Privacy Act, 5 U.S.C. 552a, and provide consultation and guidance regarding those policies.

Thomas J. Vilsack,

Secretary of Agriculture.

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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

Pale Cyst Nematode; Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, an interim rule that amended the regulations by 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. As amended by this document, the rule refers to the nematode of concern, *Globodera pallida,* by the common name ''pale cyst nematode'' rather than by the name ''potato cyst nematode;'' allows the movement of *Phaseolus* spp. (beans) and *Pisum* spp. (peas) under the same conditions that apply to the movement of other crops to which soil is often attached; and requires that a protocol approved by the Administrator as sufficient to support removal of infested fields from quarantine, rather than a 3-year biosurvey protocol, be completed in order to remove an infested field from quarantine. We are also making minor, nonsubstantive changes. These actions will prevent the spread of the pale cyst nematode via potatoes, soil, and other host material to noninfested areas of the United States.

DATES: *Effective Date:* April 29, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Y. Smith, National Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5235.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule [1] published in the **Federal Register** on September 12, 2007, and effective on November 1, 2007 (72 FR 51975–51988, Docket No. APHIS–2006–0143), we quarantined parts of Bingham and Bonneville Counties, ID, due to the discovery of the potato cyst nematode (*Globodera pallida*) and established restrictions on the interstate movement of regulated articles from the quarantined area. This action was necessary to prevent the spread of this pest to noninfested areas of the United States.

We solicited comments concerning our interim rule for 60 days ending November 13, 2007. We received three comments by that date. They were from a State department of agriculture and two private citizens. We have carefully considered the comments we received. They are discussed below.

The regulations established by the interim rule referred to *G. pallida* as the potato cyst nematode. One commenter stated that our use of the term ''potato cyst nematode'' to refer to *G. pallida* was confusing, as the term ''potato cyst nematode'' is used generically to refer to many cyst nematodes that infest potatoes. The commenter suggested that we amend the regulations to instead refer to the ''pale potato cyst nematode.''

We agree that the use of the term ''potato cyst nematode'' may make the species to which we refer unclear. For example, in our regulations for the importation of nursery stock in § 319.37–5(a), we refer to *G. rostochiensis* (the golden nematode) and *G. pallida* collectively as ''potato cyst nematodes.'' To avoid confusion, this final rule amends the regulations established by the interim rule to refer instead to the ''pale cyst nematode,'' or PCN.

Section 301.86–2 of the interim rule lists certain articles that present a risk of spreading PCN if they are moved from quarantined areas without restriction. These articles are referred to as regulated articles and include garden and dry beans (*Phaseolus* spp.) and peas (*Pisum* spp.).

One commenter asked why *Phaseolus* spp. and *Pisum* spp. were listed as regulated articles, since these articles are not hosts of PCN. The commenter also noted that we had not included provisions for their movement under certificate in the regulations and asked us to explain why.

[1] To view the interim rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2006–0143.*

Phaseolus spp. and *Pisum* spp. are listed as regulated articles because these articles are often moved with soil attached; it is the soil that poses a risk of spreading PCN, rather than the commodity itself. (*Phaseolus* spp. and *Pisum* spp. are produced both for consumption and as seed; in both cases, the risk arises from the potential movement of soil with the articles.) The risk posed by these articles is thus similar to the risk posed by potatoes and root crops intended for consumption, which are also often moved with soil attached.

The regulations established by the interim rule provide conditions under which potatoes and root crops intended for consumption can be moved interstate with a certificate. Paragraph (a)(3) of § 301.86–5 states that an inspector may issue a certificate for the interstate 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.

We should have allowed *Phaseolus* spp. and *Pisum* spp. to move interstate under the same conditions, as the risk posed by these articles is the same as the risk posed by potatoes and root crops for consumption, and the conditions under which potatoes and root crops are allowed to be moved will also be effective for *Phaseolus* spp. and *Pisum* spp. Therefore, we are amending the regulations established by the interim rule to allow *Phaseolus* spp. and *Pisum* spp. to move under the same conditions as potatoes and root crops that are moved for consumption. (We are also making minor editorial changes to § 301.86–5(a)(3) to make it consistent with the other provisions in § 301.86–5.)

Paragraph § 301.86–3(a) of the regulations provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will publish the description of the quarantined area on the Plant Protection and Quarantine (PPQ) 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.

