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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01-054-1]

Phytophthora Ramorum; Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and notice of public hearings.

SUMMARY: We are quarantining 10 counties in the State of California and a portion of 1 county in the State of Oregon because of the presence of *Phytophthora ramorum* and regulating the interstate movement of regulated and restricted articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of *P. ramorum* to noninfested areas of the United States.

DATES: This interim rule is effective February 14, 2002. We will consider all comments we receive that are postmarked, delivered, or e-mailed by April 15, 2002. We will also consider comments made at public hearings to be held in Petaluma, CA, on February 27, 2002; and in Riverdale, MD, on March 27, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or electronically. If you use postal mail/commercial delivery, please send four copies (an original and three copies) to: Docket No. 01-054-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 01-054-1. To submit a comment electronically, please visit <http://comments.aphis.usda.gov>.

You may read any comments that we receive on this docket in our reading

room, or by visiting <http://comments.aphis.usda.gov>. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

Public hearing regarding this rule will be held at the following locations:

1. Petaluma, CA: Petaluma Community Center, 320 N. McDowell Blvd., Petaluma, CA.
2. Riverdale, MD: USDA Center at Riverside, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Jones, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737; (301) 734-8247.

SUPPLEMENTARY INFORMATION:

Public Hearings

We are advising the public that we are hosting two public hearings on this interim rule. The first public hearing will be held in Petaluma, CA, on Wednesday, February 27, 2002. The second public hearing will be held in Riverdale, MD, on Wednesday, March 27, 2002.

A representative of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA or the Department), will preside at the public hearings. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the hearing record. A transcript of the public hearings will be placed in the rulemaking record and will be available for public inspection.

The purpose of the hearings is to give interested persons an opportunity for oral presentation of data, views, and arguments. Questions about the content of the interim rule may be part of the commenters' oral presentations.

However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearings, except to clarify or explain provisions of the interim rule.

The public hearings will begin at 9 a.m. and are scheduled to end at 4:30 p.m., local time. The presiding officer may limit the time for each presentation so that all interested persons appearing at each hearing have an opportunity to participate. Each hearing may be terminated at any time if all persons desiring to speak have been heard.

Registration for the hearings may be accomplished by registering with the presiding officer between 8:30 a.m. and 9 a.m. on the day of the hearing. Persons who wish to speak at a hearing will be asked to sign in with their name and organization to establish a record for the hearing. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. Those who wish to form a panel to present their views will be asked to provide the name of each member of the panel and the organizations the panel members represent.

Persons or panels wishing to speak at one or both of the public hearings may register in advance by phone or e-mail. Persons wishing to register by phone should call the Regulatory Analysis and Development voice mail at (301) 734-4339. Callers must leave a message clearly stating (1) the location of the hearing the registrant wishes to speak at, (2) the registrant's name and organization, and, if registering for a panel, (3) the name of each member of the panel and the organization each panel member represents. Persons wishing to register by e-mail must send an e-mail with the same information described above to ispmp@aphis.usda.gov. Please write "Public Hearing Registration" in the subject line of your e-mail. Advance registration for the Petaluma, CA, hearing must be received by 3 p.m. on Monday, February 25, 2002. Advance registration for the Riverdale, MD, hearing must be received by 3 p.m. on Tuesday, March 26, 2002.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Parking and Security Procedures at the USDA Center

Please note that a fee of \$2.25 is required to enter the parking lot at the USDA Center. The machine accepts \$1 bills and quarters.

Upon entering the building, visitors should inform security personnel that they are attending the *Phytophthora ramorum* quarantine public hearing. Identification is required. Security personnel will direct visitors to the registration tables located outside of Conference Rooms C and D on the first floor. Registration upon arrival is necessary for all participants, including those who have registered to speak in advance. Visitor badges must be worn throughout the day.

Background

Phytophthora ramorum is a harmful fungus that has been found in arrowwood (*Viburnum x bodnantense*), big leaf maple (*Acer macrophyllum*), black oak (*Quercus kelloggii*), California bay laurel (*Umbellularia californica*), California buckeye (*Aesculus californica*), California coffeeberry (*Rhamnus californica*), California honeysuckle (*Lonicera hispidula*), coast live oak (*Quercus agrifolia*), huckleberry (*Vaccinium ovatum*), madrone (*Arbutus menziesii*), manzanita (*Arctostaphylos* spp.), rhododendron (*Rhododendron* spp., including azalea), Shreve's oak (*Quercus parvula* var. *shrevei*), tanoak (*Lithocarpus densiflorus*), and Toyon (*Heteromeles arbutifolia*).

According to available research and observations, similar symptoms of infection with *P. ramorum* have been identified in tanoak, coast live oak, black oak and Shreve's oak. Although symptoms are similar in these species, their appearance, both chronologically and physically, varies somewhat. In tanoak, leaf symptoms are usually the first to appear, as new growth may droop or turn yellow to brown. In coast live oak, black oak, and Shreve's oak, the earliest symptom is the appearance of a bleeding canker; burgundy-red to tar-black thick sap oozes on the bark surface. Similar bleeding, though less viscous, has been observed on tanoak, although tanoak may not show the bleeding symptom at all. This bleeding is a response to infection with *P. ramorum*, and is typically found from the root crown (the area where the trunk fans out to the roots) to a height of 6 feet. Bleeding has occasionally been observed at greater heights. Oaks showing these symptoms typically die within a few months of the appearance of symptoms. Other hosts are not typically killed by *P. ramorum*.

Symptoms of infection in other hosts include leaf spotting and stem canker infections.

Since its initial discovery in Marin County, CA, in 1995, *P. ramorum* has been confirmed to exist in nine additional counties along or near the northern California coastline: Alameda, Mendocino, Monterey, Napa, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma. *P. ramorum* also has been found in a portion of Curry County, OR. *P. ramorum*, which has been commonly referred to as Sudden Oak Death or Oak Mortality Syndrome, has caused the death of thousands of mature oaks in these counties, and there is presently no known treatment for infected plants that kills the fungus but allows plants to survive.

