGE AND PRODUCTION OF VARIOUS CROPS IN BONNEVILLE COUNTY, ID, 2000–2005

	Wheat	Corn (grain)	Corn (silage)	Oats	Barley	Hay	Potatoes
Harvested acres							
2000	4,185,000	0	40,000	42,000	4,746,000	128,500	9,000,000
2001	3,200,000	20,000	39,100	77,000	4,910,000	121,000	8,136,000
2002	2,980,000	0	59,000	58,000	5,840,000	128,400	9,204,000
2003	2,420,000	.....	.....	33,000	4,380,000	124,000	8,537,000
2004	3,580,000	12,000	97,000	33,000	6,572,000	127,400	9,070,000
2005	3,065,000	170,000	114,000	15,000	6,904,000	131,600	8,250,000
Production (1,000 Pounds)							
2000	251,100	0	80,000	1,344	227,808	257,000	900,000
2001	192,000	1,120	78,200	2,464	235,680	242,000	813,600
2002	178,800	0	118,000	1,856	280,320	256,800	920,400
2003	145,200	.....	.....	1,056	210,240	248,000	853,700
2004	214,800	672	194,000	1,056	315,456	254,800	907,000
2005	183,900	9,520	228,000	480	331,392	263,200	825,000

Source: USDA, NASS, Quick Stats Database, *U.S. and All States County Data—Crops*, October 2006.

The eradication program will involve planting cover crops rather than commercial crops for a predetermined amount of time. However, for those producers wishing to participate in the eradication program, APHIS will assume the costs of implementing eradication protocols it determines to be effective, to the extent that funds are available.

Impacts of the rule on the domestic market are likely to be small, and the benefits of the quarantine are expected to outweigh the costs. Widespread dissemination of the pest would likely translate into significant economic losses for producers and processors. Left unchecked, PCN attacks the roots of the potato plant, leaching nutrients from the plant itself, which in turn reduces yields, leading to significant declines in production. Additionally, import bans implemented by U.S. trading partners would likely be more widespread and may take longer to remove.

The rule may affect domestic producers of potatoes, as well as potato processing firms. It is likely that the entities affected would be small according to Small Business Administration (SBA) guidelines. A discussion of these impacts follows.

Affected U.S. potato producers are expected to be small, based on 2002 Census of Agriculture data and SBA guidelines for entities in the farm category Potato Farming, Field, and Seed Potato Production (North American Industry Classification System [NAICS] code 111211). The SBA classifies producers in this farm category with total annual sales of not more than \$750,000 as small entities. APHIS does not have information on the size distribution of the affected

producers, but according to 2002 Agriculture Census data, there were a total of 25,017 farms in Idaho in 2002.⁵ Of this number, approximately 95 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 commodity farms.⁶ This indicates that the majority of farms are considered small by SBA standards, and it is reasonable to assume that most of the 121 potato farms located in Bingham County, ID, and the 47 potato farms located in Bonneville County, ID, that may be affected by this rule also qualify as small. Potato packing firms classified as NAICS 115114 (Postharvest Crop Activities (except Cotton Ginning)) are considered small if they have not more than \$6.5 million in total annual sales. According to the County Business Patterns report for Idaho published by the Census Bureau, there were 30 post-harvest establishments in Idaho in 2002, the latest date for which numbers were published. Of these, two were located in Bingham County, and six were located in Bonneville County. That report does not report the value of total annual sales or the distribution of annual sales for firms in this category. Thus, it is not known what percentage of potato packing firms would be considered small.

In the case of potato processors, establishments classified within NAICS 311411 (Frozen Fruit, Juice, and Vegetable Manufacturing), NAICS 311423 (Dried and Dehydrated Food Manufacturing), NAICS 311919 (Other Snack Food Manufacturing), and NAICS 311991 (Perishable Prepared Food

Manufacturing) with not more than 500 employees are considered small by SBA standards. Data from the Economic Census shows that in 2002, there were a total of 235 frozen fruit, juice, and vegetable manufacturing establishments, including firms manufacturing frozen french fries, in the United States. Of these firms, 215 or 92 percent employed fewer than 500 employees and were, therefore, considered small by SBA standards. There were 181 dried and dehydrated food manufacturing establishments in 2002. Included in this category are manufacturers of dehydrated potato products. There were 176 firms with fewer than 500 employees in this category, accounting for 97 percent of all firms. For other snack food manufacturing establishments, which includes firms manufacturing potato chips, there were 338 establishments in the United States in 2002. Of these establishments, 322 (over 95 percent) had fewer than 500 employees. Firms manufacturing peeled or cut potatoes, included in the perishable prepared food manufacturing category, numbered 610 in 2002. Of these, 603 (99 percent) had no more than 500 employees.⁷ Based on this information, it is reasonable to conclude that domestic producers and potato processors that may be affected by the rule are predominantly small entities.

