

# Growers believe regulations are overly burdensome

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Eighteen growers are in the federal PCN monitoring program, which is overseen by USDA's Animal and Plant Health Inspection Service. Twenty-six fields encompassing 2,897 acres are infested with PCN and 7,734 acres are regulated. Potatoes can still be grown on the regulated fields, which are not infested but are associated with them because the same equipment is used on them. However, regulated fields face strict testing and heightened phytosanitary requirements.

When PCN was first detected in a small area near Shelley in 2006, nations such as Canada, Mexico and South Korea closed their doors to potato imports from Idaho. Japan prohibited the importation of all U.S. potatoes.

Since then, Canada and Mexico have allowed potatoes to be imported if they undergo field soil sampling for PCN. However, they still prohibit potatoes from PCN-regulated areas. South Korea has reopened its borders to all potatoes except those from the two Idaho counties, Bingham and Bonneville, with PCN-infested fields. Japan still won't buy Idaho potatoes.

Many of the 15 farmers in the regulated area gave detailed accounts of how the regulations impact their operations.

Steve France, who has farmed for 50 years, said the regulations "have really hammered us (financially). It's about more than we can take."

The growers told lawmakers they don't know where else to turn for help, and that's why they formed the Idaho PCN Group.

Gary Farmer, an agronomist who has worked with growers in the regulated area, told legislators that the farmers have lost contracts and leases, had to hire more employees, seen their expenses increase "and generally been thrown under the proverbial bus."

He said the financial impact the regulations have had on his company — between \$40,000 and \$60,000 per year — is small compared with what those growers have had to endure.

Mark Mickelsen said his farm has lost \$700,000 due to the PCN regulations in the last six months.

"We in the Shelly area have had the finger pointed at us for a long time and we need help," he said.

Farmer said major french fry companies will not con-



Bill Schaefer/For the Capital Press  
These are two of the washer units that potato growers in a federal quarantine area in Eastern Idaho can use to clean their equipment when it leaves the field. The equipment was paid for by a federal grant obtained by the Idaho Potato Commission.

tract for potatoes grown in regulated ground, and he has seen growers in the regulated area lose contracts with packers.

## 'Over-burdensome' regulations

The growers said they believe the regulations are overly burdensome and largely unnecessary.

"The regulations are so over-burdensome and difficult, it's terribly difficult to operate," said Stephanie Mickelsen, Mark Mickelsen's wife.

As an example, Searle said other countries that deal with PCN test fields at a rate of 1.3 pounds of soil per acre, but growers in Idaho's regulated area are tested at a much higher rate.

Several growers said they believe PCN would be found in other major potato-growing areas if soil there was tested as heavily as it is in Idaho's PCN quarantine area.

"We're putting the Idaho potato industry at a huge disadvantage if we continue to test at such high rates in Idaho, and they aren't going to have the same testing in other places," Stephanie Mickelsen said.

State Department of Agriculture officials said Idaho's potato industry chose to test at higher rates so regulated fields could be released from the monitoring program quicker.

During the program's first four years, fields in the regulated area that were not infested with PCN had to test negative for the pest for four consecutive potato crops before they could be released from the federal program.

That testing protocol required 5 pounds of soil per acre to test negative after each potato crop.

Because potatoes in Eastern Idaho are grown on 3- to 5-year rotations, that meant it could take 20 years for a field to be released. At the industry's urging, ISDA officials said, they helped convince APHIS in 2010 to change the release protocol to one 20-pound soil sample after one potato crop.

This allows fields to be released much sooner.

Those people who pushed for the higher test rate include some of the farmers who are complaining about it now, ISDA Director Celia Gould said.

Stephanie Mickelsen said growers in the regulated area were led to believe at the time that additional testing was required and they chose what they believed at the time to be the lesser of two evils: a higher soil testing standard so their fields could be released quicker.

"If they had to do it over again, I believe everyone (in the regulated area) would

choose a different path," she said.

Fields infested with PCN can't be used to grow host crops such as potatoes, but they can grow other crops, including barley, wheat and corn.

Stephanie Mickelsen said that because of Eastern Idaho's cold climate, farmers are limited in what they can grow.