One commenter expressed concerns about using a Web site to display the map of the quarantined area. This commenter stated that the map on the PPQ Web site was hard to read. The commenter also noted that the Web address could change, and asked how we would ensure that the address does not change for the life of the regulations. Finally, the commenter stated that the Department of Justice in the commenter's State had advised that referring to a mutable document, such as a map of a quarantined area on a Web site, in a quarantine regulation could be more easily subjected to challenge in court than a description of the quarantined area in the regulations themselves.

On November 1, 2007, the effective date of the interim rule, we updated the map of the quarantined area and made it easier to read.[2] We published a notice in the **Federal Register** informing the public of the changes to the map since the publication of the interim rule on June 6, 2008 (73 FR 32284–32285, Docket No. APHIS–2008–0014), and we have published several notices since then informing the public of additional changes to the quarantined area. As with other regulations that refer to Web addresses, we will ensure that, if our Web site is revised and the address changes, our Web site will redirect users who enter the Web address given in the regulations to the proper Web address. Finally, the regulations set out specific conditions for adding infested and associated fields to the quarantined area and indicate that we will update the quarantined area whenever these conditions are met, meaning that the quarantined area reflects our application of standards in the regulations. We have determined that publishing the quarantined area on the Web and updating it based on standards in the regulations is an adequate means to communicate the quarantined area to the regulated public.

As noted earlier, § 301.86–5(a)(3) of the regulations sets out conditions under which potatoes and root crops intended for consumption may be moved under a certificate. One commenter suggested that we require potatoes and root crops intended for consumption and moved under a certificate to be grown only in fields that are planted with certified potato seed, if the fields are planted with potatoes.

The State of Idaho's seed certification process does not require potato seed to be examined for potato cyst nematodes. Therefore, such a requirement would not decrease the risk posed by the movement of potatoes, root crops for consumption, beans, or peas, and we are not including such a requirement in the final rule. A potato seed certification standard is being developed that would incorporate examination for pale cyst nematode; if it is adopted, we may revisit this issue.

It should be noted that the State of Idaho already requires that all potato seed planted in the State be certified potato seed, meaning that only certified potato seed is being planted in the current quarantined area.

Paragraph § 301.86–5(b) of the regulations provides for the issuance of limited permits for the interstate movement of regulated articles from the quarantined area. Paragraph (b)(2) sets out specific conditions for the movement of potatoes for consumption from the quarantined area for processing or packing. Under this paragraph, an inspector may issue a limited permit to allow the interstate movement of potatoes from the quarantined area for processing or packing 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 or packed at facilities that handle potatoes, waste, and waste water in a manner approved by APHIS to prevent the spread of PCN.

One commenter asked us to require that receiving States be notified of any movement of potatoes from the quarantined area under a limited permit. The commenter recommended that the receiving State be involved in reviewing the practices of the processing and packing facility that would receive such potatoes in order to ensure that those processes are adequate to prevent the spread of PCN. The commenter stated that receiving States should have the option of testing soil from potatoes moved under a limited permit. The commenter also asked specifically that no movement of potatoes under a limited permit be allowed to the commenter's State, Oregon.

To ensure that potatoes moved from the quarantined area under a limited permit are handled, processed, or utilized in a manner that destroys PCN, we require the receiving facility to have a compliance agreement. This compliance agreement is signed by APHIS and the owner or operator of the facility; during the approval process for a compliance agreement, the State in which the facility is located is offered the opportunity to provide input and raise any applicable concerns. APHIS will not approve any compliance agreement unless we determine that the facility will follow the regulations, which provide adequate restrictions to prevent the interstate spread of PCN. Therefore, it is not necessary to provide advance notification to States of shipments of potatoes moved under a limited permit.

It should be noted that, thus far in the PCN program, all movement of potatoes under a limited permit has occurred within the State of Idaho, and we do not anticipate any movement of potatoes under a limited permit from Idaho to other States.

One commenter stated that the interim rule had a significant economic impact on his business, citing expenses associated with washing trucks and tarping trucks that move between fields. The commenter stated that the designation of fields owned by the commenter as part of the quarantined area meant that the commenter no longer has any control over what crops can be planted there and that investments in planting potato crops in the quarantined fields had thus been lost.

The commenter also stated that there had been an agreement to sell one of his farms to another farmer, but since the designation of that field as part of the quarantined area, the sale of the farm may be lost. The commenter asked that compensation be provided to affected producers and suggested that APHIS rent the fields in the quarantined area for a period of time until PCN could be eradicated.