Based on the data available to APHIS, benefits to producers outside the regulated area of curtailing the spread of the pest will likely outweigh the costs borne by producers in the affected area. Major importers of fresh potatoes from Idaho, including Canada and Mexico, have lifted their original import

⁵ This number represents the total number of farms in Idaho, including farms producing potatoes.

⁶ Source: SBA and 2002 Census of Agriculture.

⁷ Source: SBA and 2002 Economic Census.

prohibitions and now allow imports of fresh potatoes from Idaho subject to certain restrictions, including that the potatoes did not originate from the regulated area. Since the United States exports many more potatoes in the processed form, either as frozen french fries or potato chips, the loss of the fresh markets is not likely to have significant economic impacts on the U.S. potato industry. Additionally, the domestic market would likely be able to absorb any excess supply of fresh potatoes resulting from the import bans imposed by other countries. APHIS welcomes public comment on these potential effects.

Description and Estimate of Compliance Requirements

Inspection services required to comply with regulations are provided to producers at no cost during regular business hours. Certificates and limited permits required to move regulated articles out of a quarantine area may be obtained without cost from an inspector or person operating under a compliance agreement.

Significant Alternatives to Rule Which Accomplish the Stated Objectives and Minimize Any Significant Economic Impacts on Small Entities

It is the position of APHIS that there are no alternatives to the interim rule that would satisfactorily accomplish the stated objectives and minimize any significant impacts on small entities. The rule will protect potato producers outside the regulated area from the crop damage and losses that would be incurred if the potato cyst nematode were allowed to spread.

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

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information

collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0322 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. APHIS–2006–0143, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. APHIS–2006–0143 and send your comments within 60 days of publication of this rule.

This interim rule establishes regulations to quarantine part of the State of Idaho because of the PCN and restrict the interstate movement of regulated articles from the quarantined area. In order to move regulated articles interstate from the quarantined area, regulated parties must obtain certificates or limited permits, and they may enter into compliance agreements with APHIS. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.2686 hours per response.

Respondents: Potato producers, packers, processors and handlers.

Estimated annual number of respondents: 400.

Estimated annual number of responses per respondent: 7.65.

Estimated annual number of responses: 3,060.

Estimated total annual burden on respondents: 822 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

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 parts 301 and 305 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 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Part 301 is amended by adding a new “Subpart—Potato Cyst Nematode,” §§ 301.86 through 301.86–9, to read as follows:

Subpart—Potato Cyst Nematode

Sec.

301.86 Restrictions on interstate movement of regulated articles.

301.86–1 Definitions.

301.86–2 Regulated articles.

301.86–3 Quarantined areas.

301.86–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

301.86–5 Issuance and cancellation of certificates and limited permits.

301.86–6 Compliance agreements and cancellation.

- 301.86-7 Assembly and inspection of regulated articles.
 301.86-8 Attachment and disposition of certificates and limited permits.
 301.86-9 Costs and charges.

Subpart—Potato Cyst Nematode

§ 301.86 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.¹

§ 301.86-1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

Associated field. A field that has been found to be at risk for infestation with potato cyst nematode in accordance with § 301.86-3(c)(2).

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of potato cyst nematode and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.86-4.

Field. A defined production site that is managed separately from surrounding areas for phytosanitary purposes.

Infestation (infested). The presence of the potato cyst nematode or the existence of circumstances that makes it reasonable to believe that the potato cyst nematode is present.

Infested field. A field that has been found to be infested with potato cyst nematode in accordance with § 301.86-3(c)(1).

Inspector. Any employee of APHIS or other person authorized by the

Administrator to perform the duties required under this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.86-5(b) only to a specified destination and only in accordance with specified conditions.

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Nursery stock. Living plants and plant parts intended to be planted, to remain planted, or to be replanted.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Plant Protection and Quarantine. The Plant Protection and Quarantine program of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Potato cyst nematode. The potato cyst nematode (*Globodera pallida*), in any stage of development.

