301.92 Phytophthora ramorum

Federal Domestic Quarantine

Sec. 301.92 Restrictions on Interstate Movement

(a) No person may move interstate from any quarantined area any regulated, restricted, or associated article or any other nursery stock except in accordance with this subpart.1

1Any 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 or restricted articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

(b) No person may move interstate from any regulated establishment any regulated, restricted, or associated articles except in accordance with this subpart.

(c) No person may move interstate from any quarantined area or regulated establishment any regulated restricted, or associated article or nursery stock that has been tested with a test approved by APHIS and found infected with Phytophthora ramorum, or that is part of a plant that was found infected with Phytophthora ramorum, unless such movement is in accordance with part 330 of this chapter.

[72 FR 8597, Feb. 27, 2007, as amended at 84 FR 16192, Apr. 18, 2019]

Sec. 301.92-1 Definitions

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


Associated Article. Any article listed in §301.92-2(b).2

Bark Chips. Bark fragments broken or shredded from a log or tree.

Certificate. A document, stamp, or imprint by which an inspector or person operating under a compliance agreement affirms that a specified regulated or associated article meets applicable requirements of this subpart and may be moved interstate to any destination.

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

Duff. Decaying plant matter that includes leaf litter, green waste, stem material, bark, and any other plant material that, upon visual inspection, does not appear to have completely decomposed.

Firewood. Wood that has been cut, sawn, or chopped into a shape and size commonly used for fuel, or other wood intended for fuel.

Forest Stock. All flowers, trees, shrubs, vines, scions, buds, or other plants that are wild-grown, backyard-grown, or naturally occurring.

From. An article is considered to be “from” a specific site or location for the purposes of this subpart if it was grown or propagated in, stored or sold, or distributed from the site or location.

Growing Media. Any material in which plant roots are growing or intended for that purpose.

Inspector. Any of APHIS, the U.S. Department of Agriculture, or other person authorized by the Administrator to perform the duties employee required under this subpart.

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

Log. The bole of a tree; trimmed timber that has not been sawn further than to form cants.

Lot. A contiguous block of plants of the same species or cultivar, of the same container size and from the same source, if known.

Lumber. Logs that have been sawn into boards, planks, or structural members such as beams.

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

Mulch. Bark chips, wood chips, wood shavings, or sawdust, or a mixture thereof, that could be used as a protective or decorative ground cover or as part of a growing media mixture.

Non-Host Nursery Stock. Any taxa of nursery stock not listed in §301.92-2 as a regulated or associated article.

Nursery. Any location where nursery stock is grown, propagated, stored, or sold, or any location from which nursery stock is distributed. Locations that grow trees for sale without roots (e.g., as Christmas trees) are considered to be nurseries for the purposes of this subpart.

Nursery Stock. All plants for planting, including houseplants, propagative material that is grown in a nursery, and tree seedlings for reforestation, except the following: Seeds; turf or sod; bulbs, tubers, coms, or rhizomes; greenhouse grown cactus, succulents, and orchids; aquarium grown aquatic plants; greenhouse, container, or field grown palms; greenhouse, container, or field grown cycads, and tissue culture plants grown in vitro; and plants meeting the definition of forest stock.

2Bulbs, tubers, coms, or rhizomes are only considered nursery stock (and therefore, regulated under this subpart) if they are of plant taxa listed in §301.92-2 as regulated articles or associated articles.

Permit. A written authorization issued by APHIS to allow the interstate movement of restricted articles in accordance with part 330 of this chapter.

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.

Quarantined Area. Any State, or any portion of a State, listed in §301.92-3(a)(3) of this subpart or otherwise designated as a quarantined area in accordance with §301.92-3(a)(2) of this subpart.

Regulated Article. Any article listed in §301.92-2(b) of this subpart.
Regulated Establishment. Any nursery regulated by APHIS pursuant to §301.92-3(b).

Restricted Article. Any article listed in §301.92-2(a) of this subpart.

Soil. The loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material.

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

restricted articles.

Sec. 301.92-2 Restricted, Regulated, and Associated Articles; Lists of Proven Hosts and Associated Plant Taxa

(a) Restricted Articles

The following are restricted articles:

(1) Bark chips or mulch located in a quarantined area and that are proven host plant taxa listed in paragraph (d) of this section.

(2) Forest stock located or grown in a quarantined area and that are proven host plant taxa or associated plant taxa listed in paragraph (d) or (e) of this section.