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. It is unclear how *P. ramorum* spreads, though available research suggests it is spread by water, soil, and infected plant material. It is also possible that *P. ramorum* spreads by air. Regardless, the movement of infected plants and plant products of the *P. ramorum* hosts listed earlier in this document is believed to provide a pathway for the spread of *P. ramorum*.

As explained below, the States of California and Oregon have restricted the intrastate movement of certain articles from infested areas to prevent the spread of *P. ramorum* within California and Oregon. However, Federal regulations are necessary to restrict the interstate movement of certain articles from the infested area to prevent the spread of *P. ramorum* to noninfested areas of the United States.

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart, "Phytophthora Ramorum" (§§ 301.92 through 301.92-10, referred to below as the regulations). The regulations, which are described below, quarantine portions of the States of California and Oregon because of *P. ramorum* and restrict the interstate movement of regulated and restricted articles from quarantined areas. The interstate movement of regulated and restricted articles from nonquarantined areas is not restricted under this interim rule.

Section 301.92—Restrictions on the Interstate Movement of Regulated Articles

Section 301.92 prohibits the interstate movement of regulated and restricted articles from quarantined areas except in accordance with the regulations.

Section 301.92-1—Definitions

Section 301.92-1 contains definitions of the following terms: *Administrator*, *Animal and Plant Health Inspection Service*, *bark chips*, *certificate*, *compliance agreement*, *departmental permit*, *duff*, *firewood*, *forest stock*, *inspector*, *interstate*, *log*, *moved (move, movement)*, *mulch*, *nursery stock*, *person*, *Plant Protection and Quarantine*, *quarantined area*, *regulated article*, *restricted article*, *soil*, and *State*.

Section 301.92-2—Regulated and Restricted Articles

Certain articles present a significant risk of spreading *P. ramorum* if they are moved from quarantined areas without restrictions. We call these articles regulated and restricted articles.

Regulated articles may be moved interstate from quarantined areas under certificates issued by an inspector in accordance with § 301.92-5. Restricted articles, however, may only be moved interstate by USDA under departmental permits issued in accordance with § 301.92-4(a)(2).

Paragraph (a) of § 301.92-2 lists soil and nursery stock (except acorns and seeds), unprocessed wood and wood products including firewood, logs, lumber, wreaths, garlands, and greenery of the following species as regulated articles:

- Arrowwood (*Viburnum x bodnantense*);
- Big leaf maple (*Acer macrophyllum*);
- Black oak (*Quercus kelloggii*);
- California bay laurel (*Umbellularia californica*);
- California buckeye (*Aesculus californica*);
- California coffeeberry (*Rhamnus californica*);
- California honeysuckle (*Lonicera hispidula*);
- Coast live oak (*Quercus agrifolia*);
- Huckleberry (*Vaccinium ovatum*);¹
- Madrone (*Arbutus menziesii*);
- Manzanita (*Arctostaphylos manzanita*);
- Rhododendron (*Rhododendron* spp., including azalea);
- Shreve's oak (*Quercus parvula* var. *shrevei*);
- Tanoak (*Lithocarpus densiflorus*); and
- Toyon (*Heteromeles arbutifolia*).

Paragraph (b) of the regulations lists bark chips, forest stock, and mulch of the species of plants listed above as restricted articles. Again, restricted articles may only be moved interstate by USDA under a departmental permit

¹ Fruits of huckleberry are not regulated articles.

issued in accordance with § 301.92–4(a)(2).

The regulations in § 301.92–2 also provide that any other product or article that an inspector determines to present a risk of spreading *P. ramorum* can also be considered a regulated or restricted article if the inspector notifies the person in possession of the product or article that it is subject to the restrictions in the regulations. This provision is necessary to ensure that APHIS is able to regulate the movement of all articles, especially newly identified hosts of *P. ramorum* not listed in the regulations, that pose a risk of spreading *P. ramorum* if moved without restriction.

Section 301.92–3—Quarantined Areas

Paragraph (a) of § 301.92–3 provides the criteria for the inclusion of States, or portions of States, in the list of quarantined areas. Under these criteria, any State or portion of a State in which *P. ramorum* is found by an inspector, or in which the Administrator has reason to believe that *P. ramorum* is present, will be listed as a quarantined area. These criteria also provide that an area will be designated as a quarantined area when the Administrator considers it necessary due to the area's inseparability for quarantine enforcement purposes from localities in which *P. ramorum* has been found.

Paragraph (a) of § 301.92–3 also provides that we will designate less than an entire State as a quarantined area only if we determine that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles and that the designation of less than the entire State as a quarantined area will prevent the interstate spread of *P. ramorum*. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire State as a quarantined area.

We have determined that it is not necessary to designate the entire States of California and Oregon as quarantined areas. The State of California has adopted restrictions on the intrastate movement of regulated and restricted articles from the following counties: Alameda, Marin, Mendocino, Monterey, Napa, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma.

The State of Oregon has adopted restrictions on the intrastate movement of regulated and restricted articles from a 9-square-mile area near the Brookings area of Curry County.

P. ramorum has not been found in any other areas of California or Oregon besides those listed above, and California and Oregon have adopted and are enforcing restrictions on the intrastate movement of regulated and restricted articles from those areas that are substantially the same as those we are imposing on the interstate movement of regulated and restricted articles.

The State of California is not attempting to eradicate *P. ramorum* from the State, and has quarantined any county where *P. ramorum* has been confirmed to exist, regardless of the distribution of *P. ramorum* within that county. APHIS is also using this criterion in setting the *P. ramorum* quarantine boundaries for the State of California.