Another commenter asked that APHIS allow equipment to move from quarantined fields through nonquarantined fields and to other quarantined fields without washing.

The regulations and the PCN eradication program do not require tarping of trucks. However, as mentioned earlier, potatoes moved under limited permit must be 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. Potatoes transported in trucks normally have soil attached. Accordingly, an inspector may require steps to be taken to prevent that soil from coming into contact with agricultural premises outside the quarantined area. A common and simple means to accomplish this goal is tarping trucks. The requirement to prevent soil attached to the potatoes from coming into contact with

[2] This update to the quarantined area added fields in both Bingham and Bonneville Counties, ID, and also added fields in Jefferson County, ID.

agricultural premises outside the quarantined area is necessary to prevent the spread of PCN.

Similarly, washing trucks that have been used in the quarantined area is often necessary to prevent soil on the truck from coming into contact with agricultural premises outside the quarantined area; without washing, such movement could pose a risk of spreading PCN to the nonquarantined fields. We provide the services of an inspector free of charge to monitor washing of trucks, if necessary. We are working with affected producers to ensure that we can accommodate their business processes to the extent that our resources allow.

The regulations restrict the interstate movement of regulated articles from the quarantined area; they do not prescribe management practices. The commenter refers to management practices that are part of the eradication program; if producers participate in the eradication program, infested fields will eventually be able to be removed from quarantine.

Under the regulations in § 301.86–3(d), producers have had the option of maintaining their fields under quarantine or participating in a biosurvey protocol sufficient to declare the field free of PCN. Options for ensuring that an infested field is free of PCN include participating in the APHIS eradication program for PCN or not planting any host crops in a quarantined field for enough time that any PCN that are present can no longer survive. The latter option requires not planting host crops for 30 years, meaning that affected producers may judge it to be in their best interest to participate in the eradication program.

Federal action is necessary to prevent the spread of PCN into noninfested areas and thus prevent economic impacts on a much greater number of producers than are currently affected by the PCN quarantine. We have determined that it is not appropriate to pay compensation to affected producers; however, APHIS has assumed the cost of implementing the eradication program and will continue to do so, subject to the availability of funds.

One commenter stated that we had not given advance notice of the addition of a field owned by the commenter to the quarantined area and that such notice should have been given.

We provided notice of the changes in the quarantined area on November 1, 2007, consistent with § 301.86–3 of the regulations.

We are making one additional change to the regulations established by the interim rule. Paragraph § 301.86–3(d)(1) of the interim rule stated that 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. At the time of publication of the interim rule, we believed that a 3-year biosurvey protocol would be sufficient to support removal of an infested field from quarantine, although we had not yet worked out the specific requirements for such a procedure. However, with input from stakeholders and from an independent international science panel, we have refined and continue to refine the protocol that will be sufficient to support removal of an infested field from quarantine. We will continue to solicit input from affected producers, State departments of agriculture, researchers, and the general public as we develop the protocol, and we will update affected producers and other interested parties on our progress. To ensure that the regulations recognize whatever bioassay protocol we ultimately determine to be sufficient, we are changing the regulations for removal of infested fields from quarantine to refer more generically to a protocol approved by the Administrator as sufficient to support removal of infested fields from quarantine.

Paragraph § 301.86–3(d)(2) of the interim rule stated that 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. To avoid confusion with the requirement for removing infested fields from quarantine, we are changing paragraph (d)(2) to refer to a protocol approved by the Administrator as sufficient to support removal of associated fields from quarantine.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

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

Further, this action 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.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule became effective on November 1, 2007. This rule amends the testing requirements and provisions for interstate movement established by the interim rule. Immediate action is necessary to make these changes in order to prevent the artificial spread of PCN to noninfested areas of the United States. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Regulatory Flexibility Act

This final rule follows an interim rule that amended the regulations by 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. On November 1, 2007, the quarantined area was updated to add fields in both Bingham and Bonneville Counties, ID, and to add fields in Jefferson County, ID. These are the first detections of PCN in the United States. This analysis considers the economic effects of the regulations on the current quarantined area and the benefits of imposing the quarantine.

Expected benefits and costs are examined, including expected economic impacts for small entities as required by the Regulatory Flexibility Act.

U.S. Production and Exports [3]

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 2001 to 2006, acreage planted to fall potatoes fell by 9 percent while production of this variety decreased by 4 percent throughout the United States. The decline in Idaho's acreage and production was sharper, falling by 21 percent and 18 percent, respectively. Yields over the same period increased in both the United States and Idaho. Fall potatoes are marketed year round from

[3] 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/*.