Quarantined area. Any State or portion of a State designated as a quarantined area in accordance with the provisions in § 301.86-3.

Regulated article. Any article listed in § 301.86-2 or otherwise designated as a regulated article in accordance with § 301.86-2(i).

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

§ 301.86-2 Regulated articles.

The following are regulated articles:

(a) Potato cyst nematodes.²

(b) The following potato cyst nematode host crops:

Eggplant (*Solanum melongena* L.)

Pepper (*Capsicum* spp.)

Potato (*Solanum tuberosum* L.)

Tomatillo (*Physalis philadelphica*)

Tomato (*Lycopersicon esculentum* L.)

(c) Root crops.

(d) Garden and dry beans (*Phaseolus* spp.) and peas (*Pisum* spp.).

(e) All nursery stock.

(f) Soil, compost, humus, muck, peat, and manure, and products on or in which soil is commonly found, including grass sod and plant litter.

(g) Hay, straw, and fodder.

(h) Any equipment or conveyance used in an infested or associated field that can carry soil if moved out of the field.

(i) Any other product, article, or means of conveyance not listed in paragraphs (a) through (h) of this section that an inspector determines presents a risk of spreading the potato cyst nematode, after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

§ 301.86-3 Quarantined areas.

(a) **Designation of quarantined areas.** In accordance with the criteria listed in paragraph (c) of this section, the Administrator will designate as a quarantined area each field that has been found to be infested with potato cyst nematode, each field that has been found to be associated with an infested field, and any area that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from infested or associated fields. The Administrator will publish the description of the quarantined area on the Plant Protection and Quarantine Web site, http://www.aphis.usda.gov/plant_health/plant_pest_info/potato/pcn.shtml. The description of the quarantined area will include the date the description was last updated and a description of the changes that have been made to the quarantined area. The description of the quarantined area may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories. After a change is made to the quarantined area, we will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined area.

(b) **Designation of an area less than an entire State as a quarantined area.** Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the potato cyst nematode.

(c) **Criteria for designation of fields as infested fields and associated fields.** (1) **Infested fields.** The Administrator will designate a field as an infested field when a potato cyst nematode is found in the field.

¹ Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 414 of the Plant Protection Act (7 U.S.C. 7714).

² Permit and other requirements for the interstate movement of potato cyst nematodes are contained in part 330 of this chapter.

(2) *Associated fields.* The Administrator will designate a field as an associated field when potato cyst nematode host crops, as listed in § 301.86–2(b), have been grown in the field in the last 10 years and

(i) The field shares a border with an infested field; or

(ii) The field came into contact with a regulated article listed in § 301.86–2 from an infested field within the last 10 years; or

(iii) Within the last 10 years, the field shared ownership, tenancy, seed, drainage or runoff, farm machinery, or other elements of shared cultural practices with an infested field that could allow spread of the potato cyst nematode, as determined by the Administrator.

(d) *Removal of fields from quarantine*—(1) *Infested fields.* An infested field will be removed from quarantine when a 3-year biosurvey protocol approved by APHIS has been completed and the field has been found to be free of PCN.

(2) *Associated fields.* An associated field will be removed from quarantine when the field has been found to be free of potato cyst nematode according to a survey protocol approved by the Administrator as sufficient to support removal from quarantine.

(3) *Removal of other areas from quarantine.* If the Administrator has quarantined any area other than infested or associated fields because of its inseparability for quarantine enforcement purposes from infested or associated fields, as provided in paragraph (a) of this section, that area will be removed from quarantine when the relevant infested or associated fields are removed from quarantine.

§ 301.86–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

(a) Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with §§ 301.86–5 and 301.86–8;

(2) Without a certificate or limited permit if:

(i) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or

(ii) The regulated article originates outside the quarantined area and is moved interstate through the quarantined area under the following conditions:

(A) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(B) The regulated article is moved through the quarantined area without stopping (except for refueling and for traffic conditions such as traffic lights and stop signs); and

(C) The regulated article is not unpacked or unloaded in the quarantined area; and

(D) The article has not been combined or commingled with other articles so as to lose its individual identity.

(b) When an inspector has probable cause to believe a person or means of conveyance is moving a regulated article interstate, the inspector is authorized to stop the person or means of conveyance to determine whether a regulated article is present and to inspect the regulated article. Articles found to be infested by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of.

