

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 01–054–3]

RIN 0579–AB82

#### Phytophthora Ramorum; Quarantine and Regulations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the *Phytophthora ramorum* regulations to establish restrictions on the interstate movement of nursery stock from nurseries in nonquarantined areas in California, Oregon, and Washington. We are also amending the regulations to update conditions for the movement of regulated articles of nursery stock from quarantined areas, to add restrictions on the movement of decorative trees without roots from quarantined areas, as well as to restrict the interstate movement of all other nursery stock from nurseries in quarantined areas. We are also updating the list of plants regulated because of *P. ramorum* and the list of areas that are quarantined for *P. ramorum*, and making other miscellaneous amendments to the regulations. These actions are necessary to prevent the spread of *P. ramorum* to noninfested areas of the United States.

**DATES:** This interim rule is effective February 27, 2007. We will consider all comments that we receive on or before April 30, 2007.

**ADDRESSES:** You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down

menu, then click “Submit.” In the Docket ID column, select APHIS–2005–0102 to submit or view public comments and to view supporting and related materials available electronically. Information on using [Regulations.gov](http://Regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 01–054–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–054–3.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan Jones, National *Phytophthora ramorum* Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 734–8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under the regulations in “Subpart-Phytophthora Ramorum” (7 CFR 301.92 through 301.92–11, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) restricts the interstate movement of certain regulated and restricted articles from quarantined areas in California and Oregon to prevent the artificial spread of *Phytophthora ramorum*, the pathogen that causes the plant diseases commonly known as sudden oak death, ramorum leaf blight, and ramorum dieback.

The regulations, which were established in February 2002, quarantined 10 counties in California and part of 1 county in Oregon, and restrict the interstate movement of regulated and restricted articles from those areas. Regulated articles, which may be moved interstate from quarantined areas contingent upon the application of certain phytosanitary measures, include soil and nursery stock (except acorns and seeds), unprocessed wood and wood products (including firewood, logs, and lumber), and plant products (including wreaths, garlands, and greenery) of 14 species and 1 genus of plants. Restricted articles from quarantined areas, which are prohibited from moving interstate except under departmental permit, include bark chips, forest stock, and mulch of the same 14 species and 1 genus of plants. The regulations also include provisions for the issuance of certificates and compliance agreements, as well as provisions regarding treatments for regulated articles and inspection and sampling protocols for nurseries shipping host plants interstate.

The regulatory changes codified by this rule are consistent with an order issued by APHIS on December 21, 2004, that restricted the interstate movement of nursery stock from California, Oregon, and Washington nurseries.<sup>1</sup> The requirements established by this rule supersede the requirements of the order.

In this interim rule, we are amending the regulations to establish restrictions on the interstate movement of nursery stock from nurseries in nonquarantined counties in California, Oregon, and Washington. We are also amending the regulations to update conditions for the movement of regulated articles of nursery stock from quarantined areas, to add restrictions on the movement of decorative trees without roots from quarantined areas, as well as to restrict the interstate movement of all other nursery stock from nurseries in quarantined areas. We are also updating the list of plants regulated because of *P. ramorum* and the list of areas that are quarantined for *P. ramorum*, and making other miscellaneous amendments to the regulations. These actions are necessary to prevent the

<sup>1</sup> The emergency order can be viewed on the Internet at: <http://www.aphis.usda.gov/ppq/ispmp/pramorum/>.

spread of *P. ramorum* to noninfested areas of the United States.

### Changes to the Regulations Made by this Rule

Since 2002, *P. ramorum* has been confirmed to be established in natural areas in four additional counties in California and a small additional area in Curry County, OR, and many additional plants have been confirmed as hosts of the pathogen. In this document, we are updating the regulations to reflect these developments.

Specifically, we are adding Contra Costa, Humboldt, Lake, and San Francisco Counties in California to the list of quarantined areas and revising the description of the portion of Curry County, OR, that is a quarantined area to reflect the fact that the previously quarantined area has been expanded, and that the area remains under an eradication program. The updated list of quarantined areas appears in § 301.92–3(a)(3) in this rule.

We are also amending the regulations in § 301.92–2 that designate regulated and restricted articles to include additional taxa of *P. ramorum* hosts. The complete list of proven host taxa can be found in § 301.92–2(d) in the rule portion of this document. The proven genera, species, or hybrids added by this rule are:

- *Acer pseudoplatanus* Planetree maple
- *Adiantum aleuticum* Western maidenhair fern
- *Adiantum jordanii* California maidenhair fern
- *Aesculus hippocastanum* horse chestnut
- *Calluna vulgaris* Scotch heather
- *Camellia* spp. Camellia—all species, hybrids, and cultivars
- *Castanea sativa* Sweet chestnut
- *Fagus sylvatica* European beech
- *Frangula purshiana* (= *Rhamnus purshiana*) Cascara
- *Fraxinus excelsior* European ash
- *Griselinia littoralis* Griselinia
- *Hamamelis virginiana* Witch hazel
- *Kalmia* spp. Kalmia—all species, hybrids, and cultivars
- *Laurus nobilis* Bay laurel
- *Maianthemum racemosum* (= *Smilacina racemosa*) False Solomon's seal
- *Michelia doltsopa* Michelia
- *Parrotia persica* Persian ironwood
- *Photinia fraseri* Red tip photinia
- *Pieris* spp. Pieris—all species, hybrids, and cultivars
- *Pseudotsuga menziesii* var. *menziesii* Douglas fir and all nursery-grown *P. menziesii*
- *Quercus cerris* European turkey oak
- *Quercus chrysolepis* Canyon live oak
- *Quercus falcata* Southern red oak

- *Quercus ilex* Holm oak
- *Rosa gymnocarpa* Wood rose
- *Salix caprea* Goat willow
- *Sequoia sempervirens* Coast redwood
- *Syringa vulgaris* Lilac
- *Taxus baccata* European yew
- *Trientalis latifolia* Western starflower
- *Viburnum* spp. Viburnum—all species, hybrids, and cultivars

The plant taxa listed above are proven hosts of *P. ramorum* based upon completion, documentation, review, and acceptance of traditional Koch's postulates. Note that several updates have been made to previously listed taxa:

- Black oak is now listed as California black oak;
- The scientific name for California coffeeberry has been corrected;
- Huckleberry is now listed as evergreen huckleberry;
- Arrowwood is now listed as Bodnant viburnum;
- All nursery-grown *Quercus parvula* are now regulated;
- All species, hybrids, and cultivars of *Pieris* spp. are now regulated;
- All species, hybrids, and cultivars of *Kalmia* spp. are now regulated;
- All species, hybrids, and cultivars of *Rhododendron* spp. are now regulated; and
- The listing for *Umbellularia californica* is clarified to include other recognized common names—pepperwood and Oregon myrtle.

We are also clarifying that firewood, logs, and lumber of specific proven host plant taxa are not regulated because available research shows that *P. ramorum* infections are limited to other parts (*i.e.*, twigs, leaves, and sprouts) of those hosts. These hosts are indicated with an asterisk in revised § 301.92–2(d).

In addition to amending the lists of regulated and restricted articles, we are adding a new category of article to the regulations: Associated articles. Several plant species have been associated with *P. ramorum* after symptoms were observed on the plants and culture or polymerase chain reaction (PCR) tests of the plants returned positive results for *P. ramorum*. Traditional Koch's postulates, which will confirm or exclude them as hosts, have not yet been completed for any of these plant species, but the positive results of culture or PCR tests indicate that they present a risk of transmitting *P. ramorum*. We are, therefore, imposing restrictions on their interstate movement (discussed in detail later in this document) until the results of the application of Koch's postulates are known. At that time, we will list proven

hosts as regulated and restricted articles and remove from the list of associated articles those plant species that are not proven hosts of *P. ramorum* via application of Koch's postulates.

Associated plant taxa are listed in § 301.92–2(e); only nursery stock of these plant taxa are regulated under this rule (*i.e.*, interstate movement of unprocessed wood and wood products, and plant products, including bark chips, mulch, firewood, logs, lumber, wreaths, garlands, and greenery of associated plant taxa are not regulated).

- *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
- *Corylus cornuta* California hazelnut
- *Cornus kousa* x *Cornus capitata* Cornus Norman Haddon
- *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* x *intermedia* (*H. mollis* & *H. japonica*) Hybrid witchhazel
- *Ilex purpurea* Oriental holly
- *Leucothoe axillaris* Fetter-bush, dog hobble
- *Leucothoe fontanesiana* Drooping leucothoe
- *Loropetalum chinense* Loropetalum
- *Magnolia grandiflora* Southern magnolia
- *Magnolia stellata* Star magnolia
- *Magnolia* x *loebneri* Loebner magnolia
- *Magnolia* x *soulangeana* Saucer magnolia
- *Manglietia insignis* Red lotus tree
- *Michelia maudiae* Michelia
- *Michelia wilsonii* Michelia
- *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) hybrid roses 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 x media* Yew
- *Torreya californica* California nutmeg
- *Toxicodendron diversilobum* Poison oak
- *Vancouveria planipetala* Redwood ivy

#### Nurseries Located Outside Quarantined Areas

A primary purpose of this rule is to address the discovery of *P. ramorum* in nurseries in California, Oregon, and Washington that are outside quarantined areas. Nurseries outside the quarantined area were not previously covered by the regulations. While *P. ramorum* is present and in some cases widespread in the natural environment in the quarantined areas of California and Oregon, the detections of *P. ramorum* in the nonquarantined areas of California and Oregon and in the State of Washington have been limited to commercially produced nursery plants. These nurseries are a proven source of *P. ramorum* moved in the interstate trade of nursery stock, therefore, we are regulating the interstate movement of nursery stock from nurseries in nonquarantined areas in California, Oregon, and Washington (referred to elsewhere in this document and in the amended regulations as regulated areas<sup>2</sup>) in order to prevent the spread of

<sup>2</sup>Note the distinction between regulated areas and quarantined areas. Quarantined areas include the 14 counties in California and a portion of 1 county in Oregon listed in § 301.92-3(a)(3). Regulated areas include all remaining areas of California and Oregon, and the entire State of Washington.