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 under contract. Processing potatoes, on the other hand, are typically contracted.

TABLE 1—PRODUCTION AND FARM PRICES OF FALL POTATOES IN THE UNITED STATES; IDAHO; AND BINGHAM, BONNEVILLE, AND JEFFERSON COUNTIES, ID, 2001–2006

	United States			Idaho				Bingham county [b]	Bonneville county [b]	Jefferson county [b]
	Production	Farm price		Production	Farm price			Production		
		Table stock	Processing		Table stock	Processing	All uses			
	1,000 Cwt.	$ per Cwt.		1,000 Cwt.	$ per Cwt.			1,000 Cwt.	1,000 Cwt.	1,000 Cwt.
2001	393,631	10.79	5.05	120,200	[a]	[a]	6.15	18,330	8,136	10,047
2002	413,581	9.59	5.16	133,385	[a]	[a]	5.00	20,000	9,204	13,029
2003	410,588	7.32	5.10	123,180	3.85	4.30	4.40	19,598	8,537	10,645
2004	410,253	6.76	5.06	131,970	3.40	4.50	4.25	20,740	9,070	9,200
2005	382,743	10.36	5.39	118,288	6.90	4.90	5.70	18,080	8,250	9,360
2006	398,921	10.27	5.90	128,915	6.55	5.40	5.90	20,200	9,930	9,100

[a] Prices by use not available for these years.
[b] No data available for prices at the county level.
Source: U.S. Department of Agriculture, National Agricultural Statistics Service, *Potatoes: 2006 Summary,* September 2007 and USDA, NASS, Idaho Office, *County Estimates: Potatoes 2006,* September 2007.

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 potato products from Canada tipped this balance so that the United States ran a trade deficit in those years. However, imports of Canadian potato products returned to historical levels in 2005, and the United States regained its status as a net exporter. Exports of 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, this 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 (OC 2006).[4] The outbreak of PCN in Idaho has led to the reimplementation of Japan's ban on fresh potatoes from the United States.

Idaho Production and Exports

Idaho specializes in production of fall potatoes. According to NASS data, there were no spring, summer, or winter potatoes produced in Idaho from 2001 to 2006. Over 65 percent of 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 processed rather than fresh. This analysis only focuses on the fresh market, since this is the portion that will be affected by the final rule. From 2001 to 2006, the annual value of Idaho's table potato exports averaged $3.6 million. Sixty-seven percent of Idaho's fresh exports during this period were to Canada. Mexico also imported potatoes from Idaho, accounting for 23 percent of Idaho exports. Japan is a substantial importer of U.S. processed potato products, but its imports of fresh potatoes have been 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

[4] Office of Communications of USDA. Release number 0050.06, February 2006. Online news release: *http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB/.cmd/ad/.ar/sa.retrievecontent/.c/6_2_1UH/.ce/7_2_5JM/.p/5_2_4TQ/_th/J_2_9D/_s.7_0_A/7_0_1OB?PC_7_2_5JM_contentid=2006%2F02%2F0050.xml&PC_7_2_5JM_parentnav=LATEST_RELEASES&PC_7_2_5JM_navid=NEWS_RELEASE.* Accessed September 2006.

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

	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
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.

Based upon available data and expected effects, we believe that the benefits of the rule, in terms of curtailing the spread of the pest, will outweigh the costs borne by producers in the quarantined area. Major importers of fresh potatoes from Idaho, including Canada and Mexico, have lifted their import prohibitions imposed following the PCN discoveries and now allow imports of fresh potatoes from Idaho subject to certain restrictions, including that the potatoes do not originate from the quarantined area. Since the United States exports many more potatoes in the processed form, either as frozen french fries or potato chips, any loss of foreign markets for fresh potatoes is not likely to have significant economic impacts on the U.S. potato industry. Additionally, the domestic market will be able to absorb any excess supply of fresh potatoes resulting from import bans imposed by other countries.

In the following analysis, we first consider potential costs of the rule for producers in the quarantined area. Possible benefits of the rule, in terms of preventing the spread of PCN to other States, are then examined. Lastly, we address expected impacts for small entities.

