

### 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.<sup>1</sup>

<sup>1</sup>Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated 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.

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

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

**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, corms, or rhizomes;<sup>2</sup> 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.

<sup>2</sup>Bulbs, tubers, corms, 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.

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

## **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<sup>3</sup> located in a quarantined area and that are proven host plant taxa listed in paragraph (d) of this section.

<sup>3</sup>Bark chips or mulch of species listed in paragraph (d) of this section and that are marked with an asterisk (\*) are not restricted articles.

(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,<sup>4</sup> wreaths, garlands, and greenery of proven host plant taxa listed in paragraph (d) of this section.

<sup>4</sup>Firewood, logs, and lumber of species listed in paragraph (d) of this section and that are marked with an asterisk (\*) are not regulated articles.

(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

- \**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
- Fagus sylvatica* European beech
- \**Frangula californica* (≡*Rhamnus californica*) California coffeeberry
- \**Frangula purshiana* (≡*Rhamnus purshiana*) Cascara
- Fraxinus excelsior* European ash
- \**Gaultheria procumbens*, Eastern teaberry
- \**Griselinia littoralis* Griselinia
- \**Hamamelis virginiana* Witch hazel
- \**Heteromeles arbutifolia* Toyon
- \**Kalmia* spp. Kalmia—includes all species, hybrids, and cultivars
- \**Laurus nobilis* Bay laurel
- Lithocarpus densiflorus* Tanoak
- \**Lonicera hispidula* 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—includes all species, hybrids, and cultivars
- \**Pseudotsuga menziesii* var. *menziesii* and all nursery-grown *P. 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 kelloggii* 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
- \**Trientalis 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-leaved 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  
*Molindendron 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 T38S 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, or in 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<sup>5</sup> only in accordance with this subpart.

<sup>5</sup>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<sup>6</sup> only in accordance with this section.

<sup>6</sup>See 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.<sup>7</sup>

<sup>7</sup>To 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<sup>8</sup> may issue a certificate for the interstate movement of regulated articles, associated articles, or non-host nursery stock<sup>9</sup> from a quarantined area if the inspector determines that:

<sup>8</sup>Services 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/>.

<sup>9</sup>Paragraph (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;<sup>10</sup> or

<sup>10</sup>Firewood, 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 duff 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* infestation, except that certified nurseries which receive articles from a non-certified nursery in a quarantined or regulated area may continue to ship other plants interstate, provided that the uncertified plants are safeguarded, segregated, and withheld from interstate movement until the plants are inspected and tested and found free of evidence of *Phytophthora ramorum*.

(v) The regulated or associated article or non-host nursery stock 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)<sup>11</sup> to prevent the spread of *Phytophthora ramorum*; and

<sup>11</sup>Sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754) provide 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.

(vi) The regulated or associated article or non-host nursery stock is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated or associated article.

(2) [Reserved]

#### **(b) Movements from Regulated Establishments**

An inspector may issue a certificate for the movement of regulated, restricted, and/or associated articles from a regulated establishment if the inspector determines that:

(1) The nursery has entered into a compliance agreement APHIS in accordance with §301.92-6 and is abiding by all terms and conditions of that agreement; and

(2) The nursery has been inspected in accordance with §301.92-11(c); and

(3) The articles to be shipped interstate are free from *Phytophthora ramorum* inoculum; and

(4) The movement of the articles is not subject to additional restriction under section 414 of the Plant Protection Act (7 U.S.C. 7714) or other Federal domestic plant quarantines and regulations.

(c) Certificates issued under paragraphs (a) and (b) of this section may be issued by any person engaged in the business of growing, processing, handling, or moving regulated or associated articles or nursery stock provided such person has entered into and is operating under a compliance agreement in accordance with §301.92-6. Any such person may execute and issue a certificate for the interstate movement of regulated or associated articles or nursery stock if an inspector has previously made the determination that the article is eligible for a certificate in accordance with any applicable section of this subpart.

(d) Any certificate 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 has not complied with all conditions in this subpart for the use of the certificate. 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 has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate 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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#### **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.<sup>12</sup>

<sup>12</sup>Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 160, Riverdale, MD 20737-1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories. Forms are also available on the Internet at <http://www.aphis.usda.gov/ppq/isprm/pramorom/resources.html>.

(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, in writing, 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.

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

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

#### **Sec. 301.92-7 Availability of Inspectors; Assembly for Inspection**

(a) Any person (other than a person authorized to issue certificates under §301.92-5(c)) who desires to move a regulated or associated article or non-host nursery stock interstate accompanied by a certificate must notify an inspector<sup>13</sup> as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired time of inspection.

<sup>13</sup>See 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.

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### **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

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, drainage water, water for irrigation, 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 is 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, drainage water, water for 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.

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[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.

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