Oregon is attempting to eradicate *P. ramorum* from the area in Curry County where it has been detected. The quarantined area covers 9 square miles in the Brookings area of Curry County. All boundaries of the quarantined area are at least ½ to 1 mile from any *P. ramorum* detection site. APHIS believes that this distance is sufficient to ensure that *P. ramorum* is not spread to areas outside the quarantined area. The boundary lines may vary due to factors such as the location of *P. ramorum* host material and the use of clearly identifiable lines for the boundaries. The boundaries themselves are described in the rule portion of this document.

Paragraph (b) of § 301.92–3 provides that we may temporarily designate any nonquarantined area in a State as a quarantined area when we determine that the nonquarantined area meets the criteria for designation as a quarantined area described in § 301.92–3(a). In such cases, we will give the owner or person in possession of the area a copy of the regulations along with written notice of the area's temporary designation as a quarantined area, after which time the interstate movement of any regulated or restricted article from the area will be subject to the regulations. This provision is necessary to prevent the spread of *P. ramorum* during the time between the detection of the disease and the time a document quarantining the area can be made effective and published in the **Federal Register**. In the event that an area's designation as a temporary quarantined area is terminated, we will provide written notice of that termination to the owner or person in possession of the area as soon as is practicable.

Section 301.92–4—Conditions Governing the Interstate Movement of Regulated and Restricted Articles from Quarantined Areas

This section provides that regulated articles may be moved interstate from quarantined areas if they are accompanied by a certificate issued in accordance with §§ 301.92–5 and 301.92–8, and provided that they 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.

Additionally, this section provides that restricted articles may be moved interstate from quarantined areas by APHIS or the Department for experimental or scientific purposes. Such articles must be moved in accordance with a departmental permit issued by the Administrator, under conditions specified on the permit to prevent the spread of *P. ramorum*.

Regulated or restricted articles that are moved from outside quarantined areas and that are accompanied by a waybill that indicates the point of origin may be moved interstate through a quarantined area without a certificate or a departmental permit. The articles must also be moved from outside the quarantined area through the quarantined area without stopping (except for refueling, rest stops, emergency repairs, and for traffic conditions such as traffic lights and stop signs), and the articles must not be unpacked or unloaded in the quarantined area.

Section 301.92–5—Issuance and Cancellation of Certificates

Certificates are issued for regulated articles when an inspector finds that, because of certain conditions, there is no disease risk associated with moving a regulated article from a quarantined area. Regulated articles accompanied by a certificate may be moved interstate without further restrictions. Section 301.92–5(a) provides that a certificate will be issued by an inspector for the movement of regulated articles if the inspector determines that any one of the following conditions have been met:

- The regulated articles have been treated under the direction of an inspector in accordance with § 301.92–10 of this subpart.
- The regulated articles are wood products such as firewood, logs, or lumber that are free of bark.
- The regulated article is soil that has not been in direct physical contact with any article infected with *P. ramorum*,

and from which all duff² has been removed.

- The regulated articles are articles of nursery stock that (1) are shipped from a nursery or premises in a quarantined area that is inspected annually by an inspector for *P. ramorum* in accordance with the inspection and sampling protocol described in § 301.92–11(a), and that has been found free of *P. ramorum*; (2) are part of a shipment of nursery stock that has been inspected immediately prior to interstate movement in accordance with § 301.92–11(b), and that has been found free of *P. ramorum*; (3) have been kept separate from regulated articles not inspected between the time of the inspection and the time of interstate movement; and (4) have not been grown in, or moved from, other areas within a quarantined area except nurseries or premises that have been inspected for *P. ramorum* in accordance with this section; and that have been found free of *P. ramorum*.

The regulations in § 301.92–5(a) also require that inspectors may only issue certificates for the interstate movement of regulated articles if the inspector determines that the regulated articles: (1) Are 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)³ to prevent the spread of *P. ramorum*, and (2) are eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

We have included a footnote that provides an address for securing the addresses and telephone numbers of the local Plant Protection and Quarantine offices at which services of inspectors may be requested. We have also included a footnote that explains that the Secretary of Agriculture can, under the Plant Protection Act, take emergency actions to seize, quarantine, treat, destroy, or apply other remedial measures to articles that are, or that he or she has reason to believe are, infested or infected by or contain plant pests.

² Duff is decaying plant material including leaf litter, green waste, stem material, bark, and any other plant material that, upon visual inspection, does not appear to have completely decomposed into soil.

³ 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.

Paragraph (b) of § 301.92–5 allows any person who has entered into and is operating under a compliance agreement to issue a certificate for the interstate movement of a regulated article after an inspector has determined that the article is eligible for a certificate under § 301.92–5(a).

Also, § 301.92–5(c) contains provisions for the withdrawal of a certificate by an inspector if the inspector determines that the holder of the certificate has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact in the event that the person wishes to appeal the cancellation.

Section 301.92–6—Compliance Agreements and Cancellation

Section 301.92–6 provides for the issuance and cancellation of compliance agreements. Persons who enter into compliance agreements with APHIS are allowed to self-certify that certain regulated articles meet APHIS requirements for interstate movement. Compliance agreements are provided in order to facilitate the interstate movement of certain regulated articles while still minimizing the risk that *P. ramorum* could spread interstate. A compliance agreement will be issued when an inspector has determined that the person requesting the compliance agreement is knowledgeable regarding the requirements of the regulations and the person has agreed to comply with those requirements. Since movements of nursery stock are dependent on inspection or testing by an inspector, compliance agreements will not be issued to persons interested in moving nursery stock interstate. Inspectors will issue certificates for the interstate movement of regulated articles of nursery stock after they inspect, and if necessary, test regulated articles of nursery stock and determine that they are free of *P. ramorum*.

Section 301.92–6 contains a footnote that explains how compliance agreements may be arranged. Section 301.92–6 also provides that an inspector may cancel the compliance agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact in the event that the person wishes to appeal the cancellation.