(3) Any other product or article that an inspector determines to present a risk of spreading Phytophthora ramorum, if an inspector notifies the person in possession of the product or article that it is a restricted article.

(b) Regulated Articles

The following are regulated articles:

(1) Nursery stock, decorative trees without roots, unprocessed wood and wood products, and plant products, including firewood, logs, lumber, wreaths, garlands, and greenery of proven host plant taxa listed in paragraph (d) of this section.

(2) Soil and growing media.

(3) Any other product or article that an inspector determines to present a risk of spreading Phytophthora ramorum if an inspector notifies the person in possession of the product or article that it is subject to the restrictions in the regulations.

(c) Associated Articles

The following are associated articles: Nursery stock of associated plant taxa listed in paragraph (e) of this section.

(d) Proven Host Plant Taxa

The following are proven hosts of Phytophthora ramorum:

*Acer macrophyllum* Bigleaf maple
*Acer pseudoplatanus* Planetree maple

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*Adiantum aleuticum* Western maidenhair fern
*Adiantum jordanii* California maidenhair fern
*Aesculus californica* California buckeye
*Aesculus hippocastanum* horse chestnut
*Arbutus menziesii* Madrone
*Arctostaphylos manzanita* Manzanita
*Calluna vulgaris* Scotch heather
*Camellia spp.* Camellia—all species, hybrids and cultivars
*Castanea sativa* Sweet chestnut
*Cinnamomum camphora* Camphor tree
*Cinnamomum tea* Tea tree
*Frangula purshiana* (=*Rhamnus purshiana*) Cascara
*Frangula californica* (=*Rhamnus californica*) California coffeeberry
*Frangula californica* (=*Rhamnus purshiana*) Cascara
*Griselinia littoralis* Griselinia
*Hamamelis virginiana* Witch hazel
*Heteromeles arbutifolia* Toyon
*Kalmia spp.* Kalmia—including all species, hybrids, and cultivars
*Laurus nobilis* Bay laurel
*Lithocarpus densiflorus* Tanoak
*Lonicera hispida* California honeysuckle
*Maianthemum racemosum* (=*Smilacina racemosa*) False Solomon's seal
*Michelia doltsopa* Michelia
*Parrotia persica* Persian ironwood
*Photinia fraseri* Red tip photinia
*Pieris spp.* Pieris—including all species, hybrids, and cultivars
*Pseudotsuga menziesii var. menziesii* Douglas fir
*Quercus agrifolia* Coast live oak
*Quercus cerris* European turkey oak
*Quercus chrysolepis* Canyon live oak
*Quercus falcata* Southern red oak
*Quercus ilex* Holm oak
*Quercus kelloggi* California black oak
*Quercus parvula* var. *shrevei* and all nursery-grown *Q. parvula* Shreve's oak
*Rhododendron* spp. *Rhododendron* (including azalea)—includes all species, hybrids, and cultivars
*Rosa gymnocarpa* Wood rose
*Salix caprea* Goat willow
*Sequoia sempervirens* Coast redwood
*Syringa vulgaris* Lilac
*Taxus baccata* European yew
*Trieentalis latifolia* Western starflower
*Umbellularia californica* California bay laurel, pepperwood, Oregon myrtle
*Vaccinium ovatum* Evergreen huckleberry
*Viburnum* spp. Viburnum—all species, hybrids, and cultivars
(e) Associated Plant Taxa