*P. ramorum* to noninfested areas of the United States. As stated in the previous section, we are not regulating the interstate movement of any other restricted or regulated articles from regulated areas because positive finds in regulated areas have been limited to nursery stock.

Specifically, any nursery located in a regulated area that contains regulated articles of nursery stock or associated articles is prohibited from moving nursery stock interstate until certain conditions are met. In some cases, nurseries may also be prohibited from shipping non-host nursery stock<sup>3</sup> until the same or similar conditions are met. These conditions, which are contained in § 301.92-11 of the regulations, are described below.

#### Requirements for Moving Regulated Articles of Nursery Stock and Associated Articles Interstate From Regulated Areas

Paragraph (c) of § 301.92-11 pertains to nurseries located in regulated areas that ship regulated articles of nursery stock or associated articles interstate. Under paragraph (c), such nurseries must be inspected for symptoms of *P. ramorum* by an APHIS, State, or county inspector.<sup>4</sup> Inspection will focus on, but not be limited to, regulated articles of nursery stock and associated articles.

Samples must be taken from all symptomatic plants. If fewer than 40 symptomatic plants are present, each symptomatic plant must be sampled and additional samples must be taken from asymptomatic plants so that the minimum number of plants sampled totals 40. If no symptomatic plants are present, 40 asymptomatic plants must be sampled. 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.<sup>5</sup> If the samples are collected from asymptomatic plants, the samples 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 (typically within 30-90 days of bud break) and must take nursery fungicide programs into consideration to maximize the opportunity to observe

<sup>3</sup>Non-host nursery stock is defined as any taxa of nursery stock not listed in § 301.92-2 as a regulated or associated article.

<sup>4</sup>Persons operating under compliance agreements in accordance with § 301.92-6 are eligible to issue certificates for the interstate movement of regulated and associated articles, but only APHIS, State, and county inspectors are authorized to conduct nursery inspections required by the regulations.

<sup>5</sup>"Lot" is defined as a contiguous block of plants of the same species or cultivar, of the same container size and from the same source, if known.

symptoms. We recommend that inspections be performed 2 to 9 weeks after any application of fungicides that are efficacious for *Phytophthora* spp. or oomycetes, (depending on the type of fungicide used and the plant treated), and prior to any subsequent applications of such fungicides. Nursery owners must also keep records of fungicide applications for 2 years and must make them available to inspectors upon request.

#### Annual Certification and Recordkeeping

All plant samples must be tested in accordance with § 301.92-12. If samples return negative results for *P. ramorum*, an inspector may certify that the nursery is free of evidence of *Phytophthora ramorum* infestation at the time the plants were inspected. Nurseries in a regulated area must have current and valid certification to ship regulated articles of nursery stock and associated articles interstate. If annual certification expires prior to reinspection, all plants in the nursery are prohibited interstate movement until the nursery is inspected, tested, and re-certified in accordance with the regulations.

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. This recordkeeping will help to facilitate tracebacks and traceforwards in the event that articles infected with *P. ramorum* are discovered upon inspection.

#### Requirements for Moving Non-Host Nursery Stock Interstate From Regulated Areas

Paragraph (d) of § 301.92-11 pertains to nurseries in regulated areas that contain only non-host nursery stock. If a nursery located in a regulated area moves non-host nursery stock interstate but the nursery contains regulated articles of nursery stock or associated articles, the nursery must meet the requirements of § 301.92-11(c), which are described above, even if the nursery only ships non-host nursery stock interstate. Alternately, under paragraph (d), if there are no regulated or associated articles in the nursery, a nursery in a regulated area may ship non-host nursery stock interstate if the following conditions are met:

- The nursery must be visually inspected annually and found free of symptoms of *P. ramorum* at the time

when the best expression of symptoms is anticipated (typically within 30–90 days of bud break).

- If symptomatic plants are found upon inspection, all such plants must be tested, and the following plants must be withheld from interstate shipment until testing is completed and the nursery is found free of evidence of *P. ramorum* by an inspector: All symptomatic plants, any plants located in the same lot as the symptomatic plant, and any plants located within 2 meters of the affected lot(s) of plants.

- If no symptomatic plants are found, an inspector may certify that the nursery is free of evidence of *P. ramorum*, and non-host nursery stock will be eligible for interstate movement. Note that no certificate is required for non-host plants moving interstate in accordance with § 301.92–11(d).

The States of California, Oregon, and Washington, and local governments cooperate with APHIS in enforcing the requirements of this rule. The States have agreed to maintain on the Internet a current list of nurseries that have been certified as free of evidence of *P. ramorum* infestation in accordance with this rule. Links to the States' lists can be found at <http://www.aphis.usda.gov/ppq/ispm/pramorom/resources.html>.

*Sunset Clause*

In the December 2004 Federal Order, the provisions described above pertaining to nurseries located in regulated areas and the interstate movement of nursery stock from regulated areas were scheduled to expire three years from the effective date, unless APHIS issued another rule before that time to extend or revise that aspect of the *P. ramorum* regulatory program. That expiration date only pertained to regulated areas in California, Oregon, and Washington that are outside quarantined areas. We have decided that the sunset clause included in the Federal Order is no longer necessary or appropriate, therefore we are not including it in this rule and are continuing the provisions described above pertaining to nurseries located in regulated areas and the interstate movement of nursery stock from regulated areas until further notice.

*Additional Restrictions on the Movement of Associated Articles and Non-Host Nursery Stock From Quarantined Areas*

This rule also restricts the interstate movement of associated articles<sup>6</sup> and non-host nursery stock from quarantined areas. Associated articles must meet the same conditions for interstate movement from a quarantined

area that apply to regulated articles of nursery stock; those conditions can be found in revised § 301.92–11(a). Non-host nursery stock must typically meet the same conditions for interstate movement from a quarantined area that apply to regulated articles of nursery stock, but if a nursery in a quarantined area contains no regulated articles of nursery stock or associated articles, non-host nursery stock may be moved interstate from that nursery provided the nursery is inspected and found free of evidence of *P. ramorum* in accordance with revised § 301.92–11(b), which contains essentially the same inspection and sampling protocol described above under the heading “Requirements for Moving Non-Host Nursery Stock Interstate from Regulated Areas.” Note that 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).

Most revisions made to the regulations by this rule pertain to inspection and sampling protocols for nursery stock moving interstate from California, Oregon, and Washington. In order to eliminate confusion over what provisions apply in a given situation, we have prepared the following table.

Type(s) of plants in the nursery	Type(s) of plants shipped interstate	Inspection and certification protocol	
		Origin: Quarantined areas	Origin: Regulated areas
Regulated articles only .....	None .....	Not regulated .....	Not regulated.
Regulated articles only .....	Regulated articles .....	§ 301.92–11(a) .....	§ 301.92–11(c).
Associated articles only .....	None .....	Not Regulated .....	Not Regulated.
Associated articles only .....	Associated articles .....	§ 301.92–11(a) .....	§ 301.92–11(c).
Regulated and associated articles only .....	Regulated or associated articles, or both .....	§ 301.92–11(a) .....	§ 301.92–11(c).
Regulated and associated articles and non-hosts.	None .....	Not regulated .....	Not regulated.
Regulated and associated articles and non-hosts.	Regulated or associated articles, or both .....	§ 301.92–11(a) .....	§ 301.92–11(c).
Regulated and associated articles and non-hosts.	Non-hosts only .....	§ 301.92–11(a) .....	§ 301.92–11(c).
Non-hosts only .....	None .....	Not regulated .....	Not regulated.
Non-hosts only .....	Non-hosts .....	§ 301.92–11(b) <sup>1</sup> .....	§ 301.92–11(d).
Decorative trees without roots (e.g., Christmas trees).	Proven host plant taxa .....	§ 301.92–11(a) .....	Not regulated.
Decorative trees without roots (e.g., Christmas trees).	Associated plant taxa .....	Not regulated .....	Not regulated.

<sup>1</sup> Under § 301.92–4, non-host nursery stock from a nursery in a quarantined area that contains no regulated or associated articles does not require a certificate for interstate movement, provided that the plants are moved bare-root; if soil or growing media is attached to non-host nursery stock, to be eligible for interstate movement, the soil or growing media must be certified in accordance with § 301.92–5(a)(1)(iii).

This rule also amends certain existing provisions pertaining to inspection and testing of nurseries in quarantined areas. Prior to the effective date of this interim

rule, the inspection and sampling protocol contained in § 301.92–11 required nurseries that ship regulated articles of nursery stock interstate to be

inspected and tested annually for *P. ramorum*, and each shipment intended for interstate movement to be inspected for symptoms of *P. ramorum*, and if

<sup>6</sup> As described earlier in this document, associated articles include only nursery stock of plant taxa listed in § 301.92–2(e).

necessary, tested. This rule amends the text of those provisions in order to clarify them and improve their effectiveness. Specifically, in this rule:

- The provisions for inspecting nurseries are revised. We are requiring the inspections to be focused on the detection and identification of symptomatic regulated articles of nursery stock and associated articles, and are requiring that all symptomatic plants be sampled and tested. We believe inspecting the entire nursery and focusing on all proven host nursery stock and associated plant taxa will best enable us to determine if *P. ramorum* is present in the nursery being inspected.

- The testing protocol is specified. The regulations in effect prior to this rule simply required samples to be sent to an APHIS-approved laboratory for testing. This rule requires samples to be tested and evaluated using an APHIS-approved method at an APHIS-approved laboratory in order to ensure that the tests produce accurate and consistent results. This rule also describes the only currently approved test protocol. The protocol is described in detail later in this document under the heading "Testing."