Section 301.92–7—Assembly and Inspection of Regulated Articles

Section 301.92–7 provides that any person (other than a person authorized to issue certificates under § 301.92–5(b)) who desires a certificate to move regulated articles must request, at least 14 days before the desired interstate movement, that an inspector issue a certificate. The regulated articles must be assembled in a place and manner directed by the inspector. These provisions are necessary to ensure that persons desiring inspection services can obtain them before the intended movement date.

Section 301.92–8—Attachment and Disposition of Certificates

Section 301.92–8 requires the certificate issued for movement of the regulated article to be attached, during the interstate movement, to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill. Further, the section requires that the carrier must furnish the certificate to the consignee listed on the certificate upon arrival at the location provided on the certificate. These provisions are necessary for enforcement purposes.

Section 301.92–9—Costs and Charges

Section 301.92–9 explains the APHIS policy that the services of an inspector that are needed to comply with the regulations are provided without cost between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, to persons requiring those services, but that we will not be responsible for any other costs or charges (such as overtime costs for inspections conducted at times other than between 8 a.m. to 4:30 p.m., Monday through Friday, except holidays).

Section 301.92–10—Treatments

Section 301.92–10 lists treatments that qualify soil and certain regulated articles for interstate movement with a certificate, as provided in § 301.92–5(a)(1)(i).

Under paragraph (a), soil may be heat-treated to a temperature of at least 180 °F for 30 minutes in the presence of an inspector.⁴

Under paragraph (b), wreaths, garlands, and greenery of arrowwood (*Viburnum × bodnantense*), big leaf maple (*Acer macrophyllum*), black oak (*Quercus kelloggii*), California bay laurel (*Umbellularia californica*), California buckeye (*Aesculus californica*),

⁴ Soil may also be moved interstate without heat treatment if it meets the requirements in § 301.92–5(a)(1)(iii) or (iv).

California coffeeberry (*Rhamnus californica*), California honeysuckle (*Lonicera hispida*), coast live oak (*Quercus agrifolia*), huckleberry (*Vaccinium ovatum*), madrone (*Arbutus menziesii*), manzanita (*Arctostaphylos* spp.), rhododendron (*Rhododendron* spp., including azalea), Shreve's oak (*Quercus parvula* var. *shrevei*), tanoak (*Lithocarpus densiflorus*), and Toyon (*Heteromeles arbutifolia*) may be dipped for 1 hour in water that is held at a temperature of at least 160 °F.

Section 301.92-11—Inspection and Sampling Protocol

Section 301.92-11 describes the inspection and sampling protocol that must be followed by nurseries moving regulated articles of nursery stock interstate from quarantined areas. Under the regulations, regulated articles of nursery stock will be subject to two kinds of inspections: (1) Annual inspection and sampling of regulated articles of nursery stock contained in a nursery, and

(2) inspection of individual interstate shipments of nursery stock and testing of symptomatic plants prior to interstate movement of the shipment from the quarantined area.

Annual Nursery Inspections

For an annual nursery inspection, an inspector must visually inspect regulated articles of nursery stock for symptoms of *P. ramorum*. If the nursery contains 100 or fewer regulated articles, an inspector will inspect each regulated article. If the nursery contains more than 100 regulated articles, an inspector will inspect 100 regulated articles and at least 2 percent of the number of regulated articles contained in the nursery that exceeds 100. The regulated articles to be inspected will be randomly selected from throughout the nursery.

If symptomatic plants are found upon inspection, the inspector will collect at least one sample per symptomatic plant. If fewer than 40 symptomatic plants are found in a nursery during an inspection, the inspector must collect samples from nonsymptomatic regulated articles of nursery stock so that the total number of sampled plants is at least 40. Samples must then be labeled and sent for testing to a laboratory approved by APHIS.

If any regulated articles within a nursery are found to be infected with *P. ramorum*, the nursery will be prohibited from moving regulated articles interstate until such time as an inspector can determine that the nursery is free of *P. ramorum*.

Inspections of Individual Interstate Shipments

For an inspection of a shipment of regulated articles of nursery stock, an inspector must visually inspect the nursery stock for symptoms of *P. ramorum*. If the shipment contains 100 or fewer regulated articles, an inspector will inspect each regulated article. If the shipment contains more than 100 regulated articles, an inspector will inspect 100 regulated articles and at least 2 percent of the number of regulated articles contained in the shipment that exceeds 100. The regulated articles to be inspected will be randomly selected.

If symptomatic plants are found upon inspection, the inspector must collect at least one sample per symptomatic plant, and one sample per regulated article of nursery stock that is in close proximity to, or that has had physical contact with a symptomatic plant. Samples must be labeled and sent for testing to a laboratory approved by APHIS, and must be found free of *P. ramorum* prior to the interstate movement of any regulated articles contained in the shipment.

If any plants intended for interstate movement are found to be infected with *P. ramorum*, the nursery from which they originate will be prohibited from moving regulated articles interstate until such as time as an inspector can determine that the nursery is free of *P. ramorum*.

Request for Information

As stated earlier in this document, there is much that is unknown about *P. ramorum*. In this rule, APHIS has endeavored to regulate the movement of articles that could cause *P. ramorum* to spread to unaffected areas based on the best scientific evidence available to us at this time. We invite the public to submit any information that supports or contradicts our regulatory strategy, including:

- Evidence demonstrating whether contaminated soil provides a viable or likely pathway for the spread of, or infection of natural hosts by, *P. ramorum*.

- Evidence demonstrating whether debarked wood provides a viable or likely pathway for the spread of, or infection of natural hosts by, *P. ramorum*.

- Evidence demonstrating whether acorns, seeds, or fruits of host plants are naturally infected by *P. ramorum* or carry *P. ramorum*, and whether acorns, seeds, or fruits of host plants provide viable or likely pathways for the spread of, or infection of natural hosts by, *P. ramorum*.

- Comments on the inspection and sampling requirements for nurseries, including comments providing a scientific basis for a longer or shorter inspection cycle, or an alternative sampling protocol.

- Data related to the accuracy, specificity, ease of use, and cost effectiveness of tests that can be used to detect *P. ramorum* on nursery stock of host plants.