The following plant taxa are considered to be associated with Phytophthora ramorum:
Abies concolor White fir
Abies grandis Grand fir
Abies magnifica Red fir
Acer circinatum Vine maple
Acer davidii Striped bark maple
Acer laevigatum Evergreen maple
Arbutus unedo Strawberry tree
Arctostaphylos columbiana Manzanita
Arctostaphylos uva-ursi Kinnikinnick, bearberry
Ardisia japonica Ardisia
Calycanthus occidentalis Spicebush
Castanopsis orthacantha Castanopsis
Ceanothus thyrsiflorus Blueblossom
Cinnamomum camphora Camphor tree
Clintonia andrewsiana Andrew's clintonia bead lily
Cornus kousa × Cornus capitata Cornus Norman Haddon
Corylus cornuta California hazelnut
Distylium myricoides Myrtle-leafed distylium
Drimys winteri Winter's bark
Dryopteris arguta California wood fern
Eucalyptus haemastoma Scribbly gum
Euonymus kiautschovicus Spreading euonymus
Fraxinus latifolia Oregon ash
Gaultheria shallon Salal, Oregon wintergreen
Hamamelis mollis Chinese witch-hazel
Hamamelis × intermedia (H. mollis & H. japonica) Hybrid witchhazel
Ilex cornuta Buford holly, Chinese holly
Ilex purpurea Oriental holly
Illicium parviflorum Yellow anise
Larix kaempferi Japanese larch
Leucothoe axillaris Fetter-bush, dog hobble
Leucothoe fontanesiana Drooping leucothoe
Loropetalum chinense Loropetalum
Magnolia denudata Lily tree
Magnolia grandiflora Southern magnolia
Magnolia stellata Star magnolia
Magnolia × loebneri Loebner magnolia
Magnolia × soulangeana Saucer magnolia
Mahonia nervosa Creeping Oregon grape
Manglietia insignis Red lotus tree
Michelia maudiae Michelia
Michelia wilsonii Michelia
Molinadendron sinaloense
Nerium oleander Oleander
Nothofagus obliqua Roble beech

Osmanthus decorus (≡Phillyrea decora; ≡P. vilmoriniana) Osmanthus
Osmanthus delavayi Delavay Osmanthus, Delavay tea olive
Osmanthus fragrans Sweet olive
Osmanthus heterophyllus Holly olive
Osmorhiza berteroi Sweet Cicely
Parakmeria lotungensis Eastern joy lotus tree
Pittosporum undulatum Victorian box
Prunus laurocerasus English laurel, cherry laurel
Prunus lusitanica Portuguese laurel cherry
Pyracantha koidzumii Formosa firethorn
Quercus acuta Japanese evergreen oak
Quercus petraea Sessile oak
Quercus rubra Northern red oak
Rosa (specific cultivars)
-Royal Bonica (tagged: "MEImodac")
-Pink Meidiland (tagged: "MEIpoque")
-Pink Sevillana (tagged: "MEIgeroka")
Rosa rugosa Rugosa rose
Rubus spectabilis Salmonberry
Schima wallichii Chinese guger tree
Taxus brevifolia Pacific yew
Taxus × media Yew
Torreya californica California nutmeg
Toxicodendron diversilobum Poison oak
Trachelospermum jasminoides Star jasmine, confederate jasmine
Vancouveria planipetala Redwood ivy
Veronica spicata Syn. Pseudolysimachion spicatum Spiked speedwell

[72 FR 8597, Feb. 27, 2007, as amended at 84 FR 16192, Apr. 18, 2019]

Sec. 301.92-3 Quarantined Areas and Regulated Establishments

(a) Quarantined Areas

(1) Except as otherwise provided in paragraph (a)(2) of this section, the Administrator will designate as a quarantined area in paragraph (a)(3) of this section each State, or each portion of a State, in which Phytophthora ramorum has been confirmed by an inspector to be established in the natural environment, in which the Administrator has reason to believe that Phytophthora ramorum is present in the natural environment, or that the Administrator considers it necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which Phytophthora ramorum has been found in the natural environment. Less than an entire area will be designated as a quarantined area only if the Administrator determines that:

(i) The State has adopted and is enforcing restrictions on the intrastate movement of regulated, restricted, and associated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated, restricted, and associated articles; and

(ii) The designation of less than the entire State as a quarantined area will prevent the interstate spread of
Phytophthora ramorum.

(2) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with paragraph (a)(1) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated, restricted, or associated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (a)(3) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(3) The following areas are designated as quarantined areas:

California

Alameda County. The entire county.
Contra Costa County. The entire county.
Humboldt County. The entire county.
Lake County. The entire county.
Marin County. The entire county.
Mendocino County. The entire county.
Monterey County. The entire county.
Napa County. The entire county.
San Francisco County. The entire county.
San Mateo County. The entire county.
Santa Clara County. The entire county.
Santa Cruz County. The entire county.
Solano County. The entire county.
Sonoma County. The entire county.
Trinity County. The entire county.