A grower in that area "really needs to have a cash crop like potatoes to pay their bills," she said.

Besides being limited in what they can grow, some of the growers have millions of dollars invested in potato equipment and facilities, she added. The average cost of a potato cellar is \$600,000.

Growers also told lawmakers that their pleas for help have fallen on deaf ears at the ISDA, Idaho Potato Commission and APHIS.

Gould and IPC President and CEO Frank Muir, who were watching the presentation to lawmakers via a video feed, both said they were surprised to hear that claim.

Gould said the potato industry and growers in the regulated area have been at the table and involved in helping shape the program from the beginning.

She said it was "hugely frustrating (to hear) allegations that they had not been listened to or had not had any voice in the process because from day one

they had a voice."

Gould said the ISDA has tried to balance the need to address the concerns of the regulated growers while at the same time prevent or limit the spread of PCN and protect international and domestic markets.

In a statement, Muir said the commission has worked with impacted growers, USDA and ISDA to protect Idaho potatoes.

He said federal regulations require equipment to be steam cleaned and washed when leaving infested fields and, to minimize the impact of that regulation on growers, the commission sought and received a federal grant to build a steam sanitation station and purchase several wash systems that are made available to growers free of charge.

Muir said the commission will continue to fund research toward developing PCN-resistant potato varieties as well as other efforts to help eradicate the pest.

## Changing tactics

PCN affected growers would like state and federal regulators to explore the possibility of switching from a PCN eradication program to a management program, which they believe would involve less burdensome regulations.

Searle said the pest can be controlled with the current integrated pest management

practices growers already employ.

APHIS officials told Capital Press in an email that the eradication program "continues to yield successful results. PCN viability data received to date indicate that there has been significant progress toward eradication of the pale cyst nematode in Idaho."

APHIS also fumigates the fields with methyl bromide in an effort to reduce the nematode population.

Eight of the first nine infested fields detected in Eastern Idaho are eligible for planting potatoes again, according to APHIS. However, those fields are still subject to testing after the next three potato crops to verify the absence of viable cysts.

Moving from an eradication program to management could impact interstate and international trade, APHIS said.

Lloyd Knight, administrator of ISDA's plant industries division, said countries with a PCN management program are limited in which markets will buy their potatoes.

He said the goal of Idaho's eradication plan has always been to "get all the markets back open as fully as possible to Idaho potatoes."

Four of the top five nations importing Idaho potatoes consider PCN a quarantine pest, Gould said, "and we can't tell those countries what they're going to accept."

It's not known exactly what a management plan would look like in Idaho, Gould said, but a golden nematode management plan in New York turned into a statewide testing program that has lasted for more than three decades.

"That's what we didn't want to happen in Idaho," she said.

Idaho PCN Group members said they would only support a management program if it didn't negatively affect the industry's markets, but they believe the idea is worth exploring.

Idaho PCN Group President Jared Wattenbarger said the group's visit to Boise was more about educating lawmakers about the difficulty growers face in the regulated area. The group, he said, will continue to work with the IPC and state and federal regulators to try to find a solution that protects the state's potato industry and is workable for the affected growers.

He said regulated growers want to "get this to where it's a manageable thing so we can get back to making money."

## Increased restrictions on GMOs still on table

GMO from Page 1

conflicts," said Ivan Maluski, policy director for Friends of Family Farmers, which supports stricter regulation of genetically modified organisms.

While HB 2509 doesn't provide for direct state regulation of genetically engineered crops, it would allow farmers to discuss their options before resorting to litigation, he said.

However, increased restrictions on GMOs are still on the table during the 2015 legislative session.

On April 21, lawmakers are scheduled to hold a possible work session on House Bill 2674, which would require ODA to establish "control areas" for biotech crops in which they'd be subject to regulations, like isolation distances.

Biotech crops growing outside control areas would be considered "an infestation subject to eradication" under HB 2674, which would also impose fees on GMOs to compensate farmers who are negatively affected by them.

The House Committee on Rural Communities, Land Use and Water approved several other bills during its most recent work session:

• House Bill 2277, which expands the authority of drainage districts in Oregon's Multnomah County to conduct flood control.