Expected Costs of the Rule

Costs for Producers in the Quarantined Area

As of December 1, 2008, approximately 17,376 of the 335,000 acres planted to potatoes in Idaho were included in the current quarantined area. However, of these acres, only 1,079 were infested with PCN. The rest were regulated as associated fields. The potential economic impacts of regulating this area are presented in the following paragraphs.

Given a quarantined area of approximately 17,376 acres, an upper-bound annual potato production quantity of about 563.7 million pounds could be affected by the rule.[5] This amount represents approximately 3 percent of total potato production in Idaho and slightly more than 1 percent of total potato production in the United States. However, even these small percentages overstate the probable impact because the 563.7 million pound upper-bound quantity assumes all regulated acres would be planted to potatoes at any given time, whereas potatoes are commonly grown in a 2- to 3-year rotation with grain. Moreover, interstate movement of table potatoes and other regulated articles from quarantined areas will be allowed when accompanied by a certificate or limited permit, when field surveys are completed and cropping restrictions have been met, and when PCN has not been found. We note that State officials expect a significant decline in the acreage planted to potatoes in Idaho this year, due to the high price of grain and possible water shortages.

Despite the minimal impacts on domestic production, some export markets initially did close due to the PCN outbreak. However, the majority of Idaho potato exports are in the form of processed products, not fresh potatoes. Idaho's exports of fresh potatoes averaged 2 percent of total exports of potato and potato products from 2001 to 2006. As noted, since the Federal Order quarantining certain areas of Idaho was implemented on August 28, 2006, major foreign markets for fresh potatoes from Idaho have reopened, including Canada and Mexico. Since these two countries account for approximately 90 percent of Idaho fresh exports, the impact of the rule on fresh potato exports is likely to be very small.

Producers whose fields are infested and who wish to remove those fields from quarantine may choose either not to plant any host crop, including potatoes, tomatoes, eggplants, peppers, or tomatillos, for 30 years or to engage in the APHIS eradication program. Producers may plant non-host crops on the quarantined acreage. According to APHIS field personnel, prior to the implementation of the Federal Order, producers in the three affected counties historically planted potatoes in a 2-year rotation with grain. If, because of the rule, a producer chooses to plant alternative crops entirely, it would likely be a continuous grain rotation or a rotation of grain and hay. In Bingham County, the harvested acreage of potatoes trails that of wheat and alfalfa hay. Producers in this county also grow barley. Data for Bonneville County show significant wheat and barley acreage, as well as acreage devoted to hay production. Jefferson County harvests a significant acreage of hay, with approximately equivalent acreage devoted to barley, wheat, and potatoes, combined. Based on historical production in the three counties (tables 3, 4, and 5) and farmers' options, it is likely that farmers subject to the quarantine will choose to plant non-host crops rather than forgo revenue that could be generated from the land under quarantine. The planting decision will be a function of market prices, input costs, and possibly Government payments for commodities classified as program crops. Farmers may choose to plant one commodity or multiple commodities depending on these factors. Given alternative production opportunities, the extent to which producers in the quarantined area will be negatively affected by the rule cannot be clearly defined. However, given that the crops mentioned above are viable substitutes in production for the ineligible host crops, producers will likely not face substantial impacts due to the quarantine regulations.

[5] This estimate is based on historical yields from Bingham, Bonneville, and Jefferson Counties, ID, and the estimated number of acres quarantined under the rule. An average of the yields from 2001 to 2006 excluding the high and low yields from the period is multiplied by the number of acres quarantined to estimate the level of production in each county for the quarantine area. The production numbers for the three counties are then summed to obtain the upper-bound estimate reported above.

TABLE 3—HARVESTED ACREAGE AND PRODUCTION OF VARIOUS CROPS IN BINGHAM COUNTY, ID, 2001–2006

	Wheat	Barley	Hay	Potatoes
	Harvested Acres			
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
2006	114,500	19,100	72,000	55,800
	Production (1,000 Pounds)			
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
2006	736,500	84,960	705,600	2,020,000

Source: USDA, NASS, Quick Stats Database, *U.S. and All States County Data—Crops,* January 2008.