- We are clarifying that nurseries in quarantined areas must have a current and valid annual certification of freedom from evidence of *P. ramorum* in order to submit individual shipments of nursery stock for inspection.

- We are specifying conditions under which nurseries in quarantined and regulated areas may continue to move articles interstate if the nursery receives articles from an uncertified nursery in a quarantined or regulated area. These conditions are located in § 301.92–5, paragraphs (a)(1)(iv)(D) and (b)(1)(ii), respectively.

#### *New Proven Hosts or Associated Plants and Effects on Regulated Nurseries*

New hosts of *P. ramorum* are being identified on a monthly, sometimes weekly, basis. As such, the regulations may not always reflect all known proven hosts and associated plant taxa. Under the regulations in § 301.92–2, an inspector may notify a person that a given product or article is subject to the regulations, even if the product or article is not specifically listed in the regulations. This might occur if the product or article (i.e. non-host nursery stock, pots, or potting tools) was associated with other products or articles that are likely infected with *P. ramorum*. In those instances, the product or article would be held until determined free from *P. ramorum* using official, APHIS-approved testing. APHIS inspectors provide notice to affected

States and stakeholders when new hosts are confirmed and associated plants are identified. Such plants and their products then become subject to the regulations. Hosts are added when official samples (samples taken by Federal, State, or county inspectors and submitted to APHIS) are confirmed to be infected with *P. ramorum*. National plant protection organizations (NPPO) of foreign countries are also recognized as credible sources for the identification of new hosts, as well as known *P. ramorum* researchers who publish their new host findings in peer reviewed journals or report their findings. When researchers report new host finds, these finds are verified either by the NPPO of the country in which the researcher resides or by APHIS.

In this rule, we clarify that the following provisions apply when APHIS informs a nursery owner that additional proven hosts or associated plants have been confirmed:

- Nurseries operating under a compliance agreement in accordance with § 301.92–6 may continue to ship plants interstate in accordance with the regulations.

- Nurseries that had not previously contained any regulated or associated articles, and that had been inspected in accordance with § 301.92–11(b)(3) and allowed to ship plants interstate without a certificate, but that contain a newly identified proven host or associated plant must cease interstate shipments of regulated and associated articles until the nursery is reinspected and found free of evidence of *P. ramorum* in accordance with § 301.92–11. Nurseries that come under regulation during winter dormancy periods and that are not able to be inspected in accordance with § 301.92–11 prior to desired shipments of non-host nursery stock may be allowed to ship non-host nursery stock interstate at the discretion of an inspector.

These provisions provide clear guidance to affected persons as to how they will be affected by additions to the lists of proven hosts and associated plant taxa.

#### *Testing*

We are also amending the regulations to clearly describe the testing protocols that must be used to determine whether plant samples taken in accordance with the regulations are infected with *P. ramorum*. These testing requirements are located in a new § 301.92–12. Under this section, samples must be analyzed using a methodology approved by APHIS at a laboratory approved by

APHIS. The process for testing and analyzing samples is described below.<sup>7</sup>

Any samples collected in accordance with the regulations may be prescreened using an APHIS-approved enzyme-linked immunosorbent assay (ELISA) to determine the presence of *Phytophthora* spp. ELISA tests are optional; however, if all samples collected from a single nursery or a single shipment are found to be negative through ELISA prescreening, no further testing of the plants sampled is required. A nursery or shipment of plants may be considered free of evidence of *P. ramorum* based on negative results of ELISA tests, and provided all other applicable requirements are met, the plants are eligible for interstate movement.<sup>8</sup>

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<sup>9</sup> test. Samples will be considered positive for *P. 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 described below. No culture test is required if an APHIS-approved PCR or other molecular test returns negative results. Plants in the nursery must be withheld from interstate movement pending negative test results in accordance with applicable provisions of § 301.92–11.

#### *PCR and Other Molecular Tests*

If the results of PCR or other molecular tests are negative for all samples from a nursery or single shipment, no further testing is required. The nursery or shipment sampled may be considered free of evidence of *P. ramorum*.

If any samples tested using the PCR protocol or another approved protocol return positive results for *P. ramorum*, the nursery from which they originate is prohibited from moving plants interstate until an inspector determines that plants intended for interstate movement are free of evidence of *P. ramorum*

<sup>7</sup>Detailed descriptions of testing and sample analysis procedures can be viewed on the Internet at <http://www.aphis.usda.gov/ppq/ispm/pramorom/>.

<sup>8</sup>Nurseries in quarantined areas require both current annual certification and certification of individual interstate shipments of regulated articles of nursery stock and associated articles.

<sup>9</sup>See footnote 7.

infection. When an inspector determines that a nursery in a regulated area is free of evidence of *P. ramorum* infestation, the nursery will be eligible to move plants interstate under certificate. Nurseries in quarantined and regulated areas that contain only non-host nursery stock are eligible to move plants interstate in accordance with § 301.92–11(b) and (d).

Similarly, when an inspector determines that a shipment of nursery stock intended for interstate movement from a nursery in a quarantined area is free of evidence of *P. ramorum* infection, and provided the nursery has current and valid annual certification in accordance with the regulations, the shipment of nursery stock is eligible for interstate movement under certificate.

#### Culture Test

If the results of culture tests are other than positive for any samples taken from a nursery or a single shipment, each plant sample that returns other than positive culture results must be tested again using an approved PCR or other molecular test, and plants from the nursery or shipment are only eligible for interstate movement if results of such tests are negative for all samples taken.

If any culture tests return positive results for *P. ramorum*, the movement of nursery stock is restricted under the same conditions described above for positive PCR and other molecular tests.

#### Restrictions on the Interstate Movement of Decorative Trees Without Roots From Quarantined Areas

We are restricting the interstate movement of decorative trees without roots (e.g., Christmas trees) of proven *P. ramorum* host taxa. Under the regulations, locations where trees are grown for sale as decorative trees without roots, and locations where decorative trees without roots are stored or distributed are considered nurseries. As such, any such location that ships trees interstate and that grows decorative trees without roots of proven *P. ramorum* host taxa is subject to the same inspection, testing, and certification requirements as any other nursery. Thus, decorative trees without

roots that are shipped interstate from quarantined areas must originate from a nursery that has current, valid annual certification of freedom from evidence of infestation by *P. ramorum* in accordance with § 301.92–11(a)(1) and individual shipments must also be inspected and certified in accordance with § 301.92–11(a)(2).

Note that locations that grow, store, or distribute decorative trees without roots that are not proven hosts of *P. ramorum* are not regulated under this rule unless the location contains proven hosts. If the nursery ships interstate and contains any proven hosts, the nursery is subject to the regulations.

The interstate movement of decorative trees without roots from regulated areas is not regulated under this rule.

#### Additional Provisions for the Interstate Movement of Wreaths, Garlands, and Greenery of Proven Host Taxa From Quarantined Areas

Prior to this rule, the regulations only allowed the movement of regulated articles of wreaths, garlands, and greenery from a quarantined area if the articles were treated in accordance with a treatment listed in 7 CFR part 305 or a treatment listed in § 301.92–10. In this rule, we are amending the regulations to allow wreaths, garlands, and greenery of proven *P. ramorum* host taxa to be moved interstate from a quarantined area if the articles originate from a nursery that has current, valid annual certification of freedom from evidence of infestation by *P. ramorum*, in accordance with § 301.92–11(a)(1), and provided that individual shipments of such articles are inspected and certified in accordance with § 301.92–11(a)(2).

#### Permits

The regulations in § 301.92–4 have provided for the interstate movement of restricted articles via departmental permit.<sup>10</sup> APHIS does issue permits for the movement of restricted articles for research purposes, but technically not via a departmental permit. Therefore,

<sup>10</sup> Permits are not required for the interstate movement of regulated or associated articles, or non-host nursery stock. A certificate issued in accordance with § 301.92–5 is required for those articles.

we are amending the regulations in § 301.92–4 to provide that we will issue permits for such movements in accordance with the requirements of 7 CFR part 330, which provides for the movement of plant pests and material that may be infected or infested with plants pests.

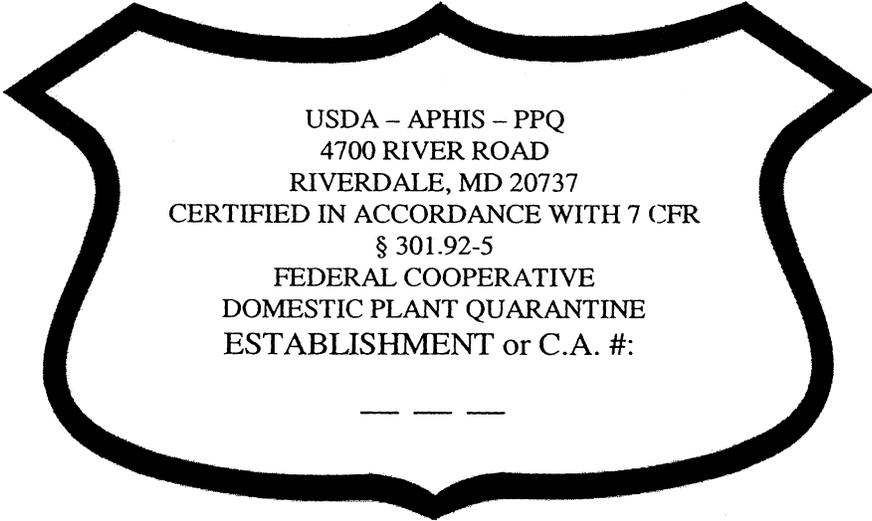
#### Miscellaneous

We are clarifying in revised § 301.92 that the interstate movement of regulated, restricted, or associated articles, or nursery stock that has been tested with a test approved by APHIS and found infected with *P. ramorum*, or that is part of a plant that was found infected with *P. ramorum*, is prohibited, unless such movement is in accordance with the plant pest regulations in 7 CFR part 330.