Oregon

Curry County. The following portion of Curry County that lies inside the area starting at the point where the mouth of the Rogue River meets the Pacific Ocean and continuing east along the Rogue River to the northeast corner of T35S R12W section 31; then south to the northeast corner of T38S R12W section 18; then east to the northeast corner of T36S R12W section 13; then south to northeast corner of T38S R12W section 25; then east to the northeast corner of T38S R11W section 29; then south to the northeast corner of T40S R11W section 8; then east to the northeast corner of T40S R11W section 10; then south to the State border with California; then west to the intersection of the State border and U.S. Highway 101; then northwest along U.S. Highway 101 to the intersection with West Benham Lane; then west along West Benham Lane to the Pacific Coastline; then following the Pacific Coastline northwest to the point of beginning.

(b) Regulated Establishments

(1) Designation

The Administrator will designate a nursery that is not located in a quarantined area for Phytophthora ramorum as a regulated establishment for Phytophthora ramorum if the nursery ships regulated, restricted, or associated articles interstate and sources of Phytophthora ramorum are detected on nursery stock, soil, growing media, pots used for nursery stock, standing water, drainage water, water used for irrigation, or any other regulated, restricted, or associated articles at the nursery.

(2) Deregulation

The Administrator will withdraw regulation of a regulated establishment if, for 3 consecutive years, each time the nursery is inspected by an inspector, it is found free of sources of Phytophthora ramorum inoculum.

(Approved by the Office of Management and Budget under control number 0579-0310)

[84 FR 16192, Apr. 18, 2019]

Sec. 301.92-4 Conditions Governing the Interstate Movement of Regulated, Restricted, and Associated Articles, and Non-Host Nursery Stock from Quarantined and Regulated Establishments

(a) Interstate Movement of Regulated and Associated Articles from Quarantined Areas

Regulated and associated articles may be moved interstate from a quarantined area only in accordance with this subpart.

Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(1) With a Certificate

Any regulated or associated article may be moved interstate from a quarantined area if accompanied by a certificate issued and attached in accordance with §§301.92-5 and 301.92-8, and provided that the regulated or associated article is moved through the quarantined area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.

(2) Without a Certificate

(i)(A) The regulated article or associated article originated outside the quarantined area and the point of origin of the article is indicated on the waybill of the vehicle transporting the article; and

(B) The regulated or associated article is moved from outside of the quarantined area through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs, and the article is not unpacked or unloaded in the quarantined area.

(ii) Soil samples may be moved from a quarantined area for Phytophthora ramorum for chemical or physical (compositional) analysis provided that they are moved to a laboratory; and that laboratory:

(A) Has entered into and is operating under a compliance agreement with APHIS in accordance with §301.92-6;

(B) Is abiding by all terms and conditions of that compliance agreement; and

(C) Is approved by APHIS to test and/or analyze such samples.

(b) Interstate Movement of Restricted Articles from
Quarantined Areas

Restricted articles may be moved interstate from a quarantined area only in accordance with this section.

6See footnote 4 of this subpart.

(1) With a Permit

Any restricted article may be moved interstate from a quarantined area only if the article is moved pursuant to a permit issued by the Administrator in accordance with part 330 of this chapter.

(2) Without a Permit

(i) The restricted article originated outside the quarantined area and the point of origin of the article is indicated on the waybill of the vehicle transporting the article; and

(ii) The restricted article is moved from outside the quarantined area through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs, and the article is not unpacked or unloaded in the quarantined area.

(c) Interstate Movement of Nursery Stock from Nurseries in Quarantined Areas

(1) Regulated Articles of Nursery Stock and Associated Articles

Regulated articles of nursery stock and associated articles may only be moved interstate from nurseries in quarantined areas in accordance with paragraph (a) of this section.

(2) Non-Host Nursery Stock

Any nursery stock of a taxon not listed in §301.92-2 as a regulated or associated article may only be moved interstate from nurseries in quarantined areas as follows:

(i) With a Certificate

If the non-host nursery stock originates from a nursery in a quarantined area that contains regulated or associated articles, the nursery stock must be accompanied by a certificate issued and attached in accordance with §§301.92-5 and 301.92-8, and be moved through the quarantined area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.

(ii) Without a Certificate

If the non-host nursery stock originates from a nursery in a quarantined area that does not contain regulated or associated articles, the nursery stock may be moved interstate without a certificate, provided that:

(A) The nursery from which plants originate has been inspected and found free of evidence of Phytophthora ramorum in accordance with §301.92-11(b)(3), and

(B) The nursery stock is not rooted in soil or growing media.

7To be eligible for interstate movement, non-host nursery stock that is rooted in soil or growing media requires certification that the soil or growing media meets the requirements of §301.92-5(a)(1)(iii).