§ 301.86–5 Issuance and cancellation of certificates and limited permits.

(a) *Certificates.* An inspector³ or person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if the inspector determines that the regulated article satisfies the general requirements for a certificate in paragraph (a)(1) of this section and any requirements that may apply to the regulated article under paragraphs (a)(2) through (a)(7) of this section.

(1) *Certification requirements for all regulated articles.* The regulated article must be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714)⁴ to prevent the spread of the potato cyst nematode. In addition, the regulated article must be eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(2) *Certification requirements for nursery stock.*—(i) *Potatoes.* Potatoes

³ Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning such local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236.

⁴ Section 414 of the Plant Protection Act (7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to destroy or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

intended for use as nursery stock (i.e., seed potatoes) are prohibited from being moved interstate from the quarantined area.

(ii) *Nursery stock of other host crops.* An inspector may issue a certificate for the interstate movement of nursery stock of potato cyst nematode host crops other than potatoes, as listed in § 301.86–2(b), if the nursery stock was grown in a field that meets the following requirements:

(A) The field has been surveyed by an inspector for potato cyst nematode at least once in the last 3 years;

(B) The potato cyst nematode has not been found in the field; and

(C) No more than one potato cyst nematode host crop, as listed in § 301.86–2(b), has been grown in the last 3 years.

(iii) *Nursery stock of non-host crops*—(A) *With soil.* An inspector may issue a certificate for the interstate movement of nursery stock of non-host crops moved with soil if the nursery stock was grown in a field that meets the following requirements:

(1) The field has been surveyed by an inspector for potato cyst nematode at least once in the last 3 years;

(2) The potato cyst nematode has not been found in the field; and

(3) No more than one potato cyst nematode host crop, as listed in § 301.86–2(b), has been grown in the field in the last 3 years.

(B) *Without soil (bare-rooted).* An inspector may issue a certificate for the interstate movement of nursery stock of non-host crops moved without soil if the inspector finds the nursery stock to be free of soil on its roots and on all other parts of the plant.

(3) *Certification requirements for potatoes and root crops for consumption.* An inspector may issue a certificate for the movement of potatoes or root crops intended for consumption from the quarantined area only if the field in which the potatoes or root crops were grown meets the following requirements:

(i) The field has been surveyed by an inspector for PCN at least once in the last 3 years and prior to the planting of the potatoes or root crops;

(ii) PCN has not been found in the field; and

(iii) No more than one PCN host crop has been grown in the field in the last 3 years.

(4) *Certification requirements for soil and associated products.* An inspector may issue a certificate for the interstate movement of a regulated article listed in § 301.86–2(e) only if the article originated in a field that meets the following requirements:

(i) The field has been surveyed by an inspector for potato cyst nematode at least once in the last 3 years;

(ii) The potato cyst nematode has not been found in the field; and

(iii) No more than one potato cyst nematode host crop, as listed in § 301.86–2(b), has been grown in the last 3 years.

(5) *Certification requirements for hay, straw, and fodder.* An inspector may issue a certificate for the movement of hay, straw, or fodder from the quarantined area only if:

(i) The field where the hay, straw, or fodder was produced meets the following requirements:

(A) The field has been surveyed by an inspector for potato cyst nematode at least once in the last 3 years;

(B) The potato cyst nematode has not been found in the field; and

(C) No more than one potato cyst nematode host crop, as listed in § 301.86–2(b), has been grown in the field in the last 3 years; or

(ii) The hay, straw, or fodder is produced according to procedures judged by an inspector to be sufficient to isolate it from soil throughout its production.

(6) *Certification requirements for equipment used in infested or associated fields.* An inspector may issue a certificate for the interstate movement of equipment that has been used in an infested or associated field and that can carry soil if moved out of the field only after the equipment has been pressure-washed under the supervision of an inspector to remove all soil or steam-treated in accordance with part 305 of this chapter.

(b) *Limited permits*—(1) *General conditions.* An inspector⁵ may issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(i) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the potato cyst nematode because life stages of the potato cyst nematode will be destroyed by the specified handling, processing, or utilization;

(ii) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the potato cyst nematode; and

(iii) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(2) *Specific conditions for potatoes for consumption.* An inspector may issue a limited permit to allow the interstate movement of potatoes from the quarantined area for processing or packing only if:

(i) The potatoes are transported in a manner that prevents the potatoes and soil attached to the potatoes from coming into contact with agricultural premises outside the quarantined area; and

(ii) The potatoes are processed or packed at facilities that handle potatoes, waste, and waste water in a manner approved by APHIS to prevent the spread of potato cyst nematode.