In conjunction with the changes described in this document, we are adding definitions for the terms *associated article*, *from*, *lot*, *non-host nursery stock*, *nursery*, and *regulated area* to § 301.92–1. The definitions for *associated article*, *lot*, *non-host nursery stock* and *regulated area* are described earlier in this document. The term *from* is defined in order to clarify when a particular nursery requires inspection. An article is considered to be “from” a specific site or location if it was grown or propagated in, stored or sold, or distributed from the site or location.

The term *nursery* is defined in order to clarify what types of businesses are subject to the regulations pertaining to the interstate movement of nursery stock. *Nursery* is defined as any location where nursery stock is grown, propagated, stored, or sold; or any location from which nursery stock is distributed. Also, as described earlier in this document, locations that grow trees for sale without roots (e.g., as Christmas trees) are considered to be nurseries for the purpose of the regulations.

In addition, we are revising the definitions of *certificate*, *forest stock*, *mulch*, *nursery stock*, and *soil* in § 301.92–1. The definition of *certificate* is revised to reflect the fact that certificates issued in accordance with the regulations may be in the form of a stamp or imprint that looks like this:



USDA – APHIS – PPQ  
4700 RIVER ROAD  
RIVERDALE, MD 20737  
CERTIFIED IN ACCORDANCE WITH 7 CFR  
§ 301.92-5  
FEDERAL COOPERATIVE  
DOMESTIC PLANT QUARANTINE  
ESTABLISHMENT or C.A. #:

— — —

The definition for *mulch* is revised to clarify that plant material meeting the definition of mulch (bark chips, wood chips, wood shavings, or sawdust, or a mixture thereof) is regulated as mulch if used as part of a growing media mixture.

The definition of *nursery stock* is revised to (1) ensure that it applies to all potential *P. ramorum* host materials, bedding plants, and other herbaceous plants, bulbs, and roots, (2) clarify that it applies to tree seedlings being used for reforestation, and (3) remove references to seeds and fruit pits, as those articles are not subject to regulation under the quarantine. In conjunction with this change, and with the addition of a definition for *nursery*, we are also revising the definition for *forest stock* to reflect that forest stock includes all flowers, trees, shrubs, vines, scions, buds, or other plants that are wild-grown, backyard-grown, or naturally occurring.

The definition for *soil* is revised to reflect the definition used by the International Plant Protection Convention glossary of phytosanitary terms:<sup>11</sup> The loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material. As a result of revising the definition of *soil*, we also need to add provisions to the regulations to ensure the regulations continue to cover growing media mixtures that were clearly regulated under the prior regulations as *soil*. As such, we are adding a definition of *growing media* to the regulations, as well as updating the regulations so that growing media is regulated in the same fashion as soil. *Growing media* is

defined as any material in which plant roots are growing or intended for that purpose.

We are revising the provisions pertaining to quarantined areas in § 301.92–3 to make it clear that APHIS will quarantine an area based on confirmed detections of *P. ramorum* in the natural environment, not based on detections in artificial environments such as nurseries.

We are also clarifying provisions throughout the regulations regarding certifications of freedom from *P. ramorum*. The regulations in effect prior to this interim rule restricted the interstate movement of regulated articles from nurseries until such a time as an inspector could determine that the nurseries are free of evidence of *P. ramorum*. This rule provides that nurseries must be free of evidence of *P. ramorum* infestation; certification of “pest freedom” can only be made if each individual plant is tested for the pathogen.

We are also updating § 301.92–7 regarding advance notice for the services of an inspector to require that a person wishing to move plants that require a certificate for interstate movement must notify the inspector as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired time of inspection. This section had previously stated that we require 14 days’ advance notice, but we are able to respond with 48 hours’ notice.

We are updating § 301.92–10 pertaining to treatments to make it clear that soil treated for *P. ramorum* must be heated such that the temperature at the center of the load reaches at least 180 °F for 30 minutes. We are also clarifying that the hot water dip for wreaths,

garlands, and greenery is applicable to all regulated articles, including newly listed ones, as well as referencing the approved treatment for bay leaves listed in 7 CFR part 305.

#### *Need for Additional Revisions to the Regulations*

The study of *P. ramorum* is constantly producing new information that allows us to better regulate the interstate movement of plant material to prevent the spread of the diseases caused by the pathogen. APHIS and the Forest Service, USDA, have been conducting annual national surveys to determine whether and where *P. ramorum* exists in other areas of the United States. If additional hosts of *P. ramorum* are identified during the course of the national survey or by other scientific research, we will add those hosts to the list of regulated and restricted articles as appropriate. Detection of *P. ramorum* on other species through PCR or culture tests could result in those species being added to the list of associated articles. Completion of Koch’s postulates would prove them as hosts.

This rule is being promulgated on an emergency basis to address specific imminent risks. We recognize that several facets of the regulations require additional revision to bring them up to date with current operational practices and the state of scientific knowledge regarding *P. ramorum*. We intend to publish another document for public comment in the future that will focus on treatments. We also intend to update the conditions for interstate movement for certain articles other than nursery stock, including wreaths and garlands, leaves, stems and branches, green waste, and other articles.

<sup>11</sup> Available at <http://www.ippc.int/>.

We will continue to review our *P. ramorum* regulatory program and evaluate the new restrictions on nurseries in regulated areas upon receipt of comments on this rule, and upon evaluation of data derived from the program so far. We will provide public notification of any changes to the regulations via a document published in the **Federal Register**.

#### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of *P. ramorum* outside quarantined areas in California and Oregon and infected nursery sites in California, Oregon, and Washington. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see DATES above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this interim rule. It provides a cost-benefit analysis as required by Executive Order 12866, as well as an initial regulatory flexibility analysis, which considers the potential economic effects of this interim rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. The full economic analysis may be viewed on the Regulations.gov Web site (see ADDRESSES at the beginning of this document for instructions for accessing Regulations.gov). You may request paper copies of the economic analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. 01-054-3 when requesting copies. The economic analysis is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading

**ADDRESSES** at the beginning of this document).

We do not currently have all of the data necessary for a comprehensive analysis of the effects of this interim rule on small entities. Therefore, APHIS welcomes public comment that would enable us to more fully consider impacts of the rule, specifically information on costs that may be incurred due to complying with the interstate movement restrictions.

#### Expected Costs of the Interim Rule

This interim rule places restrictions on the interstate movement of nursery stock from California, Oregon, and Washington. This economic analysis will focus primarily on the effects of restricting nursery stock from the regulated and quarantined areas. While there are other articles regulated besides nursery stock, such as trees without roots (i.e., Christmas trees), the economic impacts of restricting the movement of these other articles are expected to be relatively smaller, and therefore are not a primary focus of the analysis.<sup>12</sup>

Those nurseries wishing to engage in interstate movement of nursery stock of proven and associated hosts of *P. ramorum* may only do so if it is accompanied by a certificate issued under an APHIS *Phytophthora ramorum* compliance agreement. Nurseries located in the quarantined area that are planning to ship host articles must undergo annual inspection, as well as inspection of individual shipments, prior to being certified to ship interstate. In order to ship non-host articles interstate, nurseries in the quarantined area must follow these same protocols, with the exception that nurseries containing no proven or associated host stock may receive certification to ship after undergoing annual inspection and will not be required to inspect individual shipments. On the other hand, nurseries in the regulated area that intend to ship nursery stock of proven or associated host taxa must undergo annual inspection to be certified to ship interstate. Only those nurseries that contain only non-host nursery stock can ship without certification, provided that they have undergone annual inspection. In order to enter into a compliance agreement and obtain certification to ship regulated articles, the nursery must take certain steps, such as undergoing annual

inspection and sampling of nursery stock, and testing plant samples at a USDA approved laboratory using federally approved laboratory protocols. Thus, there are two major components to certification: inspection and testing. It is important to note that the costs associated with entering into and maintaining a compliance agreement were covered by regulating agencies, specifically USDA and State departments of agriculture in 2005 and 2006. Funding for entering into and maintaining a compliance agreement in 2007 will transition and have to be borne by the entity under the compliance agreement for any amount not covered by available Federal or State funding. APHIS will provide affected entities with advance notice and guidance before we change the way we fund—including the possibility of requiring additional funding support from program participants and other cooperators—the specific activities associated with entering into and maintaining compliance agreements.

#### Inspection

Nurseries will be required to undergo annual inspection and be certified free of *P. ramorum*. This inspection and sampling will be provided by Federal and State inspectors, the cost of which was covered by USDA in 2005 and 2006, when conducted during normal business hours. Individual nursery operators are responsible for all costs and charges arising from inspection and other services provided outside normal business hours. In addition, for those nurseries that must undergo inspection and sampling of individual shipments, the costs of those services were also covered by USDA in 2005 and 2006. Likewise, Federal funds are expected to cover the costs for these inspection and sampling activities in 2007, to the extent that funds are available. APHIS will provide affected entities with advance notice and guidance before we change the way we fund those inspection and sampling activities.