(d) Interstate Movement of Regulated, Restricted, and Associated Articles from Regulated Establishments

Regulated, restricted, and associated articles may be moved interstate from a regulated establishment if the regulated establishment has entered into a compliance agreement with APHIS in accordance with §301.92-6, and the articles are accompanied by a certificate issued in accordance with §301.92-5.

[72 FR 8597, Feb. 27, 2007, as amended at 84 FR 16193, Apr. 18, 2019]

Sec. 301.92-5 Issuance and Cancellation of Certificates

(a) Movements from Quarantined Areas

(1) An inspector may issue a certificate for the interstate movement of regulated articles, associated articles, or non-host nursery stock from a quarantined area if the inspector determines that:

6Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 160, Riverdale, MD 20737, or the APHIS Web site at http://www.aphis.usda.gov/ppq/sphd/.

6Paragraph (d)(2)(ii) of §301.92-4 allows the interstate movement of non-host nursery stock without a certificate under certain conditions.

(i) The regulated articles have been treated under the direction of an inspector in accordance with part 305 of this chapter; or

(ii) The regulated articles are wood products such as firewood, logs, or lumber that are free of bark; or

10Firewood, logs, lumber of species listed in 301.92-2(d) and marked with an asterisk are not regulated articles, as noted in §301.92-2(b)(1).

(iii) The regulated article is soil or growing media that has not been in direct physical contact with any article infected with Phytophthora ramorum, and from which all dust has been removed; or

(iv) The articles are nursery stock or regulated articles of decorative trees without roots, wreaths, garlands, or greenery that:

(A)(1) Are shipped from a nursery that has been inspected in accordance with the inspection and sampling protocol described in §301.92-11(a)(1), and the nursery is free of evidence of Phytophthora ramorum infestation; or

(2) Are shipped from a nursery that has been inspected in accordance with the inspection and sampling protocol described in §301.92-11(a)(2), and the nursery is free of evidence of Phytophthora ramorum infestation; or

(3) Are shipped from a nursery that has been inspected in accordance with the inspection and sampling protocol described in §301.92-11(a)(2), is not free of evidence of Phytophthora ramorum infestation, but has entered into and is operating under a compliance agreement with APHIS, and is determined by an inspector to be abiding by all terms and conditions of that agreement; and

(B) Are part of a shipment of nursery stock, decorative trees without roots, wreaths, garlands, or greenery that has been inspected prior to interstate movement in accordance with §301.92-11(a)(2), and the regulated articles in the shipment are free of evidence of Phytophthora ramorum infection; and

(C) Have been kept separate from regulated and associated...
articles and non-host nursery stock not inspected between the time of the inspection and the time of interstate movement; and

(D) Have not been grown in, or moved from, other areas within a quarantined area except nurseries that are annually inspected for Phytophthora ramorum in accordance with §301.92-11 and that have been found free of evidence of Phytophthora ramorum inoculum; and

§301.92-6 Compliance Agreements and Cancellation

(a) Any person engaged in growing, processing, handling, or moving regulated articles, associated articles, or non-host nursery stock may enter into a compliance agreement when an inspector determines that the person understands this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.

(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 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 to the Administrator within 10 days after receiving written notification of the withdrawal. 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.

(Approved by the Office of Management and Budget under control numbers 0579-0310 and 0579-0088)


Sec. 301.92-6 Compliance Agreements and Cancellation

(a) Any person engaged in growing, processing, handling, or moving regulated articles, associated articles, or non-host nursery stock may enter into a compliance agreement when an inspector determines that the person understands this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.

(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 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 to the Administrator within 10 days after receiving written notification of the withdrawal. 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.

(Approved by the Office of Management and Budget under control numbers 0579-0310 and 0579-0088)

[72 FR 8597, Feb. 27, 2007, as amended at 84 FR 4241, Jan. 26, 2010; 84 FR 16193, Apr. 18, 2019]
13See footnote 7 of this subpart.

(b) The regulated or associated article or non-host nursery stock must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

[72 FR 8597, Feb. 27, 2007, as amended at 84 FR 16194, Apr. 18, 2019]

Sec. 301.92-8 Attachment and Disposition of Certificates and Recordkeeping

(a) A certificate required for the interstate movement of a regulated article, associated article, or non-host nursery stock must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article, associated article, or non-host nursery stock; or

(2) Attached to the regulated article, associated article, or non-host nursery stock itself if not in a container; or

(3) Attached to the consignee’s copy of the accompanying waybill. If the certificate is attached to the consignee’s copy of the waybill, the regulated article, associated article, or non-host nursery stock must be sufficiently described on the certificate and on the waybill to identify the regulated article, associated article, or non-host nursery stock.

