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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2015-0101]

RIN 0579-AE30

Phytophthora ramorum; Regulated Areas, Regulated Establishments, and Testing Protocols

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the *Phytophthora ramorum* regulations to remove regulated areas for *P. ramorum* from the regulations, as well as all regulatory requirements specific to such areas. We are revising the inspection and sampling requirements for certain nurseries that are in areas quarantined for *P. ramorum* and that ship regulated nursery stock interstate to have them take into consideration additional potential sources of *P. ramorum* inoculum at the nurseries. Finally, we are establishing conditions under which we would regulate nurseries located outside of the quarantined areas for *P. ramorum*, if sources of *P. ramorum* inoculum are detected at those nurseries and the nurseries ship certain articles interstate. These changes will provide regulatory relief to nurseries in areas that are regulated for *P. ramorum*, while also ensuring that nurseries that may pose a risk of disseminating *P. ramorum* through the interstate movement of regulated nursery stock are subject to measures that address this risk.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. William Wesela, National Policy Manager, Pest Management, PPQ, APHIS, 4700 River Road, Riverdale, MD 20737-1238; (301) 851-2229.

SUPPLEMENTARY INFORMATION:

Background

Under section 412(a) of the Plant Protection Act (7 U.S.C. 7701 *et seq.*, referred to below as the PPA), the Secretary of Agriculture may prohibit or restrict the movement in interstate commerce of any plant or plant product, if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of a plant pest within the United States.

Phytophthora ramorum, the cause of sudden oak death, ramorum leaf blight, and ramorum dieback, is a harmful pathogen that can cause mortality in several oak tree species and also causes twig and foliar diseases in numerous native and non-native ornamental plants, shrubs, and trees within the United States.

Since its initial discovery in Marin County, CA, in 1995, the *P. ramorum* pathogen has been confirmed on various native hosts in Curry County, OR, and 15 California counties. In 2001, the States of Oregon and California restricted intrastate movement of certain articles from known infested areas at the time to prevent the spread of *P. ramorum* within those States. Because infected plants and plant products that move interstate could serve as a pathway for the introduction of *P. ramorum* to other areas of the United States, the Animal and Plant Health Inspection Service (APHIS) issued an interim rule published in the *Federal Register* on February 14, 2002 (67 FR 6827-6837, Docket No. 01-054-1) to quarantine portions of the States of California and Oregon where *P. ramorum* was confirmed to exist (at the time, 10 counties in California and a portion of Curry County, OR). The interim rule established a new subpart, “Subpart X—*Phytophthora ramorum*” (7 CFR 301.92 through 301.92-12, referred to below as

the regulations), which contains APHIS' regulations to address the spread of *P. ramorum*. Subsequent detections of the pathogen from two large southern California nurseries in 2004 that had shipped potentially infested plants throughout the United States led to the additional implementation of a Federal Order in 2005 requiring inspection of nurseries in California, Oregon, and Washington that ship host plants or associated host plants. As new findings emerged since that time, APHIS revised its protocols and expanded its quarantined areas to manage *P. ramorum* infections in the United States.

In a Federal Order issued on January 10, 2014, and a Federal Order issued on April 3, 2015, we restructured the domestic quarantine program for *Phytophthora ramorum*.¹ On June 25, 2018, we published in the *Federal Register* (83 FR 29465-29472, Docket No. APHIS-2015-0101), a proposal² to amend the regulations to reflect the changes made by the 2014 and 2015 Federal Orders to the *Phytophthora ramorum* domestic quarantine program. Additionally, we proposed to update the lists of hosts and associated hosts for *P. ramorum*, and to establish conditions for the interstate movement of soil samples from areas quarantined for *P. ramorum*.

We solicited comments on the proposal for 60 days ending August 24, 2018. We received 10 comments on our proposal. Comments were from researchers, State agricultural and conservation agencies, environmental advocacy groups, research foundations, and private citizens. Of these, one was fully supportive of the proposed action. Another objected to the proposal generally on the grounds that it would increase the spread of disease, but did not address specific concerns with the proposal. Others supported some aspects of the proposal, but raised several issues of concern. These issues are discussed below by topic.

¹ https://www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/phytophthora-ramorum/ct_phytophthora_ramorum_sudden_oak_death.

² To view the proposal, supporting documents, and the comments we received, go to <https://www.regulations.gov/docket?D=APHIS-2015-0101>.

Interstate Movement of Regulated Articles

An issue of concern to several commenters was the risk posed by interstate movement of nursery stock and other regulated articles under the proposed regulations. One commenter representing a State Department of Agriculture objected to the interstate shipment of plants from quarantine zones regardless of host status. The commenter stated that the proposal's method of evaluating plants in regulated establishments on a nursery-by-nursery basis prior to interstate shipment could lead to the *P. ramorum* pathogen moving with the shipment, if sampling is done during a latent period or if lots testing free of the pathogen are contaminated prior to shipment. The commenter also noted that nurseries within a *P. ramorum* quarantined area remain at risk for contamination due to *P. ramorum* existing in the natural environment. In addition to objecting to the interstate shipment of plants from quarantine zones, the commenter asked that conditions for the shipment of plants from regulated establishments outside quarantine zones be clarified in the details of proposed compliance agreements, including mitigation measures, to ensure that there is no evidence of the pathogen in the natural environment, or the possibility of contamination from positive plant material in the nursery.

APHIS has been operating under the current *P. ramorum* domestic quarantine program, as implemented by Federal Orders, since 2014. We have found the existing testing protocols and conditions in place for interstate movement of regulated, restricted, and associated articles from quarantined areas and from regulated establishments, which this rule codifies, are sufficient to mitigate the risk of transmission of the pathogen. Additionally, we note in response to the commenter's concerns regarding sampling that the regulations require that annual inspections and sampling take place at times most conducive to detection of the pathogen.

Compliance agreements between regulated establishments and APHIS ensure that appropriate standards for individual establishments are implemented to prevent the spread of the *P. ramorum* pathogen. As the Agency responsible for Federal oversight of regulated establishments, APHIS will continue to ensure that requirements specified in individual compliance agreements meet stringent Agency standards to prevent the spread of the pathogen.

Another commenter representing a State Department of Food and Agriculture raised concerns regarding the proposed sampling requirement for nurseries in quarantined areas to be set on a nursery-by-nursery basis. The commenter stated that Federal Order DA-2014-02, used as a justification in the proposed rule for changing these sampling standards, does not actually address the number of samples to be collected during the annual quarantine compliance inspection of a nursery, only the number of samples for the Federal Order's compliance sampling that occurs biannually at previously positive nurseries. The State expressed concern that its regulators under this proposal would be placed under a substantial burden, and requested clarification regarding the minimum number of samples to be taken during an annual inspection in quarantined counties not previously testing positive for *P. ramorum*, as well as guidance in the form of a table or guide in the proposal to determine the number of samples to be collected from each nursery. The commenter also requested that APHIS re-examine Federal Order DA-2014-02 to determine if the Order's intent supports the proposed nursery-by-nursery basis for sampling, and asked that APHIS add a regulatory requirement for the inspection of nurseries that supply interstate shippers.

We agree with the commenter's assessment of the proposed sampling requirements for nurseries in quarantined areas and will not be making that proposed change in this final rule. Sampling requirements for annual inspections of nurseries in quarantined areas not previously

testing positive for *P. ramorum* will continue as implemented under existing regulations and Federal Orders. We have also taken the commenter's request for additional nursery inspections under consideration, and will keep it in mind for future updates to domestic quarantine program operations. APHIS meets annually with the National Plant Board to discuss the program and any changes in protocol that may be needed, and will continue to engage with stakeholders when making operational decisions.

Two commenters stated that the risk of inadvertent shipment of the *P. ramorum* pathogen, and subsequent risk to forests and nurseries, would be reduced with additional mitigations in the proposed rule including more rigorous inspections, surveys, or monitoring. The commenters noted that any nursery with host plants in any location should be considered as a potential source of infested plants. Another commenter also highlighted the risk that any nursery plant poses in transmitting *P. ramorum*, adding that APHIS should institute a system for detecting the pathogen in any nursery that contains host plants. The commenter indicated that such a system should include mandatory inspection and monitoring using techniques for detecting *P. ramorum* beyond visual inspection alone, and that enhanced regulatory scrutiny should be applied to nurseries in geographic areas that are conducive to survival of *P. ramorum* or that sell plants to be planted in such geographic areas. The commenter also suggested resources for research that support amended testing protocols for *P. ramorum*.

We appreciate the commenters' concerns regarding the potential for additional infestation of *P. ramorum*. While our regulations focus on establishments that participate or intend to participate in interstate shipping, based on our experience in administering the domestic quarantine program, we believe the conditions currently in place for testing and inspections – which will be codified under this rule – are sufficient for preventing further spread of the

pathogen and for protecting American agriculture. As mentioned above, the regulations require that annual inspections and sampling take place at times most conducive to detection of *P. ramorum*, which mitigates the risk of inadvertent shipment of the pathogen. Additionally, this rule will codify the use of measures beyond visual inspection for detecting the pathogen in regulated establishments and nurseries in quarantined areas shipping regulated articles interstate, including testing of soil and standing water. As in past practice, we will continue to monitor detection of the pathogen, and will reevaluate program protocols should the need arise.

One commenter questioned where the proposal would leave ‘opt-out’ nurseries that had tested positive for *P. ramorum* since March 31, 2011, but decided not to ship interstate under the DA-2014-02 Federal Order. The commenter asked if such nurseries would be considered a regulated establishment under the proposed rule if they choose to ship interstate in the future, or if the rule creates a loophole for these opt-out nurseries to begin shipping interstate without sampling or certification.

In § 301.92-3(b) of the proposed rule and this final rule, we indicate that the Administrator will designate a nursery that is not located in a quarantined area for *P. ramorum* as a regulated establishment if the nursery ships regulated, restricted, or associated articles interstate and sources of *P. ramorum* are detected on nursery stock, or in soil, growing media, pots used for nursery stock, water sources, or any other regulated, restricted, or associated articles at the nursery. A nursery outside of a quarantined area that has tested positive for *P. ramorum* and wishes to begin shipping interstate will need to meet the requirements of §§ 301.92-4 and 301.92-5, as well as the inspection and sampling requirements in § 301.92-11(c).

Any nurseries located in quarantined areas in which *P. ramorum* has been detected since March 31, 2011, wishing to ship interstate under the requirements of § 301.92-11(a)(2) in this

rule will need to meet the requirements therein for inspection, sampling, and testing prior to shipment.

Two commenters representing different Departments of the same State also expressed concerns about interstate movement of *P. ramorum*, and asked for additional Federal oversight measures to address this. They asked that the U.S. Department of Agriculture (USDA) not relax regulations to protect against *P. ramorum* infestation and requested that USDA allow receiving States more flexibility in their ability to protect State resources. They also expressed concern that nurseries testing positive for *P. ramorum* are placed under Federal compliance agreements, which are then left to the States for oversight without stated minimum standards for mitigation processes.

Ongoing cooperation between Federal and State regulators is essential to the proper functioning of the domestic quarantine program for *P. ramorum*. States play an important role in this relationship to enforce regulatory requirements, for which Federal funding is provided. APHIS remains committed to its ongoing partnership with States, and intends to set minimum standards for mitigation processes through the codification of this rule. Additionally, we note that this rule does not relax any regulatory operations, but rather updates the regulations to codify existing protocols that have been in place since 2014, and will remain in place following publication of this rule.

Discrepancies in Background Information and Host List

Several commenters noted discrepancies in the background information of the proposed rule. Two commenters highlighted specific passages where suggestions for rewording were included to clarify the history and background associated with the *P. ramorum* pathogen. Several commenters also noted that the proposed rule's statement that 14 counties in California

are under quarantine for *P. ramorum* should read as 15. A few commenters also took issue with the APHIS host list, finding it to exclude a number of hosts and also finding the length of time between a host's identification and its addition to the list to be unsatisfactory. Specifically, commenters cited concerns regarding the placement of the Japanese larch (*Larix kaempferi*) on the list of associated hosts, as literature in the United Kingdom has documented that this is a proven host of the pathogen. The commenters requested that APHIS re-evaluate its determination of hosts, including the speed with which hosts are evaluated, in addition to adding Japanese larch to the host list.

We appreciate the commenters' concerns and have in this final rule clarified background information that may have been inadvertently imprecise regarding the historical progression of *P. ramorum* detections and response protocols in the United States. The reference to 14 quarantined counties in the preamble of the proposed rule was made in the context of describing the list of counties in the existing regulations (first implemented by the 2002 interim rule). We have clarified this reference in this final rule, and note that all 15 counties quarantined under subsequent Federal Orders were included in the regulatory text of the proposal.

Regarding the host list, we agree with commenters as to the challenges of maintaining an updated host list in its current form. To address this issue, we plan in the near future to restructure the lists of proven *P. ramorum* hosts and associated plant taxa, and to move the lists from the regulations to the APHIS website to allow for more timely updates. Part of the restructuring plan would likely include merging the lists of proven and associated hosts into a single host list, which would address commenters' concern regarding placement of specific taxa within the existing lists. Any such plans would be proposed via rulemaking with a public comment period provided.

One commenter stated that the background information in the proposed rule understated the risk of *P. ramorum* infection to nurseries, pointing out that the annual 3 percent level of detection cited in the proposal is not a low level of risk, that spread of the pathogen to nurseries from the natural environment still occurs despite regulatory efforts, and that new infections in nurseries are likely to continue absent mandated surveys of all nurseries selling host or associated host plant material.

We wish to clarify that the 3 percent level of detection indicated in the preamble text was referring to the number of nurseries, not the number of overall plants, where *P. ramorum* was detected. Also, we note that we are bound by statutory authority to regulate based on interstate commerce, and therefore cannot mandate regulatory requirements that extend beyond this authority. However, based on our experience in administering the domestic quarantine program and the relatively low number of infestations discovered during its implementation, we believe that the proposed methods are sufficient to mitigate risks of further spread of the pathogen. As we have done in past practice with making program enhancements – including with this final rule that codifies program updates that were made to existing regulations – we note that we will continue to monitor detections of *P. ramorum* and will update program protocols should it become necessary to do so.

Lack of Transparency

Citing a lack of publicly-available data, several commenters noted the difficulty for non-regulators to be able to adequately evaluate the existing efficacy of the *P. ramorum* program and the provisions to codify them in the proposed rule. The commenters requested that APHIS reinstate the *P. ramorum* quarterly program updates that were discontinued in 2014.

We appreciate the commenters' concerns and will be reinstating the *P. ramorum* program updates beginning in April of 2019.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866. Further, APHIS considers this rule to be a deregulatory action under Executive Order 13771 as the action would remove regulated areas for *P. ramorum* from the regulations, as well as the regulatory requirements specific to such areas, thus relieving restrictions on affected entities living in those areas. This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov website (see ADDRESSES above for instructions for accessing Regulations.gov).

This rule revises the *Phytophthora ramorum* domestic regulations in accordance with Federal Orders issued 2013-2015. The Federal Orders have allowed APHIS and State regulatory agencies to focus regulatory controls on the nurseries that present a significant risk of spreading the pathogen and away from those nurseries that pose a negligible risk of contributing to its artificial spread, thereby more efficiently apportioning resources and the regulatory burden.

The rule removes the designation of *P. ramorum* regulated areas, as well as all restrictions and protocols specific to those areas. It will relieve the regulatory burden on approximately 1,500 nurseries where the pathogen is not present in the environment. As an alternative to regulated areas, this action codifies the concept of regulated establishments that will be required to enter into compliance agreement with APHIS.

The annual cost of complying with the *P. ramorum* management requirements in the regulations ranges from \$14,000 to \$16,000 per nursery. Thus, the cost savings for the 1,500 operations that will be relieved of these management requirements range from \$21 million to \$24 million per year. In accordance with guidance on complying with Executive Order 13771, the single primary estimate of the cost savings of this rule is about \$22.5 million (\$15,000 per nursery), the mid-point estimate of cost savings annualized in perpetuity using a 7 percent discount rate. In addition, by not requiring annual certification by APHIS or State officials, there will be public cost savings of about \$363,000 per year.

This rule will not deregulate the current *P. ramorum* quarantine areas, nor will it deregulate interstate shipping nurseries located within these quarantined areas. For regulated establishments and establishments located within quarantined areas, compliance costs may increase or decrease depending on amended best management practices, but any related change in operational costs is not expected to be significant.

The majority of establishments that will be affected by this rule are small entities. The rule codifies current Federal Orders, and will not have a significant economic impact on a substantial number of small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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 officials. (See 2 CFR chapter IV.)

Executive Order 12988

This final 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.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the reporting, recordkeeping, and third party disclosure requirements included in this final rule have already been approved by the Office of Management and Budget (OMB) under OMB control numbers 0579-0088 and 0579-0310.

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

final rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

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

2. Section 301.92 is amended as follows:

a. By revising paragraph (b); and

b. In paragraph (c), by removing the words "quarantined or regulated area" and adding the words "quarantined area or regulated establishment" in their place.

The revision reads as follows:

§ 301.92 Restrictions on interstate movement.

* * * * *

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

* * * * *

3. Section 301.92-1 is amended by removing the definition for *Regulated area* and by adding, in alphabetical order, a definition for *Regulated establishment* to reads as follows:

§ 301.92-1 Definitions.

* * * * *

Regulated establishment. Any nursery regulated by APHIS pursuant to § 301.92-3(b).

* * * * *

4. Section 301.92-2 is amended as follows:

a. In paragraph (d), by adding entries in alphabetical order for *Cinnamomum camphora* and *Gaultheria procumbens*; and

b. In paragraph (e), by adding entries in alphabetical order for *Ilex cornuta*, *Illicium parviflorum*, *Larix kaempferi*, *Magnolia denudata*, *Mahonia nervosa*, *Molinadendron sinaloense*, *Trachelospermum jasminoides*, and *Veronica spicata* Syn. *Pseudolysimachion spicatum*.

The additions read as follows:

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

* * * * *

(d) * * *

**Cinnamomum camphora* Camphor tree

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**Gaultheria procumbens*, Eastern teaberry

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(e) * * *

Ilex cornuta Buford holly, Chinese holly

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Illicium parviflorum Yellow anise

Larix kaempferi Japanese larch

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Magnolia denudata Lily tree

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Mahonia nervosa Creeping Oregon grape

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Molinadendron sinaloense

* * * * *

Trachelospermum jasminoides Star jasmine, confederate jasmine

* * * * *

Veronica spicata Syn. *Pseudolysimachion spicatum* Spiked speedwell

5. Section 301.92-3 is revised to read as follows:

§ 301.92-3 Quarantined areas and regulated establishments.

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

natural environment. Less than an entire area will be designated as a quarantined area only if the Administrator determines that:

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

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

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

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

CALIFORNIA

Alameda County. The entire county.

Contra Costa County. The entire county.

Humboldt County. The entire county.

Lake County. The entire county.

Marin County. The entire county.

Mendocino County. The entire county.

Monterey County. The entire county.

Napa County. The entire county.

San Francisco County. The entire county.

San Mateo County. The entire county.

Santa Clara County. The entire county.

Santa Cruz County. The entire county.

Solano County. The entire county.

Sonoma County. The entire county.

Trinity County. The entire county.

OREGON

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

(b) *Regulated establishments*—(1) *Designation*. The Administrator will designate a nursery that is not located in a quarantined area for *Phytophthora ramorum* as a regulated establishment for *Phytophthora ramorum* if the nursery ships regulated, restricted, or associated articles interstate and sources of *Phytophthora ramorum* are detected on nursery stock, or in soil, growing media, pots used for nursery stock, standing water, drainage water, water used for irrigation, or any other regulated, restricted, or associated articles at the nursery.

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

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

6. Section 301.92-4 is amended by revising the section heading and paragraphs (a)(2) and (d) to read as follows:

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

(a) * * *

(2) *Without a certificate*. (i)(A) The regulated article or associated article originated outside the quarantined area and the point of origin of the article is indicated on the waybill of the vehicle transporting the article; and

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

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

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

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

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

* * * * *

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

7. Section 301.92-5 is amended by revising paragraphs (a)(1)(iv)(A) and (b) to read as follows:

§ 301.92-5 Issuance and cancellation of certificates.

(a) * * *

(1) * * *

(iv) * * *

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

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

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

* * * * *

(b) *Movements from regulated establishments.* An inspector may issue a certificate for the movement of regulated, restricted, and/or associated articles from a regulated establishment if the inspector determines that:

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

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

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

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

* * * * *

§ 301.92-6 [Amended]

8. Section 301.92-6 is amended as follows:

a. By redesignating footnote 15 as footnote 12; and

b. In the OMB citation at the end of the section, by adding the words “0579-0088 and” after the word “numbers”.

§ 301.92-7 [Amended]

9. In § 301.92-7, footnote 16 is redesignated as footnote 13.

10. Section 301.92-11 is revised to read as follows:

§ 301.92-11 Inspection and sampling protocols.

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

(i) *Annual inspection, sampling, and testing—(A) Inspection.* The nursery must be inspected annually for symptoms of *Phytophthora ramorum* by an inspector. Inspectors will visually inspect for symptomatic plants throughout the nursery, and inspection will focus on, but not be limited to, regulated articles and associated articles.

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

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

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

(ii) *Pre-shipment inspection, sampling, and testing*==(A) *Inspection.* During the 30 days prior to interstate movement from a nursery in a quarantined area, regulated articles or associated articles intended for interstate movement must be inspected for symptoms of *Phytophthora ramorum* by an inspector. Inspection will focus on, but not be limited to, regulated articles and

associated articles. No inspections of shipments will be conducted unless the nursery from which the shipment originates has a current and valid annual certification in accordance with this section.

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

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

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

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

quarantined areas that do not meet the following requirements or those in paragraph (b) of this section are prohibited from moving non-host nursery stock interstate.

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

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

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

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

(v) *Positive results.* If any samples tested in accordance with this section and § 301.92-12 return positive results for *Phytophthora ramorum*, the nursery may ship lots of regulated, restricted, and associated articles interstate pursuant to § 301.92-5(b) only if the lot is

determined to be free from *Phytophthora ramorum* inoculum. The method for this determination will be specified in the nursery's compliance agreement with APHIS.

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

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

(2) *Sampling.* 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) and § 301.92-12: All symptomatic plants, any plants located in the same lot as the suspect plant, and any plants located within 2 meters of this lot of plants.

(3) *Certification.* If all plant samples tested in accordance with this section and § 301.92-12 return negative results for *Phytophthora ramorum*, or if an inspector at the nursery determines that plants in a nursery exhibit no signs of infection with *Phytophthora ramorum*, the inspector

may certify that the nursery free of evidence of *Phytophthora ramorum* infestation at the time of inspection. Certification is valid for 1 year and must be renewed each year to continue shipping plants interstate.

(c) *Regulated establishments shipping regulated, restricted, or associated articles of interstate*—(1) *Inspections*. To meet the conditions of § 301.92-5(b), the regulated establishment must be inspected at least twice annually for symptoms of *Phytophthora ramorum* infestation by an inspector. The inspection will focus on regulated plants and other potential sources of *Phytophthora ramorum* inoculum.

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

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

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

(5) *Positive results*. If any samples tested in accordance with this section and § 301.92-12 return positive results for *Phytophthora ramorum*, the nursery may ship lots of regulated,

restricted, and associated articles interstate pursuant to § 301.92-5(b) only if the lot is determined to be free from *Phytophthora ramorum* inoculum. The method for this determination will be specified in the nursery's compliance agreement with APHIS.

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

§ 301.92-12 [Amended]

11. In § 301.92-12, paragraph (a) introductory text is amended by removing the words “prescreen plant samples” and adding the words “prescreen samples” in their place.

Done in Washington, DC, this 12th day of April 2019.

Kevin Shea

Administrator, Animal and Plant Health Inspection Service.

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