#### Testing

The interim rule will further amend the regulations by specifically describing the testing protocols that must be used to determine whether plant samples are infected with *P. ramorum*. While samples are being tested, nurseries must withhold shipments from movement until negative results are returned. The actual cost impact on nurseries will vary, depending on the classification of article shipped and/or the type of testing performed. Nurseries may choose to prescreen samples by using

<sup>12</sup> The only species of Christmas tree that is affected by the rule is the Douglas fir, which reportedly is not a high volume product in the quarantined area. As such, we do not believe this particular aspect of the interim rule will cause significant impact on affected nurseries.

the optional APHIS-approved ELISA test to determine the presence of *Phytophthora* spp. If all samples collected from a single nursery or a single shipment are found to be negative through ELISA prescreening, no further testing of the plants sampled is required. If ELISA prescreening is not performed, or if results of the prescreening are positive for *Phytophthora* spp. in any sample, the sample must be analyzed using APHIS-approved testing such as PCR or other molecular tests, or a culture test. Samples will be considered positive for *P. ramorum* based on positive results of any approved test. If the results of PCR assay or other molecular tests are negative for all samples in a nursery, no further testing is required, and the nursery may be considered free of *P. ramorum*. In the case of any of the samples tested using PCR or other molecular tests, or a culture test, returning a positive result for *P. ramorum*, the nursery from which they originated is prohibited from moving plants interstate until an inspector determines that those plants are free of evidence of *P. ramorum*. In the event a nursery opts to test samples using a culture test, and the results are negative for *P. ramorum*, it is important to note that these samples must continue to be withheld from shipment until they return a negative result to a PCR or other molecular test. General estimates approximate the cost of ELISA, PCR and other molecular tests to be \$15 per test, whereas the approximate cost of a culture test is about \$10 per test.<sup>13</sup> This testing has been provided by Federal and State inspectors, the cost of which was covered by USDA or States in 2005 and 2006. Funding for testing activities in 2007 and beyond will transition to the nursery for costs not covered by any available Federal or State funding. APHIS will provide affected entities with advance notice and guidance before we change the way we fund those testing activities.

The *P. ramorum* program was fully funded for the fiscal year (FY) 2006, with the total available funds being \$8.353 million.<sup>14</sup> In FY 2006, we estimated spending approximately \$6.35 million in *P. ramorum* activities in California, Washington, and Oregon, of

<sup>13</sup> Source: Phillip Berger, National Science Program Leader—Molecular Diagnostics & Biotechnology, USDA APHIS PPQ (Raleigh, NC). NOTE: These estimates would cover the cost of materials and supplies, and some but possibly not all labor. These estimates do not consider the cost of instrumentation, service contracts, maintenance, etc.

<sup>14</sup> Source: Jonathan Jones, APHIS/PPQ, and Rick Lewis, APHIS/PPD.

which approximately \$4.15 million was allocated to inspection, sampling, testing, and certification activities. The remainder of the spending was allocated to national survey, trace forwards and trace backs, eradication, and enforcement activities of the regulation.

In addition to the monetary costs of compliance agreements and nursery and shipment certifications borne by the public sector, there are also indirect costs to the nurseries as a result of regulation. For example, there could be potential costs associated with lost sales while withholding plants for shipment during inspection and testing. Further, the presence of *P. ramorum*, and the accompanying movement restrictions where there were none previously could result in a potential loss in consumer confidence for nursery stock from the regulated area. These potential indirect losses are not quantifiable; however, we examine them to the extent possible in the sections that follow. In researching the possible impacts of the rule on nurseries, we solicited comments from State departments of agriculture, as well as industry associations. In some cases, no information was provided, either because it was unavailable and/or unidentifiable, or because it was considered to be confidential business information. We welcome public comment on the impacts of the interim rule.

#### California

As of July 2005, there were 861 nurseries in California that have been inspected and determined to be free of *P. ramorum*, and were authorized to ship non-host nursery stock interstate without a certificate. In addition, there were 81 locations in the quarantined area authorized to ship host material under *P. ramorum* compliance agreements, and 323 locations in the regulated area operating under *P. ramorum* compliance agreements.<sup>15</sup> As mentioned earlier, the majority of direct enforcement costs of the regulation associated with entering into compliance agreements, such as inspection, sampling, and testing, have been paid for by regulatory agencies. In 2005, \$4.2 million in regulatory funds were allocated to *P. ramorum* quarantine and survey activities in California. In 2006, this amount increased to \$5.4 million. It is important to note that these allocated funds do not include costs associated with trace back, trace forward, or eradication activities

<sup>15</sup> Source: California Department of Food & Agriculture, Quarantine and Survey Information ([http://www.cdffa.ca.gov/phpps/pe/sod\\_survey/](http://www.cdffa.ca.gov/phpps/pe/sod_survey/)).

in the event of an infestation of nurseries as a result of interstate trade.<sup>16</sup>

In addition, there are other costs of the regulation, many of which are indirect and more difficult to quantify. For example, in the case of a nursery in Azusa County found to be infected with *P. ramorum*, there were both direct and indirect losses. Direct losses due to plants being destroyed at cost, not at the wholesale value, as well as customer credits and other expenses totaled over \$4.5 million for the 2004/2005 year. Other costs, such as lost sales while plants were on hold and possible loss of customer base due to loss in confidence, could not be quantified.<sup>17</sup>

Other potential indirect costs were examined by a report on the economic impact of *P. ramorum* on the Californian nursery sector, prepared by researchers at the University of California, Berkeley.<sup>18</sup> In their study they found that many nurseries are investing in preventative pest management actions to reduce the risk of *P. ramorum* infection, which in turn increased their production expenses. These nurseries invested in preventative pest management by changing their inventory and labor practices and by applying fungicide to limit potential exposure to *P. ramorum*. The additional investments were estimated to account for less than 3 percent of all production expenses for the average nursery, suggesting that the average nursery has not been significantly impacted as a result of *P. ramorum*. However, there was evidence presented to suggest that the implications of the presence of *P. ramorum* are not borne equally among large and small entities. Small nurseries with a high percentage of host products face cost constraints which make it difficult to make the optimal investment in inventory management, thereby placing the smaller nurseries at greater risk of *P. ramorum* infestation. It is important to note that this impact is not a direct result of the regulation, but rather is a voluntary investment in preventative management to lessen the risk of *P. ramorum* infestation. Though this study was prepared with respect to nurseries in California, we can assume nurseries in Oregon and Washington are operating in much the same way, and

<sup>16</sup> Source: Jonathan Jones, APHIS/PPQ.

<sup>17</sup> Source: John Keller, Research Director for Monrovia Growers, as reported by Carolyn Pizzo, Operations Support Officer, California Plant Health Director's Office.

<sup>18</sup> "The Economic Impact of Sudden Oak Death on the California Nursery Sector" by Alix Peterson Zwane and J. Keith Gilles March 2005. Unpublished report prepared for the USDA-Forest Service, Pacific Southwest Research Station. NOTE: All information in this paragraph is adapted from this study.

face similar costs of *P. ramorum* regulation.

Officials at the California Department of Food and Agriculture (CDFA) confirmed that while no concrete figures are available, they have received reports from several nurseries of having lost revenue while holding plants during inspection, sampling, and testing. In addition, some in the industry feel the emergency Federal order did not adequately protect against further sanctions of nursery products from California by other nations.

#### Oregon<sup>19</sup>

The quarantined area of Oregon, an 11.5 square mile area as described in the regulations, contains no nurseries, and thus there are no entities subject to the movement restrictions on plants within the quarantined area. In the regulated area, there are 778 nurseries that contain host or associated plant material under compliance agreement to ship interstate. Additionally, there are 1,039 nurseries only growing, distributing, and storing non-host plant material under compliance agreement to ship non-host nursery stock interstate. The Oregon Department of Agriculture (ODA) estimates the total cost of certifying nurseries within the regulated area with proven and associated host nursery stock to be \$307,820 per year. For nurseries containing only non-host nursery stock located within the regulated area, the total cost of annual inspection is estimated at \$122,936. Neither of these estimates includes any potential indirect costs. In 2005, over \$200,000 in regulatory funds was allocated to *P. ramorum* survey and quarantine activities in Oregon. In 2006, this amount increased to over \$549,000. It is important to note that these allocated funds do not include costs associated with trace back, trace forward, or eradication activities in the event of an infestation of nurseries as a result of interstate trade.<sup>20</sup>

Further, there may be indirect costs of the regulation incurred by nurseries. For example, ODA has received reports that some out-of-State customers are purchasing nursery stock from other States rather than Oregon because of the negative publicity related to finding a limited number of infested nurseries through inspection. While this regulation only concerns restricting interstate movement of nursery stock, it is interesting to note the anecdotal evidence of potential impacts of

quarantining portions of Curry County for *P. ramorum*. For instance, Canada has quarantined the entire county, effectively prohibiting host plant genera and soil. ODA reports that Easter lily bulb growers have been particularly impacted, as it is impossible to remove all the soil from their bulbs. As a result, shipments of this high-value commodity to Canada have essentially been shut down. As a point of interest, 99 percent of Easter lily bulbs produced in the United States are grown in Curry County, OR, and Del Norte County, CA. Again, it is important to note that Canada's decision to quarantine all of Curry County is not an impact or result of this interim rule.

#### Washington<sup>21</sup>

As of August 11, 2005, there were 131 nurseries in Washington growing or selling *P. ramorum* proven or associated host plants that had been inspected, are under a compliance agreement and are authorized to ship host material interstate. In addition, there are 138 nurseries under a compliance agreement and certified to ship non-host plants interstate. Again, it is important to note that cost of nursery inspections were covered by funds allotted to the Washington State Department of Agriculture (WSDA) by USDA-APHIS in 2006, and will be in 2007, to the extent that Federal funding is available. APHIS will provide affected entities with advance notice and guidance before we change the way we fund those inspection and testing activities. Therefore, the non-Federal direct cost of implementing the regulation will be minimal. As a point of interest, WSDA provided cost information of inspecting nurseries and performing laboratory tests on plant samples. In 2004, WSDA incurred a cost of \$500 per host nursery for collecting samples and laboratory testing, in addition to an inspection fee of \$31.10 per hour, bringing the average cost to approximately \$600 per nursery. In 2005, over \$104,000 in regulatory funds was allocated to *P. ramorum* survey and regulatory activities in Washington. In 2006, this amount increased to over \$323,000. It is important to note that these allocated funds do not include costs associated with trace back, trace forward, or eradication activities in the event of an infestation of nurseries as a result of interstate trade.<sup>22</sup> Nurseries under the compliance agreement are permitted to

bring in proven and associated host stock from non-certified nurseries in Oregon or California, provided that these shipments are held separately until they have been inspected, tested, and found free of *P. ramorum*. WSDA estimates that the cost of holding the plants for inspection and testing is probably negligible, since these activities are usually done as soon as requested. WSDA officials believe the Federal response has assisted in alleviating any misconceptions regarding *P. ramorum* infestations of West Coast nursery stock. Rather than create any negative stigma, the regulations and emergency Federal order have actually worked to boost sales which had been lagging in recent years.