(b) The certificate for the interstate movement of a regulated article, associated article, or non-host nursery stock must be furnished by the carrier to the consignee listed on the certificate upon arrival at the location provided on the certificate.

(c) All nurseries that are operating under compliance agreements must maintain records of all incoming shipments of plants for a minimum of 24 months and must make them available to inspectors upon request. In addition, all nurseries that are operating under compliance agreements, except retail dealers, must maintain records of outgoing shipments for a minimum of 24 months and must make them available to inspectors upon request.

(Approved by the Office of Management and Budget under control numbers 0579-0088 and 0579-0310)

Sec. 301.92-9 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. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

Sec. 301.92-10 [Reserved]

Sec. 301.92-11 Inspection and Sampling Protocols

(a) Nurseries in Quarantined Areas Shipping Regulated Articles of Nursery Stock and Associated Articles Interstate

(1) Nurseries in which Phytophthora ramorum has not been detected since March 31, 2011.

To meet the requirements of §301.92-5(a)(1)(iv), nurseries that are located in quarantined areas, that move regulated articles of nursery stock, decorative trees without roots, wreaths, garlands, or greenery, associated articles, or non-host nursery stock interstate, and in which Phytophthora ramorum has not been detected since March 31, 2011, must meet the following requirements. Any such nurseries in quarantined areas that do not meet the following requirements are prohibited from moving regulated articles and associated articles interstate. Any such nurseries in quarantined areas that do not meet the following requirements or those in paragraph (b) of this section are prohibited from moving non-host nursery stock interstate.

(i) Annual Inspection, Sampling, and Testing

(A) Inspection

The nursery must be inspected annually for symptoms of Phytophthora ramorum by an inspector. Inspectors will visually inspect for symptomatic plants throughout the nursery, and inspection will focus on, but not be limited to, regulated articles and associated articles.

(B) Sampling

A minimum of 40 plant samples must be tested per nursery location. Samples must be taken from all symptomatic plants if symptomatic plants are present. If fewer than 40 symptomatic plants are present, each symptomatic plant must be sampled, and the remainder of the 40-sample minimum must be taken from asymptomatic plants. If no symptomatic plants are present, 40 asymptomatic plants must be sampled; biased toward proven hosts. Each sample may contain more than one leaf, and may come from more than one plant, but all plants in the sample must be from the same lot. Asymptomatic samples, if collected, must be taken from regulated and associated articles and nearby plants. Inspectors must conduct inspections at times when the best expression of symptoms is anticipated and must take nursery fungicide programs into consideration. Nursery owners must keep records of fungicide applications for 2 years and must make them available to inspectors upon request.

(C) Testing

Samples must be labeled and sent for testing to a laboratory approved by APHIS and must be tested using a test method approved by APHIS, in accordance with §301.92-12.

(D) Annual Certification

If all plant samples tested in accordance with this section and §301.92-12 return negative results for Phytophthora ramorum, an inspector may certify that the nursery is free of evidence of Phytophthora ramorum infestation at the time of the inspection, and the nursery is eligible to enter into or maintain its compliance agreement in accordance with §301.92-6.

(ii) Pre-shipment Inspection, Sampling, and Testing

(A) Inspection

During the 30 days prior to interstate movement from a nursery in a quarantined area, regulated articles or associated articles intended for interstate movement must be inspected for symptoms of Phytophthora ramorum by an inspector. Inspection will focus on, but not be limited to, regulated articles and associated articles. No inspections of shipments will be conducted unless the nursery from which the shipment originates has a current and valid annual certification in accordance with this section.

(1) If no symptomatic plants are found upon inspection, the shipment may be considered free from evidence of Phytophthora ramorum and is eligible for interstate movement, provided that the nursery is operating under a compliance agreement with APHIS in accordance with §301.92-6.

(2) If symptomatic plants are found upon inspection, the
The inspector will collect at least one sample per symptomatic
plant, and one sample per regulated article or associated
article that is in close proximity to, or that has had physical
contact with, a symptomatic plant.

