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(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.

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§ 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-