# Immigration action back in limelight

## Appeals court hears arguments

By DAN WHEAT  
Capital Press

PASCO, Wash. — It may be months yet before millions of people living in the U.S. illegally can sign up for temporary legal work status under the president's controversial executive action, a Pasco immigration attorney says.

The 5th U.S. Circuit Court of Appeals, in New Orleans, hears arguments April 17 on an injunction preventing the Obama administration from proceeding with deportation deferrals and temporary legal work status for people in the U.S. illegally.

Having just dismissed a similar case April 9, the court is likely to overturn the injunction and let the programs proceed while taking up the merits of the case, says attorney Tom Roach.

But regardless of which way the court goes on the injunction, the losing party may appeal to the U.S. Supreme Court and that could take several more months to hear, Roach said.

He estimates there are 90,000 to 100,000 people in Central Washington and northeastern Oregon, thousands more in Idaho and many thousands more in California who are eligible for the Deferred Action for Parents of Americans (DAPA) or an expanded 2014 version of the 2012 Deferred Action for Childhood Arrivals, called DACA 2.0. Many of them are farmworkers.

The programs are executive actions giving temporary legal work status to illegals who have lived in the U.S. at least five years, not been convicted of disqualifying crimes and meet some other conditions.

Roach said he helped about 350 people prepare to sign up for DAPA before the program was put on hold Feb. 16 by an injunction by a U.S. District Court judge in Texas.

Roach said he's handled 335 cases under the 2012 DACA which he's been told is more than any other immigration attorney in the state.

How many people sign up for DAPA or DACA 2.0, if the programs



Roach

are eventually upheld, is a good question, he said.

Some people may be eager for legal status and benefits that come with it while others may figure they've done well enough in the shadows for years and are reluctant to risk exposure since deferrals are only good for three years, he said.

Benefits include a Social Security card good only with a work permit and, in some states, drivers licenses.

The government estimates 1.2 million people were eligible under the 2012 DACA program but only 600,000 signed up, Roach said.

An estimated 4 million to 5 million people are eligible for DAPA nationwide. "It wouldn't surprise me if only half of them sign up," he said.

Shortly after the November 2014 elections, President Obama issued an executive action for DAPA and DACA 2.0. The administration planned to implement the programs this spring. Many Republicans said the action was unconstitutional, that Obama was writing law.

On Feb. 16, U.S. District Judge

Andrew Hanen, in Texas, ruled in favor of 26 states that sued to overturn the executive order and issued an injunction stopping the programs on grounds that they were implemented without following an administrative procedures act requiring a public comment period.

On April 7, Hanen denied an administration request to lift his injunction.

The government argues the executive order is prosecutorial discretion that does not require the administrative procedures act be followed, Roach said.

Prior administrations have deferred deportation of people from China, Nicaragua, Cuba and other places, just not on the same scale, he said.

On April 9, the 5th Circuit Court dismissed a lawsuit challenging the 2012 DACA, saying the state of Mississippi lacked standing to sue because it did not prove it was injured by the program.

The 26 states suing over DAPA and DACA 2.0 "allege irreparable harm, that the programs will cost them lots of money and encourage more illegal immigration," Roach said.

## 'If employees want to talk about those programs, tell them to go to an attorney'

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"Eligibility for a benefit does not automatically imply that an individual is employment eligible. Employees are only eligible for employment once they have received documentation from the Department of Homeland Security showing work authorization.

Employers may be subject to civil or criminal penalties when they employ or continue to employ an alien in the United States knowing that the alien is an unauthorized alien with respect to such employment," she wrote.

An employer may rehire a previously terminated employee once that person has

DHS work authorization, she wrote.

WAFLA has advised employers to provide employment records to employees only if there is no discussion between the employer and employees about DAPA or DACA 2.0, Fazio told Capital Press.

"If employees want to talk

about those programs, tell them to go to an attorney," he said. "I can't conceive of anyone going after an employer who helped out a worker, but I've seen weirder stuff from government."

Tom Roach, a Pasco immigration attorney, said it seems ironic that the government provides safe harbor for

employees but not employ-

ers. "But it does make sense if you look at it from the government's point of view," he said.

It wants the program to go forward so it provides assurance for employees, but it wants employers to hire only legal workers, he said.