- Evidence demonstrating whether certain treatments are effective in eliminating *P. ramorum* infection in regulated articles.

Emergency Action

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

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The 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 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this interim rule on small entities. Based on the information we have, there is no basis to conclude that adoption of this interim rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this interim rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to prohibit or restrict the interstate movement of any plant, plant product, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of a plant pest within the United States.

As stated earlier in this document, *Phytophthora ramorum* is known to infect arrowwood (*Viburnum × bodnantense*), big leaf maple (*Acer macrophyllum*), black oak (*Quercus kelloggii*), California bay laurel (*Umbellularia californica*), California buckeye (*Aesculus californica*), California coffeeberry (*Rhamnus californica*), California honeysuckle (*Lonicera hispidula*), coast live oak (*Quercus agrifolia*), huckleberry (*Vaccinium ovatum*), madrone (*Arbutus menziesii*), manzanita (*Arctostaphylos* spp.), rhododendron (*Rhododendron* spp., including *azalea*), Shreve's oak (*Quercus parvula* var. *shrevei*), tanoak (*Lithocarpus densiflorus*), and Toyon (*Heteromeles arbutifolia*). *P. ramorum* has been confirmed to exist in 10 counties along or near the northern California coastline: Alameda, Marin, Mendocino, Monterey, Napa, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma. *P. ramorum* also has been found in a portion of Curry County, OR.

This interim rule is issued to quarantine portions of the States of California and Oregon where *P. ramorum* is confirmed to exist, and regulate the movement of certain host articles to prevent the risk of spread of *P. ramorum* to other noninfested areas in the United States. California is not attempting to eradicate *P. ramorum* from the 10 counties in the State where the disease is confirmed to exist. Oregon is attempting to eradicate the disease from an area in Curry County, the only county where *P. ramorum* is known to exist in the State. Both States have restricted the intrastate movement of certain articles from infested areas to prevent the spread of *P. ramorum* within California and Oregon. A Federal quarantine of the affected counties, comprising approximately 5 percent of the area of the State of California, and a portion of one county in Oregon is necessary to protect oak forests and urban tree resources across the United States.

P. ramorum is apparently capable of killing healthy, mature black oaks (*Quercus kelloggii*), coast live oak (*Quercus agrifolia*), and tanoaks (*Lithocarpus densiflorus*). *Quercus* spp. are considered the most important and widespread of the hardwood trees in the north temperate zone, consisting of

about 300 species. The United States has about 58 oak species of tree size and 10 species that are classified as shrubs. If other *Quercus* or *Lithocarpus* spp. in the Eastern deciduous forests prove susceptible to the pathogen under natural environmental conditions, the economic impact could be significant. The commercial hardwood timber production in the United States alone is worth over \$30 billion. Should the disease become widespread, some countries would likely place restrictions on U.S. exports of oak and other hardwood products which generated nearly \$3 billion in revenue in 2000.

The pathogen has also been isolated from *Rhododendron* spp., arrowwood (*Viburnum × bodnantense*), and in huckleberry (*Vaccinium* spp.), the genus of which includes the commercially important blueberries and cranberries. *P. ramorum* causes leaf spotting and twig dieback on these species, and in severe cases in huckleberry, can kill the plant. Nursery stock is a probable route of long distance spread of the disease since spores that give rise to *P. ramorum* can be dispersed by soil, or infected shoots, and foliage. Federal restrictions on nursery stock is necessary as *Rhododendron* spp. and viburnum are important components of the ornamental nursery trade. Additionally, two of the host species of oak are sold as nursery stock and are used as ornamentals in landscaping. The importance of the Federal quarantine and restrictions is further underscored by the fact that there is currently no known treatment for infected plants that kills the fungus but allows plants to survive. Federal action is necessary to protect the U.S. nursery industry whose sales in 1997 was estimated at almost \$11 billion.

Impact of the Interim Rule

Under the interim rule, nursery stock moving interstate from the quarantined area must be accompanied by a certificate stating that, among other things, the stock (1) originates from a nursery that has been inspected for *P. ramorum* on an annual basis and that has been found free, and (2) is part of shipment of nursery stock that has been inspected for *P. ramorum* prior to interstate movement and that has been found free. The impact of the restriction on interstate movement of nursery stock would depend on the amount of host products that are to be moved outside the quarantined area. The 1997 Census of Agriculture data show that in that year, there were some 1,214 nurseries in the 10 affected counties in California which accounted for 24 percent of the number of nurseries and 27 percent of

the value of nursery sales in California, or 5.5 percent of total U.S. sales of nursery stock in 1997. There were 7 nurseries in Curry County, OR, which comprised less than 0.2 percent of the number of nurseries, and 0.15 percent of sales. Not all of the 1,214 nurseries in the 10 California counties, however, are expected to be affected by this rule. Some indication of the impact may be surmised from the preliminary results of a survey jointly conducted by the California Department of Food and Agriculture and USDA/APHIS, between January and March 2001. The respondents to the survey were 517 wholesale and retail establishments in 6 counties in California (no survey was available for Oregon). These businesses include facilities that sold lumber, firewood cutters and dealers, and nurseries involved in propagation and sale of oaks, rhododendrons, and other host products.

Approximately 234, or 45 percent, of the businesses surveyed had contact with host materials. The total sales value of these businesses amounted to some \$7 million. A large amount of the aggregate receipts (nearly 85 percent) were derived from the sale of azaleas and rhododendron. The next largest category of sales is from oak firewood (12.7 percent), followed by oak nursery stock (2.5 percent), and mulch and chips from oak (0.17 percent).