TABLE 4—HARVESTED ACREAGE AND PRODUCTION OF VARIOUS CROPS IN BONNEVILLE COUNTY, ID, 2001–2006

	Wheat	Barley	Hay	Potatoes
	Harvested Acres			
2001	57,400	60,100	34,500	28,700
2002	52,600	68,400	34,700	31,200
2003	46,300	71,300	38,800	29,800
2004	51,000	66,500	37,400	29,900
2005	46,500	69,000	35,600	26,600
2006	52,700	59,200	39,000	29,200
	Production (1,000 Pounds)			
2001	192,000	235,680	242,000	813,600
2002	178,800	280,320	256,800	920,400
2003	145,200	210,240	248,000	853,700
2004	214,800	315,456	254,800	907,000
2005	183,900	331,392	263,200	825,000
2006	203,100	264,000	311,000	993,000

Source: USDA, NASS, Quick Stats Database, *U.S. and All States County Data—Crops,* January 2008.

TABLE 5—HARVESTED ACREAGE AND PRODUCTION OF VARIOUS CROPS IN JEFFERSON COUNTY, ID, 2001–2006

	Wheat	Barley	Hay	Potatoes
	Harvested Acres			
2001	30,900	41,600	91,500	29,600
2002	27,200	42,700	97,500	36,700
2003	22,700	51,900	101,700	32,000
2004	33,300	56,300	98,000	24,200
2005	31,300	56,700	95,300	24,300
2006	32,800	44,600	98,600	23,400
	Production (1,000 Pounds)			
2001	152,100	187,776	835,600	1,004,700
2002	143,160	198,960	913,200	1,302,900
2003	123,900	234,576	926,400	1,064,500
2004	195,600	288,672	911,400	920,000
2005	188,880	276,192	910,000	936,000
2006	197,880	207,840	997,000	910,000

Source: USDA, NASS, Quick Stats Database, *U.S. and All States County Data—Crops,* January 2008.

Expected Benefits of the Rule

Impacts of the rule on the domestic market are likely to be small, and the benefits of the quarantine in preventing the spread of PCN 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 take longer to remove. Furthermore, producers have the option to plant non-host crops and keep land in production rather than allowing it to remain fallow.

Cost-Benefit Summary

Benefits of the regulation in terms of preventing the spread of PCN are expected to outweigh direct costs to affected producers. The rule states that an infested field will be removed from quarantine when a protocol approved by the Administrator as sufficient to support removal of infested fields from quarantine has been completed and the field has been found to be free of 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; PCN can survive for up to 30 years in a dormant state without any host crops on which to feed. PPQ is also developing a protocol for eradicating PCN in infested fields. As noted earlier, PPQ will solicit input from affected producers, State departments of agriculture, researchers, and the general public to develop the protocol and provide updates on its progress. When the protocol is finalized, APHIS will make it available to the public and will pay for its implementation, subject to the availability of funds. Regardless of the eradication means used to ensure that a field is free from PCN, however, APHIS will require the protocol approved by the Administrator as sufficient to support removal of infested fields from quarantine to confirm that freedom. Until eradication of PCN in a field is achieved, producers can minimize their losses resulting from the regulation by planting alternative non-host crops. A number of non-host crops have been identified as viable substitutes for potatoes in the quarantined area.

Final 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 604 of the Act requires agencies to prepare and make available to the public a final regulatory flexibility analysis (FRFA) describing any changes made to the rule as a result of comments received and the steps the agency has taken to minimize any significant economic impacts on small entities. Section 604(a) of the Act specifies the content of a FRFA. In this section, we address these FRFA requirements.

Objectives and Need for the Rule

The objective of the interim rule and this final rule is to prevent the spread of PCN by quarantining infested or associated 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 and movement restrictions will prevent the pest from spreading to other areas in Idaho and the rest of the United States. This will benefit a majority of potato producers by safeguarding their fields from infestation.

Summary of Significant Issues Raised During Comment Period

One producer affected by the quarantine commented that following the protocols established in this rule would be logistically difficult and would impose an economic burden on his operation. In addition, the producer felt the rule limited his ability to make planting decisions and interfered with the potential sale of land.

The issues raised in this comment appear to be an isolated incident where the rule may have a significant impact on one operation. However, the benefits of the rule, in terms of preventing the spread of PCN to other areas, outweigh the costs described by this producer. APHIS has not made any changes in this final rule based on this comment.

Description and Estimated Number of Small Entities Regulated

The final rule will have potential implications for domestic producers of potatoes, as well as potato processing firms. Additionally, producers of other host crops and non-host crops also regulated under the rule may be impacted. It is likely that the entities affected will 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 entities, based on 2002 Census of Agriculture data and SBA guidelines for entities in the farm category Potato Farming, Field, and Seed Potato Production (NAICS 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 relevant producers, but according to 2002 Agriculture Census data, there were a total of 25,017 farms in Idaho in 2002.[6] 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.[7] 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, the 47 potato farms located in Bonneville County, and the 32 potato farms located in Jefferson County 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 22 post-harvest establishments in Idaho in 2005, the latest date for which numbers were published. Of these, one was located in Bingham County and one was located in Bonneville County; there were no establishments reported for Jefferson County. This document 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 are small.