In summary, because USDA has been covering the cost of inspection, testing, and certification, the direct costs of the interim rule for nurseries are expected to be minimal. USDA-APHIS currently covers some of the inspection and testing charges for all nurseries under the Federal Order. There are approximately 4,000 nurseries subject to the inspection requirements under the interim rule.<sup>23</sup> Approximately \$4 million was expected to be spent in FY 2006 on inspection and testing activities in the regulated area, which translates to an average cost of \$1,000 per nursery. This cost estimate is expected to hold for FY 2007 and FY 2008, to the extent that Federal funding is available. Of course there is a possibility that the number of nurseries required to be inspected subject to the rule may increase in the event that the number of host plants increases, thereby making more nurseries subject to this part of the regulations. In any case, to the extent that Federal funding is not available, the unfunded portion of the inspection and testing activities would have to be borne by the affected entity. APHIS plans to issue guidance on the implementation of transferring the costs of inspection and testing to nurseries in the event funding becomes unavailable.

Moreover, in the event that a nursery is found infested with *P. ramorum*, there will be additional costs of labor and revenue loss associated with plant destruction, but this cost would be limited by the extent of infestation. For example, the additional labor costs to destroy one infested plant would be less than that of a nursery full of infected plants. In addition, this interim rule requires nurseries to maintain fungicide reports for at least 2 years; however, regulated entities are already required to maintain fungicide reports, and because

<sup>19</sup> Source: Gary McAninch, Program Manager of Nursery and Christmas Tree Program (Oregon Department of Agriculture).

<sup>20</sup> Source: Jonathan Jones, APHIS/PPQ.

<sup>21</sup> Source: Tom Wessels, Nursery Program Manager (Washington State Department of Agriculture), as reported by Linda Stark, State Operations Support Officer, WA (APHIS), and Jeanne McNeil, Executive Director (WSNLA).

<sup>22</sup> Source: Jonathan Jones, APHIS/PPQ.

<sup>23</sup> Source: Jonathan Jones, APHIS/PPQ.

of that fact there are minimal recordkeeping costs associated with this interim rule. All nurseries that are operating under compliance agreements must also 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 make them available to inspectors upon request. Again, labor costs and recordkeeping costs are difficult to quantify as the magnitude varies by each nursery and by the level of infestation. As such, we welcome public comment regarding estimates of these costs as a result of the interim rule.

As is evident in each State's analysis, likely effects of the rule on consumer confidence in nursery stock from the West Coast are difficult to capture as it is largely dependent on buyers' perceptions. However, in light of the public's growing awareness of *P. ramorum*'s threat to the natural environment and nurseries, we believe that failure to promulgate this interim rule and place Federal restrictions on the interstate movement of nursery stock would further lessen consumer confidence in West Coast nursery stock. Hence, we believe the interim rule will boost confidence in West Coast nursery stock rather than lessen it. We welcome public comment on this indirect cost of the rule. In our research we have discovered other impacts of the regulation. For instance, the study conducted in California suggests that, in response to *P. ramorum* regulations, some nurseries are engaging in increased pest management activities so as to avoid infestation. These additional production expenses are not a result of the interim rule. Rather, such precautionary or risk-reducing activities are a rational response to the potential regulatory costs and production value loss of infestation.

#### *Expected Benefits of the Interim Rule*

This interim rule will amend the *P. ramorum* regulations to protect against the artificial spread of *P. ramorum*. This rule will provide two chief benefits: (1) Protect the environment outside of the quarantined area from the pathogen; and (2) protect nurseries outside the regulated area from becoming infected with the pathogen, while facilitating interstate sales of regulated articles from West Coast nurseries. Benefits of the rule will accrue both to entities in the immediate regulated area as well as to the general public and private

enterprises across the nation, as this rule expands the quarantined boundary in order to contain the pathogen's spread in the natural environment and addresses the artificial spread via interstate movement restrictions.

The extensive environmental damage caused by *P. ramorum* makes its control a matter of public interest, all the more so given our incomplete understanding of the range of susceptible species. By expanding the quarantined area, we hope to confine the spread of the pathogen in the natural environment, with the goal of protecting forests and ecological areas in the regulated area and beyond. Ecological threats include a change in species composition in infested forests and therefore, in ecosystem functioning; loss of food sources for wildlife; a change in fire frequency or intensity; and decreased water quality due to an increase in exposed soil surfaces.<sup>24</sup>

We do not have an estimate of the environmental costs that would be incurred if *P. ramorum* were to become widespread regionally or nationally. Given the tens of thousands of oak trees that have died in California, it is reasonable to assume that movement of the pathogen outside of the current area of quarantine would be potentially devastating.

With respect to benefits of the rule to the nursery industry, we queried State agricultural departments in the regulated area on the benefits of the emergency Federal order which went into effect January 10, 2005. However, that data was not available at the time this analysis was completed. We welcome public comment from the greenhouse/nursery industry and others on these benefits.

In the absence of data needed to analyze commercial benefits of this interim rule, we relate expected benefits to the sales value of the West Coast nursery industry. We present a description of that industry.

The nursery stock industry ranks second in value of agricultural production in California, with cash receipts totaling \$2.44 billion in 2003.<sup>25</sup> Nursery and greenhouse production in California accounts for 11.9 percent of the State's total farm receipt value, and contributes 21.8 percent of the Nation's nursery and greenhouse products inventory.<sup>26</sup> The top five counties in

<sup>24</sup> Source: [http://nature.berkeley.edu/comtf/html/history\\_background.html](http://nature.berkeley.edu/comtf/html/history_background.html).

<sup>25</sup> NASS-CA, California Agricultural Overview. Sacramento, CA: California Agricultural Statistics Service, 2003.

<sup>26</sup> California: Leading Commodities for Cash Receipt, 2003. Washington, DC: Economic Research Service, 2005.

production are San Diego, Orange, Riverside, Monterey, and Los Angeles. Of these only one, Monterey, is located in the area quarantined for *P. ramorum*. In Oregon, the nursery and greenhouse industry is the top agricultural industry, with sales of \$844 million in 2004.<sup>27</sup> This equates to approximately 21 percent of the total value of agricultural production in Oregon. The Oregon Nursery and Greenhouse survey estimates there were 2,073 operations in 2004, with over half of those operations making less than \$20,000 per year in sales. As was mentioned previously, there are no nursery operations in the quarantined portion of Curry County. In Washington, the value of production of specialty products was approximately \$508 million in 2003. They include forest products, Christmas trees, floriculture, nursery and other horticultural products, and mushrooms. By itself, nursery and greenhouse products (including floriculture) had a total value of \$313 million in 2003.<sup>28</sup> As a whole, the greenhouse/nursery industry represents the sixth most valuable category of agricultural commodities in the United States, with over \$15 billion in cash receipts in 2003, and accounting for 7.2 percent of U.S. total agricultural value.<sup>29</sup>

The interim rule will protect against the artificial spread of *P. ramorum* in commercial nurseries both in the regulated areas as well as nationwide. We do not have estimates of how the rule will reduce the probability of such spread. However, when the emergency Federal order was issued in December 2004, the total number of confirmed positive sites from the trace forward, national, and other survey was 176 in 22 States. Since the Order went into effect, the rate of new detections in nurseries outside the regulated area has declined sharply. Based on this experience, we believe that this interim rule will continue to protect commercial nurseries outside of the regulated area from artificial spread of the pathogen, and will also support sales of regulated articles from entities in the regulated area.

In sum, there are far-reaching benefits of the rule that we are unable to assess and quantify at this time. In light of the wide-ranging environmental resources

<sup>27</sup> NASS-OR, 2004 Oregon Nursery and Greenhouse Survey. Portland, OR: National Agricultural Statistics Service—Oregon Field Office, 2004.

<sup>28</sup> NASS-WA, Washington 2004 Annual Bulletin. Olympia, WA: NASS, Washington Agricultural Statistics, 2004.

<sup>29</sup> United States: Leading Commodities for Cash Receipts, 2003. Washington, DC: Economic Research Service, 2005.

that will be protected by this rule as well as the importance of the nursery industry, nationally and in the regulated area, the benefits of preventing the artificial spread of *P. ramorum* via interstate movement restrictions far outweigh the costs of implementing and complying with the interim rule.

#### *Small Entities Potentially Affected*

The interim rule will affect all nurseries located in California, Oregon, and Washington. The Oregon Nursery and Greenhouse Survey estimates there were 2,073 operations in 2004, with over half having sales of less than \$20,000 per year. According to the 2002 Census of Agriculture, there were 4,388 operations in California, 4,291 in Oregon, and 2,211 operations in Washington engaged in greenhouse, nursery, and floriculture production.<sup>30</sup> Of the 4,388 operations in California, there are 1,228 located within the quarantined area. Again, according to the ODA, there are no nurseries located within the quarantined area of Curry County, Oregon. We believe that the majority of operations would be considered small by SBA standards. SBA size standards for operations in nursery and tree production (North American Industry Classification System (NAICS) code 111421), or floriculture production (NAICS code 111422) are \$750,000 or less in annual receipts. The SBA size standard for retail nursery and garden center operations (NAICS code 444220) is \$6 million or less in annual receipts.

#### *Alternatives*

As described in section I, subsection C, of the full economic analysis, APHIS does not believe that there are alternatives to the interim rule that would satisfactorily accomplish the goals of the regulation. Our preferred action balances the need to protect forests and nurseries outside the regulated area while facilitating the interstate movement of proven and associated host articles and non-host articles.

This proposed rule contains certain reporting and recordkeeping requirements (see "Paperwork Reduction Act" below).

#### **Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires

intergovernmental consultation with State and local elected officials. (See 7 CFR part 3015, subpart V.)

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Environmental Considerations**

The regulation of potential host plants and plant parts susceptible to *P. ramorum* has developed as the knowledge of the plant disease and the understanding of the epidemiology of the potential for spread of the causal agent increase. This interim rule is based on the best available science, and applies to plants that are both proven hosts or shown to be associated with this plant pathogen based upon positive test results. In addition, diagnostics to be used in support of these regulations have undergone a formal validation process by APHIS to ensure that regulatory actions are based upon results obtained from the most sensitive and accurate diagnostic tools available.

The purpose of this rule is to prevent the spread of the plant diseases to other parts of the United States; it is specifically designed to avoid or minimize adverse environmental impacts. The rule's expanded quarantine and movement restrictions do not pose any new environmental hazards nor any new methods not analyzed for potential risks. The expanded inspection, sampling, and testing are all requirements designed to enhance the protection of the environment.

Based upon the increased protection of the environment afforded by this interim rule and the recognition that this rule will be subject to revision as our knowledge of the disease and plant pathogen increase, there is no need for further environmental documentation at this time. As additional information becomes available, further decisions are likely and public input will be requested.

#### **Paperwork Reduction Act**

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned

control number 0579-0310 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 01-054-3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 01-054-3 and send your comments within 60 days of publication of this rule.

This interim rule restricts the interstate movement of nursery stock from nurseries in nonquarantined areas in California, Oregon, and Washington, updates conditions for the movement of regulated articles of nursery stock from quarantined areas, adds restrictions on the movement of decorative trees without roots from quarantined areas, and restricts the interstate movement of all other nursery stock from nurseries in quarantined areas. This rule also updates the list of plants regulated because of *P. ramorum* and the list of areas that are quarantined for *P. ramorum*.

Its implementation will require us to engage in certain information collection activities, in that, in certain cases, nursery stock may not be moved interstate from nurseries in quarantined or regulated areas unless they are accompanied by a certificate. A certificate may be issued by an inspector (i.e., an APHIS employee, State, or County inspector, or other person authorized by the APHIS Administrator to enforce the regulations) or by a person who has entered into a written compliance agreement with APHIS. Nursery owners must also keep records of fungicide applications for 2 years and must make them available to inspectors upon request. All nurseries that are operating under compliance agreements must also 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. We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

<sup>30</sup> USDA, 2002 Census of Agriculture, Table 51. NAICS code: 1114 (Includes farms engaged in greenhouse, nursery, and floriculture production). Washington, DC: National Agricultural Statistics Service.

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.31313 hours per response.

*Respondents:* Nurseries in the States of California, Oregon, and Washington.

*Estimated annual number of respondents:* 1,425.

*Estimated annual number of responses per respondent:* 5.0715789.

*Estimated annual number of responses:* 7,227.

*Estimated total annual burden on respondents:* 2,263 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

### List of Subjects in 7 CFR Part 301

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

■ Accordingly, we are amending 7 CFR part 301 as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 also issued under Sec. 204, Title II, Pub. L. 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 also issued under Sec. 203, Title II, Pub. L. 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Part 301 is amended by revising "Subpart-Phytophthora Ramorum," §§ 301.92 through 301.92-11, to read as follows:

### Subpart—Phytophthora Ramorum

Sec.

301.92 Restrictions on interstate movement.

301.92-1 Definitions.

301.92-2 Restricted, regulated, and associated articles; lists of proven hosts and associated plant taxa.

301.92-3 Quarantined and regulated areas.

301.92-4 Conditions governing the interstate movement of regulated, restricted, and associated articles, and non-host nursery stock from quarantined and regulated areas.

301.92-5 Issuance and cancellation of certificates.

301.92-6 Compliance agreements and cancellation.

301.92-7 Availability of inspectors; assembly for inspection.

301.92-8 Attachment and disposition of certificates and recordkeeping.

301.92-9 Costs and charges.

301.92-10 Treatments.

301.92-11 Inspection and sampling protocols.

301.92-12 Testing protocols.

### § 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>

(b) No person may move interstate from any nursery in any regulated area any nursery stock except in accordance with this subpart.

(c) No person may move interstate from any quarantined or regulated area 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.

### § 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 employee of APHIS, the U.S. Department of Agriculture, or other person authorized by the Administrator to perform the duties 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.

<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).

**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.

**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 area.** Any area listed in § 301.92–3(b) of this subpart.

**Regulated article.** Any article listed in § 301.92–2(b) of this subpart.

**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.

**§ 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.

(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.

(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

*Fagus sylvatica* European beech

\* *Frangula californica* (= *Rhamnus californica*) California coffeeberry

\* *Frangula purshiana* (= *Rhamnus purshiana*) Cascara

*Fraxinus excelsior* European ash

\* *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 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—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 orthocantha* Castanopsis

*Ceanothus thyrsiflorus* Blueblossom

*Cinnamomum camphora* Camphor tree

*Clintonia andrewsiana* Andrew's clintonia bead lily

*Cornus kousa* x *Cornus capitata* Cornus Norman Haddon

*Corylus cornuta* California hazelnut

*Distylium myricoides* Myrtle-leaved distylium

*Drimys winteri* Winter's bark

*Dryopteris arguta* California wood fern

<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.

<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.

<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.

*Eucalyptus haemastoma* Scribbly gum  
*Euonymus kiautschovicus* Spreading euonymus  
*Fraxinus latifolia* Oregon ash  
*Gaultheria shallon* Salal, Oregon wintergreen  
*Hamamelis mollis* Chinese witch-hazel  
*Hamamelis x intermedia* (*H. mollis* & *H. japonica*) Hybrid witchhazel  
*Ilex purpurea* Oriental holly  
*Leucothoe axillaris* Fetter-bush, dog hobble  
*Leucothoe fontanesiana* Drooping leucothoe  
*Loropetalum chinense* Loropetalum  
*Magnolia grandiflora* Southern magnolia  
*Magnolia stellata* Star magnolia  
*Magnolia x loebneri* Loebner magnolia  
*Magnolia x soulangeana* Saucer magnolia  
*Manglietia insignis* Red lotus tree  
*Michelia maudiae* Michelia  
*Michelia wilsonii* Michelia  
*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 x media* Yew  
*Torreya californica* California nutmeg  
*Toxicodendron diversilobum* Poison oak  
*Vancouveria planipetala* Redwood ivy

### § 301.92–3 Quarantined and regulated areas.

(a) *Quarantined areas.* (1) Except as otherwise provided in paragraph (a)(2) of this section, the Administrator will list 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 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 State 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 the 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 in a State 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.

#### Oregon

*Curry County.* That portion of the county as follows: In T. 39 S., R. 13 W., secs. 32, 33, and 34; T. 40 S., R. 13 W., secs. 3, 4, 5, 8, 9, 10, southeast quarter of sec. 11, southwest quarter of sec. 12, northwest quarter of sec. 13, northeast quarter of secs. 14, 15, 16, and 17, east half of sec. 18, east half of secs. 19, 20, 21, 22, 28, and 29, northeast quarter of secs. 30, 32, 33, and 34; T. 40 S., R. 14 W., southeast quarter of sec. 23, southwest quarter of sec. 24, northwest quarter of sec. 25, and the northeast quarter of sec. 26.

(b) *Regulated areas.* The following areas are designated as regulated areas:

#### California

All counties in the State not listed in paragraph (a) of this section as quarantined areas.

#### Oregon

All areas in the State not listed in paragraph (a) of this section as quarantined areas.

#### Washington

The entire State.

### § 301.92–4 Conditions governing the interstate movement of regulated, restricted, and associated articles, and non-host nursery stock from quarantined and regulated areas.

(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.

(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) The regulated 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

(ii) The regulated or associated 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.

(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.

(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

<sup>5</sup> Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

<sup>6</sup> See footnote 4 of this subpart.

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>

(d) *Interstate movement of nursery stock from nurseries in regulated areas*—(1) *Regulated and associated articles of nursery stock.* Regulated articles of nursery stock and associated articles may only be moved interstate from nurseries in regulated areas if accompanied by a certificate issued and attached in accordance with §§ 301.92–5 and 301.92–8, and provided that, if moved through a quarantined area en route to another State, the regulated

articles of nursery stock or associated articles are 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) *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 regulated areas as follows:

(i) *With a certificate.* If non-host nursery stock originates from a nursery in a regulated 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 provided that, if moved through a quarantined area en route to another State, the nursery stock 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.

(ii) *Without a certificate.* If non-host nursery stock originates from a nursery in a regulated area that does not contain regulated or associated articles, the nursery stock may be moved interstate without a certificate, provided that the nursery from which plants originate has been inspected and found free of evidence of *Phytophthora ramorum* in accordance with § 301.92–11(d)(3).

#### **§ 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:

(i) The regulated articles have been treated under the direction of an inspector in accordance with § 301.92–10 or 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>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.

<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) Are shipped from a nursery in a quarantined area 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; 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

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

<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).

regulations applicable to the regulated or associated article.

(2) *Reserved.*

(b) *Movements from regulated areas.*

(1) An inspector<sup>12</sup> may issue a certificate for the interstate movement of regulated articles of nursery stock, associated articles, or non-host nursery stock<sup>13</sup> from a nursery in a regulated area if an inspector determines that:

(i) The nursery from which the nursery stock originates has been inspected in accordance with § 301.92–11(c) and found free of evidence of *Phytophthora ramorum* infestation; and

(ii) All nursery stock in the nursery have not been grown in, or moved from, nurseries except those that have been inspected for *Phytophthora ramorum* in accordance with § 301.92–11(c) 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*; and

(iii) The 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>14</sup> to prevent the spread of *Phytophthora ramorum*; and

(iv) The nursery stock is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the nursery stock.

(2) *Reserved.*

(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.

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

#### § 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>15</sup>

(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

<sup>15</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/ispqm/pramorum/resources.html>.

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)

#### § 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>16</sup> as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired time of inspection.

(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.

#### § 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

<sup>16</sup> See footnote 7 of this subpart.

<sup>12</sup> See footnote 7 of this subpart.

<sup>13</sup> Paragraph (d)(2)(ii) of § 301.92–4 allows the interstate movement of non-host nursery stock without a certificate under certain conditions.

<sup>14</sup> See footnote 7 of this subpart.

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)

**§ 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.

**§ 301.92-10 Treatments.**

Treatment schedules listed in part 305 of this chapter are authorized for use on certain regulated articles to prevent the spread of *Phytophthora ramorum*. The following treatments also may be used for the regulated articles indicated:

(a) *Soil*—Heat to a temperature of at least 180 °F at the center of the load for

30 minutes in the presence of an inspector.

(b) *Wreaths, garlands, and greenery of host material*—Dip for 1 hour in water that is held at a temperature of at least 160 °F.

(c) *Bay leaves*—Treat with vacuum heat in accordance with part 305 of this chapter.

**§ 301.92-11 Inspection and sampling protocols.**

Type(s) of plants in the nursery	Type(s) of plants shipped interstate	Inspection and certification protocol	
		Origin: Quarantined areas	Origin: Regulated areas
Regulated articles only .....	None .....	Not regulated .....	Not regulated.
Regulated articles only .....	Regulated articles .....	§ 301.92-11(a) .....	§ 301.92-11(c).
Associated articles only .....	None .....	Not regulated .....	Not regulated.
Associated articles only .....	Associated articles .....	§ 301.92-11(a) .....	§ 301.92-11(c).
Regulated and associated articles only .....	Regulated or associated articles, or both .....	§ 301.92-11(a) .....	§ 301.92-11(c).
Regulated and associated articles and non-hosts.	None .....	Not regulated .....	Not regulated.
Regulated and associated articles and non-hosts.	Regulated or associated articles, or both .....	§ 301.92-11(a) .....	§ 301.92-11(c).
Regulated and associated articles and non-hosts.	Non-hosts only .....	§ 301.92-11(a) .....	§ 301.92-11(c).
Non-hosts only .....	None .....	Not regulated .....	Not regulated.
Non-hosts only .....	Non-hosts .....	§ 301.92-11(b) .....	§ 301.92-11(d).
Decorative trees without roots (e.g., Christmas trees).	Proven host plant taxa .....	§ 301.92-11(a) .....	Not regulated.
Decorative trees without roots (e.g., Christmas trees).	Associated plant taxa .....	Not regulated .....	Not regulated.

(a) *Nurseries in quarantined areas shipping regulated articles of nursery stock and associated articles interstate.* To meet the requirements of § 301.92-5(a)(1)(iv), nurseries located in quarantined areas and that move regulated articles of nursery stock, decorative trees without roots, wreaths, garlands, or greenery, associated articles, or non-host nursery stock interstate must meet the requirements in this section. Nurseries in quarantined areas that do not meet the requirements of this section are prohibited from moving regulated articles and associated articles interstate. Nurseries in quarantined areas that do not meet the requirements of this section or paragraph (b) of this section are prohibited from moving non-host nursery stock interstate.

(1) *Annual inspection, sampling, and testing.*

(i) *Inspection.* The nursery must be inspected annually for symptoms of *Phytophthora ramorum* by an inspector.<sup>17</sup> 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.

(ii) *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.

(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) *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 inspection, and the nursery will be eligible to enter into a compliance agreement in accordance with § 301.92-6.<sup>18</sup>

(2) *Pre-shipment inspection, sampling, and testing.*

(i) *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.<sup>19</sup> Inspection will focus on,

<sup>17</sup> Persons operating under compliance agreements are eligible to issue certificates for the interstate movement of regulated and associated articles, but only inspectors are authorized to

conduct nursery inspections required under the regulations.

<sup>18</sup> See footnote 14 of this subpart.

<sup>19</sup> See footnote 7 of this subpart.

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 paragraph (a)(1)(iv) of this section.

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

(B) 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.

(ii) *Testing and withholding from interstate movement.* Samples taken in accordance with paragraph (a)(2)(i)(B) of this section 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.

(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.<sup>20</sup> If such nurseries contain any regulated or associated articles, the nursery must meet the requirements of paragraph (a). This paragraph (b) only applies if there are no regulated or associated articles of nursery stock in the nursery. Nurseries that do not meet the requirements of paragraphs (a) or (b) of this section 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.

<sup>20</sup> In addition, 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).

(2) *Sampling.* All plants showing symptoms of infection with *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)(3) of this section 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 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) *Nurseries in regulated areas shipping regulated articles of nursery stock or associated articles interstate.* To meet the conditions of § 301.92–5(b), any nursery that is located in a regulated area and contains regulated articles of nursery stock or associated articles, and ships any nursery stock interstate must meet the following requirements:

(1) *Annual inspection.* The nursery must be inspected annually for symptoms of *Phytophthora ramorum* by an inspector.<sup>21</sup> Inspection will focus on, but not be limited to, regulated articles of nursery stock and associated articles.

(2) *Sampling.* Samples must be taken from all symptomatic plants. If fewer than 40 symptomatic plants are present, each symptomatic plant must be sampled and additional samples must be taken from asymptomatic plants so that the minimum number of plants sampled is 40. If no symptomatic plants are present, 40 asymptomatic plants must be sampled. 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. If samples are collected from asymptomatic plants, the samples 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.

(3) *Annual certification.* If all plant samples tested in accordance with this section and § 301.92–12 return negative results for *Phytophthora ramorum*, the inspector may certify that the nursery is free of evidence of *Phytophthora ramorum* infestation at the time of inspection. Nurseries in a regulated area must have current and valid certification to ship regulated articles of nursery stock and associated articles interstate. If annual certification expires prior to reinspection, all plants in the nursery are prohibited interstate movement until the nursery is inspected, tested, and re-certified in accordance with this section and § 301.92–12.

(d) *Nurseries in regulated areas shipping non-host nursery stock interstate.* Nurseries located in regulated areas and that move non-host nursery stock interstate must meet the requirements in this paragraph or the requirements of paragraph (c) of this section. If such nurseries contain any regulated or associated articles, the nursery must meet the requirements of paragraph (c). This paragraph (d) only applies if there are no regulated or associated articles in the nursery. Nurseries that do not meet the requirements of paragraphs (c) or (d) of this section 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 apparent pest freedom for such nurseries must occur at the time when the best expression of symptoms is anticipated.

(2) *Sampling.* All plants showing symptoms infection with *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 § 301.92–12: All symptomatic plants, any plants located in the same lot as the symptomatic plant, and any plants located within 2 meters of that 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 determines that plants in the nursery exhibit no signs of infection with *Phytophthora ramorum*, the inspector may certify that the nursery is

<sup>21</sup> See footnote 7 of this subpart.

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.

(e) *Additions to the lists of proven hosts and associated plants.* In the event that APHIS informs a nursery owner that additional proven hosts or associated plants exist, but those taxa are not yet listed in this subpart, the following provisions apply:

(1) Nurseries operating under a compliance agreement in accordance with § 301.92–6 may continue to ship plants interstate in accordance with this subpart.

(2) Nurseries that had not previously contained any regulated or associated articles, and that had been inspected in accordance with § 301.92–11(b)(3) and allowed to ship plants interstate without certificate, but that contain a newly identified proven host or associated plant must cease interstate shipments of regulated articles and associated hosts until the nursery is reinspected and found free of evidence of *Phytophthora ramorum* in accordance with § 301.92–11. Nurseries that come under regulation during winter dormancy periods and that are not able to be inspected in accordance with § 301.92–11 prior to desired shipments of non-host nursery stock may be allowed to ship non-host nursery stock interstate at the discretion of an inspector.

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

#### § 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 plant 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.

Done in Washington, DC, this 16th day of February 2007.

**Bruce Knight,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 07–892 Filed 2–26–07; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2006–25890; Directorate Identifier 2006–NM–115–AD; Amendment 39–14943; AD 2007–04–11]

RIN 2120–AA64

#### Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD), which applies to all Airbus Model A300 B2, B4–100, and B4–200 series airplanes. That AD currently requires supplemental structural inspections to detect fatigue cracking, and repair of cracked structure. This new AD requires revising the maintenance program by incorporating new and revised supplemental structural inspections, inspection intervals, and repairs; and repair of any damaged, cracked, or corroded structure; which would end the existing supplemental structural inspections. This AD results from a review of service history and reports received from the current supplemental structural inspection document program. We are issuing this AD to prevent reduced structural integrity of these airplanes due to fatigue cracking.

**DATES:** This AD becomes effective April 3, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 3, 2007.

On August 9, 1996 (61 FR 35122, July 5, 1996), the Director of the Federal Register approved the incorporation by reference of Airbus Industrie Supplemental Structural Inspection Document, dated September 1989; and Airbus Industrie A300 Supplemental Structural Inspection Document, Revision 2, dated June 1994.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

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