This interim rule may impact some of the wholesale nurseries who move rhododendrons and oak nursery stock to nurseries outside the State. Nurseries that do not meet APHIS's requirements must divert their products to markets within the quarantined area, or if a market cannot be found, lose sales of that commodity. Although some information is available from the survey on the number of businesses who have contact with host materials (234 establishments), and the relatively large amount of receipts earned from sales of *Rhododendron* spp. (including azaleas) is also known, the amount of these hosts that are intended for interstate shipment is unknown. Thus, a conclusive statement cannot be made about the extent of the impact due to the movement restriction. APHIS invites comments from members of the public who may be impacted by the restriction on interstate movement of *Rhododendron* spp.

Besides rhododendrons and azaleas, wholesale nurseries within the affected area that sell oak seedlings and trees to nurseries outside the State would also be affected by the rule. The proportion of the 234 establishments that would be affected by the restrictions on movement of oak seedlings is unknown.

However, trade of seedlings is primarily on one type of host species, the coast live oak, which is not believed to be shipped interstate to a significant degree. We therefore expect that the restriction on the movement of oak nursery stock to be small.

Under this rule, producers in the quarantined counties who wish to sell wreaths, garlands, or greenery outside their counties are required to treat these products with hot water. The cost of hot water treatment is not known, and we invite public comments on treatment costs.

The economic effects that could result from the requirement that unprocessed wood or wood products (including firewood, logs, lumber, and other wood products) be debarked prior to interstate movement are unknown. We invite public comments on any costs to affected entities that may result from the debarking requirements of this rule.

The businesses surveyed that are involved in firewood distribution, from cutters to wholesalers to retailers, are generally small entities who sell primarily intrastate. The economic effects of the rule on entities involved in the firewood business is expected to be small as their sales are believed to be largely to markets within the quarantined area.

The effects of this rule on persons moving soil interstate from quarantined areas, and persons who wish to move forest stock (non-nursery grown trees, shrubs, etc.) interstate is also unknown at this time. We invite public comments on these potential effects.

In general, the economic effects of this rule could be small because many host products are sold primarily within the affected States, often within quarantined areas. Consequently, State regulations on intrastate movement would likely have a larger impact on business within the affected counties than APHIS's quarantine and regulations on interstate movement.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that APHIS specifically consider the economic impact of the interim rule on small entities. The Small Business Administration (SBA) has established size criteria for determining which economic entities meet the definition of a small firm. The small entity size standard for nursery and tree production (NAICS 111421) is \$750,000 or less in annual receipts; for forest nurseries and gathering of forest products (NAICS 113210) is \$5,000,000 or less in annual receipts. The SBA classifies logging operations (NAICS 113310), as well as sawmills, and wood

product manufacturers as small entities if fewer than 500 people are employed.

Based on the above criteria, the majority of nurseries in the affected counties of California and Oregon would likely be classified as small entities. The impact of the rule on businesses handling host materials, whether small or large, would depend on the amount of regulated articles moved in interstate commerce that would have to meet APHIS's requirements as a condition of movement. Some businesses may incur additional costs for hot water treatment or debarking.

Preliminary results from a survey of businesses in 6 of the 10 affected counties in California indicate that host materials worth over \$7 million in annual sales may be potentially affected by the interim rule. The actual impact (that is, the number of affected establishments and the amount of additional costs or losses incurred) is not known. The negative impact of this interim rule could be small as a majority of host products is sold primarily within the regulated counties in the States. Consequently, State regulations on intrastate movement would likely have a larger impact on businesses within the affected counties than APHIS's regulations on interstate movement. The public is invited to submit information regarding the percentage of sales of regulated articles that moves intra-county, inter-county, and interstate.

The economic effects of this rule are expected to be offset by large benefits to the public in terms of preventing disease spread and harm to forest and urban resources in unaffected regions across the country.

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 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information

collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579-0191 to the information collection and recordkeeping requirements.

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

This interim rule quarantines portions of the States of California and Oregon because of the presence of *P. ramorum* and restricts the interstate movement of regulated articles from quarantined areas. Its implementation will require us to engage in certain information collection activities, in that regulated articles may not be moved interstate from quarantined areas unless they are accompanied by a certificate. A certificate may be issued by an inspector (i.e., an APHIS employee or other person authorized by the APHIS Administrator to enforce the regulations) or by a person who has entered into a written compliance agreement with APHIS. We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

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

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

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

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

Estimate of burden: Public reporting burden for this collection of information

is estimated to average 0.07372 hours per response.

Respondents: Persons engaged in growing, processing, handling, or moving regulated articles.

Estimated annual number of respondents: 387.

Estimated annual number of responses per respondent: 43.002.

Estimated annual number of responses: 16,642.

Estimated total annual burden on respondents: 1,227 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

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. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

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

2. Part 301 is amended by adding a new “Subpart—Phytophthora Ramorum,” §§ 301.92 through 301.92–10, to read as follows:

Subpart—Phytophthora Ramorum

Sec.

301.92 Restrictions on the interstate movement of regulated and restricted articles.

301.92–1 Definitions.

301.92–2 Regulated and restricted articles.

301.92–3 Quarantined areas.

301.92–4 Conditions governing the interstate movement of regulated and restricted articles from quarantined areas.

301.92–5 Issuance and cancellation of certificates.

301.92–6 Compliance agreements and cancellation.

301.92–7 Assembly and inspection of regulated articles.

301.92–8 Attachment and disposition of certificates.

301.92–9 Costs and charges.

301.92–10 Treatments.

301.92–11 Inspection and sampling protocol.

Subpart—Phytophthora Ramorum

§ 301.92 Restrictions on the interstate movement of regulated and restricted articles.

No person may move interstate from any quarantined area any regulated or restricted article except in accordance with this subpart.¹

§ 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.

Bark chips. Bark fragments broken or shredded from a log or tree.

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article meets the requirements of § 301.92–5(a) of this subject 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 articles, wherein the person agrees to comply with this subpart.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.92–4(a)(2) of 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 into soil.

Firewood. Wood that has been cut, sawn, or chopped into a shape and size commonly used for fuel.