(B) Testing and withholding from interstate movement

Samples taken in accordance with this paragraph (a)

(1) must be labeled and sent for testing to a laboratory
approved by APHIS and must be tested using a test method
approved by APHIS, in accordance with §301.92-12. The
interstate movement of plants in the shipment is prohibited until
the plants in the shipment are determined to be free of
evidence of Phytophthora ramorum infection in accordance with §301.92-12.

(2) Nurseries in which Phytophthora ramorum has been
detected since March 31, 2011.

To meet the requirements of §301.92-5(a)(1)(iv), nurseries that
are located in quarantined areas, that move regulated articles
of nursery stock, decorative trees without roots, wreaths,
garlands, or greenery, associated articles, or non-host nursery
stock interstate, and in which Phytophthora ramorum has been
detected since March 31, 2011, must meet the following
requirements. Any such nurseries in quarantined areas that do
not meet the following requirements are prohibited from moving
regulated articles and associated articles interstate. Any such
nurseries in quarantined areas that do not meet the following
requirements or those in paragraph (b) of this section are
prohibited from moving non-host nursery stock interstate.

(i) Inspections

The nursery must be inspected at least twice annually for
symptoms of Phytophthora ramorum infestation by an
inspector. The inspection will focus on regulated plants and
other potential sources of Phytophthora ramorum inoculum.

(ii) Sampling

Samples must be taken from host plants, soil, standing water,
irrigation, growing media, and any other articles
determined by the inspector to be possible sources of
Phytophthora ramorum inoculum. The number of samples
taken may vary depending on the possible sources of inoculum
identified at the nursery, as well as the number of host articles
in the nursery.

(iii) Testing

Samples must be labeled and sent for testing to a laboratory
approved by APHIS and must be tested using a test method
approved by APHIS in accordance with §301.92-12.

(iv) Negative Results; Certification

If all samples tested in accordance with this section and
§301.92-12 return negative results for Phytophthora ramorum,
an inspector may certify that the nursery is free of
Phytophthora ramorum at the time of the inspection. If the
nursery is inspected and determined by an inspector to be free of
Phytophthora ramorum inoculum each time it is inspected for
3 consecutive years, the nursery will thereafter be inspected in
accordance with paragraph (a)(1) of this section.

(v) Positive Results

If any samples tested in accordance with this section and
§301.92-12 return positive results for Phytophthora ramorum,
the nursery may ship lots of regulated, restricted, and
associated articles interstate pursuant to §301.92-5(b) only if
the lot is determined to be free from Phytophthora ramorum
inoculum. The method for this determination will be specified in
the nursery’s compliance agreement with APHIS.

(b) Nurseries in Quarantined Areas Shipping Non-Host
Nursery Stock Interstate

Nurseries located in quarantined areas and that move non-host
nursery stock interstate must meet the requirements of this
paragraph or the requirements of paragraph (a) of this section.
If such nurseries contain any regulated or restricted articles,
the nursery must meet the requirements of paragraph (a) of
this section. This paragraph (b) only applies if there are no
regulated or associated articles or nursery stock at the nursery.
Nurseries that do not meet the requirements of paragraph (a)
of this section or this paragraph (b) are prohibited from moving
non-host nursery stock interstate.

(1) Annual Visual Inspection

The nursery must be visually inspected annually for symptoms
of Phytophthora ramorum. Inspections and determinations of
freedom from evidence of Phytophthora ramorum infestation
must occur at the time when the best expression of symptoms
is anticipated.

(2) Sampling

Phytophthora ramorum upon inspection will be sampled and
tested in accordance with §301.92-12. If symptomatic plants
are found upon inspection, the following plants must be
withheld from interstate shipment until testing is completed
and the nursery is found free of evidence of Phytophthora ramorum
in accordance with this paragraph (b) and §301.92-12: All
symptomatic plants, any plants located in the same lot as the
suspect plant, and any plants located within 2 meters of this lot
of plants.

(3) Certification

If all plant samples tested in accordance with this section and
§301.92-12 return negative results for Phytophthora ramorum,
or if an inspector at the nursery determines that plants in a
nursery exhibit no signs of infection with Phytophthora
ramorum, the inspector may certify that the nursery free of
evidence of Phytophthora ramorum infestation at the time of
inspection. Certification is valid for 1 year and must be
renewed each year to continue shipping plants interstate.

(c) Regulated Establishments Shipping Regulated,
Restricted, or Associated Articles of Interstate

(1) Inspections

To meet the conditions of §301.92-5(b), the regulated
establishment must be inspected at least twice annually for
symptoms of Phytophthora ramorum infestation by an
inspector. The inspection will focus on regulated plants and
other potential sources of Phytophthora ramorum inoculum.

(2) Sampling

Samples must be taken from host plants, soil, standing water,
irrigation, growing media, and any other articles
determined by the inspector to be possible sources of
Phytophthora ramorum inoculum. The number of samples
taken may vary depending on the possible sources of inoculum
identified at the nursery, as well as the number of host articles
in the nursery.

(3) Testing

Samples must be labeled and sent for testing to a laboratory
approved by APHIS and must be tested using a test method
approved by APHIS in accordance with §301.92-12.

(4) Negative Results; Certification
If all samples tested in accordance with this section and §301.92-12 return negative results for *Phytophthora ramorum*, an inspector may certify that the nursery is free of *Phytophthora ramorum* at the time of the inspection. For purposes of §301.92-5(b), regulated, restricted, and associated articles at a certified nursery are considered free from *Phytophthora ramorum* until the time of the next inspection.

(5) Positive Results

If any samples tested in accordance with this section and §301.92-12 return positive results for *Phytophthora ramorum*, the nursery may ship lots of regulated, restricted, and associated articles interstate pursuant to §301.92-5(b) only if the lot is determined to be free from *Phytophthora ramorum* inoculum. The method for this determination will be specified in the nursery's compliance agreement with APHIS.

(Approved by the Office of Management and Budget under control number 0579-0310)

[84 FR 16194, Apr. 18, 2019]

Sec. 301.92-12 Testing Protocols

Samples must be analyzed using a methodology approved by APHIS at a laboratory approved by APHIS. The following methodology is approved by APHIS:

(a) Optional ELISA Prescreening

An APHIS-approved ELISA may be used to prescreen samples to determine the presence of *Phytophthora* spp.

(1) Negative Prescreening Results

If all samples from a single nursery are found to be negative through APHIS-approved ELISA prescreening, no further testing is required. The nursery may be considered free of evidence of *Phytophthora ramorum*, and plants in the nursery are eligible for interstate movement under certificate in accordance with §301.92-5.

(2) Positive Prescreening Results

If ELISA prescreening reveals the presence of *Phytophthora* spp. in any plants, each sample that returns positive ELISA results must be tested as provided in paragraph (b) of this section.

(b) Mandatory Testing Procedures

If ELISA prescreening is not performed, or if results of ELISA prescreening are positive for *Phytophthora* spp. in any sample, the sample must be analyzed using an APHIS-approved test. Samples will be considered positive for *Phytophthora ramorum* based on positive results of any approved test. Positive PCR or other molecular tests do not require confirmatory culture tests, nor do positive culture tests require confirmatory PCR or other molecular tests; however, if culture tests return other than positive results, an APHIS-approved PCR or other molecular test must be conducted, as provided in paragraph (b)(1) of this section.

(1) PCR or other molecular tests

(i) Negative Results

If the results of PCR or other molecular tests are negative for all samples in a nursery, no further testing is required. The nursery may be considered free of evidence of *Phytophthora ramorum* and plants in the nursery are eligible for interstate movement under certificate in accordance with §301.92-5.

(ii) Positive Results

If any samples tested using PCR or other molecular tests return positive results for *Phytophthora ramorum*, the nursery from which they originate is prohibited from moving plants interstate. The nursery will be eligible to ship certain plants interstate when an inspector determines that those plants are free of evidence of *Phytophthora ramorum*.

(2) Culture Test

(i) Negative Results

If the results of culture tests are other than positive for any samples taken from a single nursery, plants in the nursery must continue to be withheld from shipment in accordance with §301.92-11 and each plant sample must be tested again using a PCR or other molecular test, as described in this section.

(ii) Positive Results

If any culture tests return positive results for *Phytophthora ramorum*, the nursery from which they originate is prohibited from moving plants interstate as directed by an inspector. The nursery will be eligible to ship certain plants interstate when an inspector determines that those plants are free of evidence of *Phytophthora ramorum*.

(c) Other Test Methods

Other test methods may be acceptable if approved by APHIS.

[72 FR 8597, Feb. 27, 2007, as amended at 84 FR 16195, Apr. 18, 2019]