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article after an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article after an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all provisions in this subpart for the use of the certificate or limited permit or has not complied with all the conditions contained in the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of

practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0322)

§ 301.86–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person is aware of this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.⁶

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with any of the provisions of this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Administrator, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.86–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.86–5(c)) who desires a certificate or limited permit to move a regulated article interstate must notify an inspector⁷ as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

⁶ Compliance agreement forms are available without charge from local Plant Protection and Quarantine offices, which are listed in telephone directories.

⁷ See footnote 3 to § 301.86–5(a).

⁵ See footnote 3 to § 301.86–5(a).

§ 301.86–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a

regulated article must be furnished by the carrier or the carrier's representative to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

(Approved by the Office of Management and Budget under control number 0579–0322)

§ 301.86–9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. APHIS will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

PART 305—PHYTOSANITARY TREATMENTS

■ 3. The authority citation for 7 CFR part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 4. In § 305.2, in the table in paragraph (g), the entries for “Automobiles” and “Construction equipment without cabs”; the first entry for “Used farm equipment with cabs”; and the entries for “Used farm equipment without cabs” and “Used containers” are revised to read as follows:

§ 305.2 Approved treatments.

* * * * *

(g) * * *

Article	Pest	Treatment
Automobiles	<i>Globodera rostochiensis</i> and <i>G. pallida</i> .	T406–c, steam cleaning: Steam at high pressure until all soil is removed. Treated surfaces must be thoroughly wet and heated.
Construction equipment without cabs.	<i>G. rostochiensis</i> and <i>G. pallida</i>	SS T–406d.
Used farm equipment with cabs	<i>G. rostochiensis</i> and <i>G. pallida</i>	T406–c, steam cleaning: Steam at high pressure until all soil is removed. Treated surfaces must be thoroughly wet and heated.
Used farm equipment without cabs	<i>G. rostochiensis</i> and <i>G. pallida</i>	SS T–406d.
Used containers	<i>G. rostochiensis</i> and <i>G. pallida</i>	SS T–406d.

* * * * *

Done in Washington, DC, this 5th day of September 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–17842 Filed 9–11–07; 8:45 am]

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DEPARTMENT OF AGRICULTURE**Farm Service Agency****7 CFR Part 770**

RIN 0560–AG87

Indian Tribal Land Acquisition Program Loan Writedowns

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the Farm Service Agency (FSA) Indian Tribal Land Acquisition Program (ITLAP) regulations as required by the Native American Technical Corrections Act of 2006. The regulations pertaining to rental value write-down of ITLAP loans

will not require a market value rent study where the land is actually rented. The actual rents received shall be used to determine the rental value of the property for write-down purposes.

DATES: *Effective Date:* October 12, 2007.

FOR FURTHER INFORMATION CONTACT: Mel Thompson, Senior Loan Officer, Farm Service Agency; telephone: 202–720–7862; Facsimile: 202–690–1196; E-mail: mel_thompson@wdc.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:**Discussion of the Final Rule**

This rule revises the write-down servicing regulations of the Farm Service Agency's (FSA) Indian Tribal Land Acquisition Loan Program (ITLAP) to comply with section 203 of the Native American Technical Corrections Act of 2006, Public Law 109–221 (25 U.S.C. 494a) (“NATCA”).

A. Background

ITLAP loans assist Native American tribes or tribal corporations with the acquisition of land interests within the tribal reservation or in an Alaskan community as set out in 7 CFR part 770. Loan funds may be used to acquire land, land interests and appurtenances which will be used for the benefit of the tribe or its members, pay costs for loan closing, and refinance non-USDA debts the applicant incurred to purchase the land in certain situations. During the life of the ITLAP loan the borrower has a number of servicing options available based on changes in their loan status. The servicing options available depend on each borrower's circumstances and can include reamortization, consolidation, interest rate reduction, deferral, land exchanges, debt writedown, release of reserve accounts, or a combination thereof.

B. Writedown Requirements

Under 7 CFR 770.10(e) the Agency may reduce the unpaid principal and interest on an ITLAP loan based, in part, on the land sale value or rental value of