Forest stock. All flowers, trees, shrubs, vines, scions, buds, fruit pits, or other seeds of fruit and ornamental trees or shrubs that are wild-grown, backyard-grown, or naturally occurring and do not meet the definition of nursery stock, and that are not located on a nursery premises.

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).

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.

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.

Nursery stock. All greenhouse or field-grown florist's stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable, and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Plant Protection and Quarantine. Plant Protection and Quarantine, 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(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.92–3(b) of this subpart.

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

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

Soil. Any non-liquid combination of organic and/or inorganic material in which plants can grow.

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

§ 301.92–2 Regulated and restricted articles.

(a) The following are regulated articles, and may be moved interstate from a quarantined area only if accompanied by a certificate issued in accordance with the regulations in this subpart:

(1) Nursery stock (except acorns and seeds), unprocessed wood and wood products, and plant products, including firewood, logs, lumber, wreaths,

garlands, and greenery of arrowwood (*Viburnum x bodnantense*), big leaf maple (*Acer macrophyllum*), black oak (*Quercus kelloggii*), California bay laurel (*Umbellularia californica*), California buckeye (*Aesculus californica*), California coffeeberry (*Rhamnus californica*), California honeysuckle (*Lonicera hispida*), coast live oak (*Quercus agrifolia*), huckleberry (*Vaccinium ovatum*) (except fruit), madrone (*Arbutus menziesii*), manzanita (*Arctostaphylos* spp.), rhododendron (*Rhododendron* spp., including azalea), Shreve's oak (*Quercus parvula* var. *shrevei*), tanoak (*Lithocarpus densiflorus*), and Toyon (*Heteromeles arbutifolia*).

(2) Soil.

(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.

(b) The following are restricted articles, and may only be moved interstate from a quarantined area by the U.S. Department of Agriculture for experimental or scientific purposes, and only in accordance with the regulations in § 301.92-4(a)(2) of this subpart:

(1) Bark chips, forest stock, or mulch of arrowwood (*Viburnum x bodnantense*), big leaf maple (*Acer macrophyllum*), black oak (*Quercus kelloggii*), California bay laurel (*Umbellularia californica*), California buckeye (*Aesculus californica*), California coffeeberry (*Rhamnus californica*), California honeysuckle (*Lonicera hispida*), coast live oak (*Quercus agrifolia*), huckleberry (*Vaccinium ovatum*), madrone (*Arbutus menziesii*), manzanita (*Arctostaphylos* spp.), rhododendron (*Rhododendron* spp., including azalea), Shreve's oak (*Quercus parvula* var. *shrevei*), tanoak (*Lithocarpus densiflorus*), and Toyon (*Heteromeles arbutifolia*).

(2) Any other product or article that an inspector determines to present a risk of spreading *Phytophthora ramorum*, if an inspector notifies the person in possession of the product or article that it is a restricted article.

§ 301.92-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which *Phytophthora ramorum* has been found by an inspector, in which the Administrator has reason to believe that *Phytophthora ramorum* is present, 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. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

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

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

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) 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 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 (c) 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.

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

California

Alameda 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 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 bounded by a line drawn as follows: Beginning in the northwest corner of sec. 17, T. 40 S., R. 13 W., then east along sec. 17 and 16, T. 40 S., R. 13 W., to sec. 16, T. 40 S., R. 13 W., then south along sec. 16, 21, 28, and 33, T. 40 S., R. 13 W., to sec. 33, T. 40 S., R. 13 W., then west along sec. 33 and 32, T. 40 S., R. 13 W., to sec. 32, T. 40 S., R. 13 W., then north along sec. 32 and 29, T. 40 S., R. 13 W., to the midway point of the western boundary of sec. 29, T. 40 S., R. 13 W., then west to the center of sec. 30, T. 40 S., R. 13 W., then north through sec. 30 and 19, T. 40 S., R. 13 W., to the center of sec. 19, T. 40 S., R. 13 W., then east to the

western boundary of sec. 20, T. 40 S., R. 13 W., then north along sec. 20 and 17, T. 40 S., R. 13 W., to the point of beginning.

§ 301.92-4 Conditions governing the interstate movement of regulated and restricted articles from quarantined areas.

Regulated articles and restricted articles may be moved interstate from a quarantined area² only if moved in accordance with this section.

(a) *With a certificate or departmental permit.*

(1) Any regulated articles 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 of this subpart, and provided that the regulated 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) Any restricted article may be moved interstate from a quarantined area only if the article is moved:

(i) By the United States Department of Agriculture for experimental or scientific purposes;

(ii) Pursuant to a departmental permit issued by the Administrator for the article;

(iii) Under conditions specified on the departmental permit and found by the Administrator to be adequate to prevent the spread of *Phytophthora ramorum*; and

(iv) With a tag or label bearing the number of the departmental permit issued for the article attached to the outside of the container holding the article, or attached to the article itself if not in a container.

(b) *Without a certificate or departmental permit.*

(1) The regulated or 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

(2) The regulated or 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. (Approved by the Office of Management and Budget under control number 0579-0191)

² Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

§ 301.92-5 Issuance and cancellation of certificates.

(a) An inspector³ may issue a certificate for the interstate movement of regulated articles if an inspector determines that:

(1)(i) The regulated articles have been treated under the direction of an inspector in accordance with § 301.92-10 of this subpart; or

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

(iii) The regulated article is soil that has not been in direct physical contact with any article infected with *P. ramorum*, and from which all duff has been removed.

(iv) The regulated articles are articles of nursery stock that:

(A) Are shipped from a nursery or premises in a quarantined area that is inspected annually in accordance with the inspection and sampling protocol described in § 301.92-11(a) of this subpart, and that has been found free of *Phytophthora ramorum*; and

(B) Are part of a shipment of nursery stock that has been inspected prior to interstate movement in accordance with § 301.92-11(b) of this subpart, and that has been found free of *Phytophthora ramorum*; and

(C) Have been kept separate from regulated articles 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 or premises that are annually inspected for *Phytophthora ramorum* in accordance with this section, and that have been found free of *Phytophthora ramorum*.