In addition to potato farms, producers engaged in growing other host crops, including tomatoes, eggplants, peppers, and tomatillos, and non-host crops that may be moved with soil attached, including garden and dry beans and peas, are subject to regulation and expected to be small entities according to SBA standards. The crops listed above are all classified within NAICS 111219 (Other Vegetable (except Potato) and Melon Farming). Firms with total annual sales of less than $750,000 are considered small entities. As discussed earlier, APHIS does not have data at a sufficiently detailed level to determine which farms in these categories are considered small. However, it is reasonable to assume that if 95 percent of total Idaho farms are small by SBA guidelines, a majority of the farms classified under NAICS 111219 can also be considered small. Although it is assumed that most if not all vegetable (except potato) farms in Bingham, Bonneville, and Jefferson Counties are small, NASS does not report any of these types of farms in the affected counties, nor is there any production data for these crops in any of the affected counties. Therefore, there is likely to be at most a very small impact

[6] This number represents the total number of farms in Idaho, including farms producing potatoes.

[7] Source: SBA and *2002 Census of Agriculture.*

as a result of regulations concerning other host crops and non-host crops moved with soil attached.

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 entities by SBA standards. Data from the Economic Census show 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 entities 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 less 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.[8] 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 affected producers. Major importers of fresh potatoes from Idaho, including Canada and Mexico, have lifted import prohibitions they imposed following the PCN discoveries and now allow imports of fresh potatoes from Idaho subject to certain restrictions, including that the potatoes do not originate from the quarantined area. Since the United States exports many more potatoes in the processed form, either as frozen french fries or potato chips, any loss of 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.

Description and Estimate of Compliance Requirements

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

Description of Steps Taken To Minimize Significant Economic Impacts on Small Entities

APHIS has concluded that there are no alternatives to the 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 pale cyst nematode were allowed to spread.

List of Subjects in 7 CFR Part 301

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

■ Accordingly, the interim rule amending 7 CFR parts 301 and 305 that was published at 72 FR 51975–51988 on September 12, 2007, is adopted as a final rule with the following changes:

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).

Subpart—Pale Cyst Nematode

■ 2. The heading of the subpart consisting of §§ 301.86 through 301.86–9 is revised to read as set forth above.

■ 3. Section 301.86–1 is amended as follows:

■ a. By removing the definition for ''potato cyst nematode''.

■ b. By adding, in alphabetical order, a definition of ''pale cyst nematode'' to read as set forth below.

■ c. In the definitions of ''associated field'', ''certificate'', ''infestation (infested)'', and ''infested field'', by removing the word ''potato'' and adding the word ''pale'' in its place each time it occurs.

§ 301.86–1 Definitions.

Pale cyst nematode. The pale cyst nematode (*Globodera pallida*), in any stage of development.

■ 4. Section 301.86–2 is amended as follows:

■ a. By revising paragraph (a), including footnote 2, to read as set forth below.

■ b. In paragraphs (b) and (i), by removing the word ''potato'' and adding the word ''pale'' in its place each time it occurs.

§ 301.86–2 Regulated articles.

(a) Pale cyst nematodes.[2]

§ 301.86–3 [Amended]

■ 5. Section 301.86–3 is amended as follows:

■ a. In paragraphs (a), (b)(2), (c), and (d)(2), by removing the words ''potato cyst'' and adding the words ''pale cyst'' in their place each time they occur.

■ b. In paragraph (d)(1), by removing the words ''3-year biosurvey protocol approved by APHIS'' and adding the words ''protocol approved by the Administrator as sufficient to support removal of infested fields from quarantine'' in their place; and by removing the word ''PCN'' and adding the words ''pale cyst nematode'' in its place.

■ c. In paragraph (d)(2), by removing the word ''survey'' and by adding the words ''of associated fields'' after the word ''removal''.

■ 6. Section 301.86–5 is amended as follows:

■ a. In paragraphs (a)(1), (a)(2), (a)(4), (a)(5), and (b), by removing the word ''potato'' and adding the word ''pale'' in its place each time it occurs.

