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such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document; *Provided, however*, That the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.91–9 Costs and charges.

The services of the inspector shall be furnished without cost, except as provided in 7 CFR part 354. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

Subpart—Phytophthora Ramorum

SOURCE: 72 FR 8597, Feb. 27, 2007, unless otherwise noted.

§ 301.92 Restrictions on interstate movement.

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

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

[1] 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).

(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.

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;[2] 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[3] 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

[2] 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.

[3] Bark chips or mulch of species listed in paragraph (d) of this section and that are marked with an asterisk (*) are not restricted articles.

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,[4] 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 hispidula* California honeysuckle
**Maianthemum racemosum* (=*Smilacina racemosa*) False Solomon's seal
**Michelia doltsopa* Michelia
**Parrotia persica* Persian ironwood
**Photinia fraseri* Red tip photinia
**Pieris* spp. Pieris—includes all species, hybrids, and cultivars
**Pseudotsuga menziesii* var. *menziesii* and all nursery-grown *P. menziesii* Douglas fir
Quercus agrifolia Coast live oak
Quercus cerris European turkey oak
Quercus chrysolepis Canyon live oak
Quercus falcata Southern red oak
**Quercus ilex* Holm oak
Quercus kelloggii California black oak
Quercus parvula var. *shrevei* and all nursery grown *Q. parvula* Shreve's oak
**Rhododendron* spp. Rhododendron (including azalea)—includes all species, hybrids, and cultivars
**Rosa gymnocarpa* Wood rose
**Salix caprea* Goat willow
**Sequoia sempervirens* Coast redwood
**Syringa vulgaris* Lilac
**Taxus baccata* European yew
**Trientalis latifolia* Western starflower
**Umbellularia californica* California bay laurel, pepperwood, Oregon myrtle
**Vaccinium ovatum* Evergreen huckleberry
**Viburnum* spp. Viburnum-all species, hybrids, and cultivars

(e) *Associated plant taxa.* The following plant taxa are considered to be associated with *Phytophthora ramorum:*

Abies concolor White fir
Abies grandis Grand fir
Abies magnifica Red fir
Acer circinatum Vine maple
Acer davidii Striped bark maple
Acer laevigatum Evergreen maple
Arbutus unedo Strawberry tree
Arctostaphylos columbiana Manzanita
Arctostaphylos uva-ursi Kinnikinnick, bearberry
Ardisia japonica Ardisia
Calycanthus occidentalis Spicebush
Castanopsis orthacantha Castanopsis
Ceanothus thyrsiflorus Blueblossom
Cinnamomum camphora Camphor tree
Clintonia andrewsiana Andrew's clintonia bead lily
Cornus kousa x *Cornus capitata* Cornus Norman Haddon
Corylus cornuta California hazelnut
Distylium myricoides Myrtle-leafed distylium
Drimys winteri Winter's bark
Dryopteris arguta California wood fern
Eucalyptus haemastoma Scribbly gum
Euonymus kiautschovicus Spreading euonymus
Fraxinus latifolia Oregon ash
Gaultheria shallon Salal, Oregon wintergreen
Hamamelis mollis Chinese witch-hazel
Hamamelis x *intermedia* (*H. mollis* & *H. japonica*) Hybrid witchhazel
Ilex purpurea Oriental holly
Leucothoe axillaris Fetter-bush, dog hobble
Leucothoe fontanesiana Drooping leucothoe
Loropetalum chinense Lorapetalum

[4] Firewood, logs, and lumber of species listed in paragraph (d) of this section and that are marked with an asterisk (*) are not regulated articles.

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[5] 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.

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

(b) *Interstate movement of restricted articles from quarantined areas.* Restricted articles may be moved interstate from a quarantined area[6] 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 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

[6] See footnote 4 of this subpart.

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.[7]

(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[8] may issue a certificate for the interstate movement of regulated articles, associated articles, or non-host nursery stock[9] 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 part 305 of this chapter; or

(ii) The regulated articles are wood products such as firewood, logs, or lumber that are free of bark;[10] or

(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,

[7] 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).

[8] 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/*.

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

[10] 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).

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)[11] 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 regulations applicable to the regulated or associated article.

(2) [Reserved]

(b) *Movements from regulated areas.* (1) An inspector[12] may issue a certificate for the interstate movement of regulated articles of nursery stock, associated articles, or non-host nursery stock[13] 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)[14] 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

[11] 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.

[12] See footnote 7 of this subpart.

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

[14] See footnote 7 of this subpart.

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)

[72 FR 8597, Feb. 27, 2007, as amended at 75 FR 4241, Jan. 26, 2010]

§ 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.[15]

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

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

§ 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[16] 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

[15] 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/ispm/pramorum/resources.html*.

[16] See footnote 7 of this subpart.

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

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

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

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

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

§ 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 [Reserved]

§ 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.[17] 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.[18]

(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.[19] 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 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.[20] If such nurseries contain any regulated or associated articles, the nursery

[17] 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.

[18] See footnote 14 of this subpart.

[19] See footnote 7 of this subpart.

[20] 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).

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.

(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.[21] 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

[21] See footnote 7 of this subpart.

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 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.

PART 302—DISTRICT OF COLUMBIA; MOVEMENT OF PLANTS AND PLANT PRODUCTS

Sec.

302.1 Definitions.
302.2 Movement of plants and plant products.

AUTHORITY: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

SOURCE: 66 FR 1016, Jan. 5, 2001, unless otherwise noted.

§302.1 Definitions.

Inspector. Any employee of the Animal and Plant Health Inspection Service or other person authorized by the Administrator to inspect and certify the plant health status of plants and products under this part.

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

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

§302.2 Movement of plants and plant products.

Inspection or documentation of the plant health status of plants or plant products to be moved interstate from the District of Columbia may be obtained by contacting the State Plant Health Director, Plant Protection and Quarantine, APHIS, Wayne A. Cawley, Jr. Building, Room 350, 50 Harry S. Truman Parkway, Annapolis, MD 21401–7080; phone: (410) 224–3452; fax: (410) 224–1142.

[66 FR 54641, Oct. 30, 2001]

PART 305—PHYTOSANITARY TREATMENTS

Sec.

305.1 Definitions.
305.2 Approved treatments.
305.3 Processes for adding, revising, or removing treatment schedules.
305.4 Monitoring and certification of treatments.
305.5 Chemical treatment requirements.
305.6 Cold treatment requirements.
305.7 Quick freeze treatment requirements.
305.8 Heat treatment requirements.
305.9 Irradiation treatment requirements.

AUTHORITY: 7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

SOURCE: 75 FR 4241, Jan. 26, 2010, unless otherwise noted.

§305.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person delegated to act for the Administrator in matters affecting this part.