(2) The regulated article 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)⁴ to prevent the spread of *Phytophthora ramorum*; and

³ 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 134, Riverdale MD 20737-1236, or the APHIS web site at <http://www.aphis.usda.gov/travel/aqi.html>.

⁴ 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.

(3) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) Certificates may be issued by any person engaged in the business of growing, processing, handling, or moving regulated articles provided such person has entered into and is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of regulated articles if an inspector has previously made the determination that the article is eligible for a certificate in accordance with § 301.92-5(a) of this subpart.

(c) 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 number 0579-0191)

§ 301.92-6 Compliance agreements and cancellation.

(a) Any person engaged in growing, processing, handling, or moving regulated articles other than 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.⁵

(b) Any compliance agreement may be canceled, either orally or in writing, by

⁵ 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 134, Riverdale, MD 20737-1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

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.

§ 301.92-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates under § 301.92-5(b) of this subpart) who desires to move a regulated article interstate accompanied by a certificate must notify an inspector⁶ as far in advance of the desired interstate movement as possible, but no less than 14 days before the desired interstate movement.

(b) The regulated article 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.

(a) A certificate required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article 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 must be sufficiently described on the certificate and on the waybill to identify the regulated article.

(b) The certificate for the interstate movement of a regulated article must be furnished by the carrier to the consignee listed on the certificate upon arrival at the location provided on the certificate. (Approved by the Office of Management and Budget under control number 0579-0191)

⁶ See footnote 3 of this subpart.

§ 301.92-9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

§ 301.92-10 Treatments.

The following methods may be used to treat the regulated articles listed for *Phytophthora ramorum*:

- (a) Soil must be heated to a temperature of at least 180 °F for 30 minutes in the presence of an inspector.
- (b) Wreaths, garlands, and greenery of arrowwood (*Viburnum × bodnatense*), big leaf maple (*Acer macrophyllum*), black oak (*Quercus kelloggii*), California bay laurel (*Umbellularia californica*), California buckeye (*Aesculus californica*), California coffeeberry (*Rhamnus californica*), California honeysuckle (*Lonicera hispida*), coast live oak (*Quercus agrifolia*), huckleberry (*Vaccinium ovatum*), madrone (*Arbutus menziesii*), manzanita (*Arctostaphylos* spp.), rhododendron (*Rhododendron* species, including azalea), Shreve's oak (*Quercus parvula* var. *shrevei*), tanoak (*Lithocarpus densiflorus*), and Toyon (*Heteromeles arbutifolia*) must be dipped for 1 hour in water that is held at a temperature of at least 160 °F.

§ 301.92-11 Inspection and sampling protocol.

(a) *Annual nursery inspection and sampling.* To meet the requirements of § 301.92-5(a)(1)(iv) of this subpart, nurseries that ship regulated articles of nursery stock interstate must be inspected for symptoms of *Phytophthora ramorum* annually in accordance with this section.

(1) If the nursery contains 100 or fewer regulated articles, an inspector will inspect each regulated article. If the nursery contains more than 100 regulated articles, an inspector will inspect 100 regulated articles and at least 2 percent of the number of regulated articles contained in the nursery that exceeds 100. The regulated articles to be inspected will be randomly selected from throughout the nursery.

(2) If symptomatic plants are found upon inspection, the inspector must collect at least one sample per symptomatic plant.

(3) If fewer than 40 symptomatic plants are found in a nursery during an annual inspection, the inspector must collect samples from nonsymptomatic regulated articles of nursery stock so that the total number of sampled plants is at least 40.

(4) Samples must be labeled and sent for testing to a laboratory approved by APHIS.

(5) If any regulated articles within a nursery are found to be infected with *Phytophthora ramorum*, the nursery will be prohibited from moving regulated articles interstate until such time as an inspector can determine that the nursery is free of *Phytophthora ramorum*.

(b) *Inspection and sampling of individual shipments.* To meet the requirements of § 301.92-5(a)(1)(iv) of this subpart, each shipment of regulated articles of nursery stock intended for interstate movement must be inspected for symptoms of *Phytophthora ramorum* in accordance with this section.

(1) If a shipment contains 100 or fewer regulated articles, an inspector will inspect each regulated article. If a shipment contains more than 100 regulated articles, an inspector will inspect 100 regulated articles and at least 2 percent of the number of regulated articles contained in the shipment that exceeds 100. The regulated articles to be inspected will be randomly selected.

(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 of nursery stock that is in close proximity to, or that has had physical contact with a symptomatic plant.

(3) Samples will be labeled and sent for testing to a laboratory approved by APHIS, and must be found free of *Phytophthora ramorum* prior to the interstate movement of any regulated articles contained in the shipment.

(4) If any plants intended for interstate movement are found to be infected with *Phytophthora ramorum*, the nursery from which they originate will be prohibited from moving regulated articles interstate until such time as an inspector can determine that the nursery is free of *Phytophthora ramorum*.

Done in Washington, DC, this 12th day of February 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Parts 911 and 944**

[Docket No. FV01-911-2 FR]

Limes Grown in Florida and Imported Limes; Suspension of Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule suspends regulations for one year for limes grown in Florida and for limes imported into the United States that are shipped to the fresh market. This rule suspends grade, size, quality, maturity, pack, inspection, assessment collection, reporting, and other requirements currently prescribed under the Florida lime marketing order (order). The order is administered locally by the Florida Lime Administrative Committee (Committee). This suspension gives the industry time to evaluate citrus canker eradication efforts and the market effects of suspending regulations for one year. This change reduces costs and will help the industry recover from the effects of citrus canker. The suspension of the grade, size, quality, maturity, and inspection requirements specified in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: This final rule becomes effective February 19, 2002 through February 24, 2003.

FOR FURTHER INFORMATION CONTACT:

Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone: (863) 324-3375, Fax: (863) 325-8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing