

§ 301.86-4

7 CFR Ch. III (1-1-08 Edition)

(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.

(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

³Inspectors 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.

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 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:

⁴Section 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.

(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

⁵ See footnote 3 to § 301.86-5(a).

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.

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§ 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.

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

§ 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.

§ 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.

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§ 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

⁷See footnote 3 to § 301.86-5(a).