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

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

(a) * * *

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

(i) The field has been surveyed by an inspector for pale cyst nematode at least

[8] Source: SBA and *2002 Economic Census.*

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

once in the last 3 years and prior to the planting of the potatoes or root crops;

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

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

Done in Washington, DC, this 23rd day of April 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–9724 Filed 4–28–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 090415662–9687–01]

RIN 0694–AE61

Additions and Revisions to the List of Approved End-Users and Respective Eligible Items for the People's Republic of China (PRC) Under Authorization Validated End-User (VEU)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to add a name to the list of end-users for the People's Republic of China (PRC) approved to receive exports, reexports and transfers of certain items under Authorization Validated End-User (VEU). This rule also amends the EAR to add and revise eligible items and destinations for existing VEU authorizations. Specifically, this rule amends the EAR to authorize one additional VEU and identify its respective eligible items for export and reexport to the PRC. This rule also amends the authorizations of two pre-existing VEUs in the PRC. Finally, this rule makes a modification to the listed name of an existing VEU in the PRC. In a final rule published in the **Federal Register** on June 19, 2007, BIS revised and clarified U.S. export control policy for the PRC, establishing Authorization VEU and identifying the PRC as the initial eligible destination. In a final rule published in the **Federal Register** on October 19, 2007, BIS published the names of the first five validated end-users in the PRC that were approved to receive certain specified items under Authorization VEU.

DATES: This rule is effective April 29, 2009. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE61 (VEUPRCADE), by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include ''RIN 0694–AE61 (VEUPRCADE)'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AE61 (VEUPRCADE).

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *jseehra@omb.eop.gov* or by fax to (202) 395–7285. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.,* RIN 0694–AE61 (VEUPRCADE))—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chairman, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230; by telephone (202) 482–3811, or by e-mail to *kniesv@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User (VEU): Additions and Modifications to the List of Approved End-Users, Eligible Items and Destinations

Consistent with U.S. Government policy to facilitate trade for civilian end-users in the PRC, BIS amended the EAR in a final rule on June 19, 2007 (72 FR 33646) by creating a new authorization for ''validated end-users'' (VEUs) located in eligible destinations to which eligible items (commodities, software and technology, except those controlled for missile technology or crime control reasons) may be exported, reexported or transferred under a general authorization instead of a license, in conformance with Section 748.15 of the EAR.

Authorization VEU is a mechanism to facilitate increased high-technology exports to companies in the PRC and India that have a record of using such items responsibly. VEUs may obtain eligible items that are on the Commerce Control List without having to wait for their suppliers to obtain export licenses from BIS. A wide range of items are eligible for shipment under Authorization VEU. In addition to U.S. exporters, Authorization VEU may be used by foreign reexporters, and does not have an expiration date.

Additional VEUs in the PRC and Their Respective ''Eligible Items (By ECCN)'' and ''Eligible Destinations''

This final rule amends Supplement No. 7 to Part 748 of the EAR to identify an additional company with eligible facilities in the PRC as a VEU and to identify the items that may be exported, reexported or transferred to it under Authorization VEU. This new entry is for Aviza Technology China. It lists Export Control Classification Numbers (ECCNs) 2B230, 3B001.c.1.a and 3B001.e under ''Eligible Items (By ECCN),'' and includes the following facility names and addresses under ''Eligible Destination:''

Aviza Technology China, Room B–1501, No. 188, Tomson Center, Zhang Yang Road, Shanghai, China 200122.

Aviza Technology China, Room 612, International Business Center, No. 18, Hong Da North Road, Beijing Economics and Technology Development Area, Beijing, China.

Beijing Bonded: CIES, Electronics Building, A23, Fuxing Road, Beijing, China 100036.

Shanghai Bonded: SLC, Shanghai Industrial-Wailianfa International Logistics Co., Ltd., Address: 13F Waigaoqiao Building, 889 Yang Gao Road(N), Pudong, Shanghai, China.

HMG Logistics (Chengdu) Co., Ltd., Floor 1, No. 5 Standard Warehouse, EPZ (West Area), Chengdu, China 611731.

Modifications to Existing VEU Authorizations

This final rule also amends Supplement No. 7 to Part 748 of the EAR to implement requests received from existing VEUs for modifications in their authorizations to include additional eligible items and additional destinations, and to list a change of name for an existing VEU. Specifically, this rule makes the following amendments to Supplement No. 7 to Part 748: