

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 70 FR 9207–9210 on February 25, 2005.

Done in Washington, DC, this 17th day of June 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 305

[Docket No. 04–092–2]

Phytophthora Ramorum; Vacuum Heat Treatment for Bay Leaves

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the phytosanitary treatments regulations to allow leaves of the California bay laurel (*Umbellularia californica*) to be treated with vacuum heat before being moved interstate from any area quarantined because of *Phytophthora ramorum*. This action will provide an alternative to the hot water dip that had been the only approved treatment for the greenery of host plants, which include California bay laurel leaves, but that ruined the suitability of the leaves for use as a dried spice.

DATES: Effective June 23, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. James Writer, Assistant *P. ramorum* Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–7121.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart-Phytophthora Ramorum” (7 CFR 301.92 through 301.92–11, referred to below as the regulations) list 10 counties in California and a portion of Curry County in Oregon as quarantined areas due to the presence of *Phytophthora ramorum* and restrict the interstate movement of regulated articles from those areas. Regulated articles are identified in § 301.92–2 of the regulations.

In subsequent Federal Orders, the Animal and Plant Health Inspection

Service (APHIS) expanded the list of quarantined areas to include Contra Costa, Humboldt, Lake, and San Francisco Counties, CA, as well as another portion of Curry County, OR, and expanded the list of regulated articles to include additional confirmed hosts of *P. ramorum*.

The regulations in § 301.92–10 provide treatments that may be used to qualify regulated articles for interstate movement from quarantined areas. For unprocessed wreaths, garlands, and greenery of host plants, the only approved treatment has consisted of a hot water dip for 1 hour at a sustained temperature of at least 160 °F. However, this treatment is not a viable option for treating leaves from the California bay laurel (*Umbellularia californica*), as it ruins the leaves for their intended use as a dried spice.

On February 8, 2005, we published in the **Federal Register** (70 FR 6596–6598, Docket No. 04–092–1) a proposal to amend the Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual), which was incorporated by reference in the Code of Federal Regulations, to allow leaves of the California bay laurel to be treated with vacuum heat before being moved interstate from any area quarantined because of *P. ramorum*. In addition to adding this vacuum heat treatment schedule, which we would have designated as T101-m-2–1–2, to the PPQ Treatment Manual, we also proposed amending the PPQ Treatment Manual’s incorporation by reference in 7 CFR part 300.1 to reflect the date of the treatment’s inclusion in the manual, and the list of accepted treatments in § 301.92–10 to include any treatments authorized for use on *P. ramorum* that are listed in the PPQ Treatment Manual.

We solicited comments concerning our proposal for 60 days ending April 11, 2005. We received one comment by that date, from a spice trade association. The commenter was in favor of amending the regulations to allow California bay laurel leaves to be treated with vacuum heat before moving interstate from areas quarantined because of *P. ramorum*.

In the proposed rule, we proposed adding the vacuum heat treatment for bay leaves to the PPQ Treatment Manual. However on June 7, 2005, we published in the **Federal Register** a final rule (70 FR 33264–33326, Docket No. 02–019–1) that removed the PPQ Treatment Manual’s incorporation by reference and relocated the portions of the PPQ Treatment Manual that prescribe treatment schedules, instructions for administering the treatments, and requirements for

certification of facilities that administer the treatments to 7 CFR part 305, “Phytosanitary Treatments.” Therefore, in this final rule, we are adding the vacuum heat treatment for bay leaves to part 305 rather than the PPQ Treatment Manual.

In addition, in the proposed rule, the vacuum heat treatment for use on bay leaves was given the designation T101-m-2–1–2, but the T101 numbering series is used to refer to fumigation treatments. As the vacuum heat treatment described in the proposed rule and this final rule is not a fumigation treatment, we are designating the treatment as T111-a-1 and are adding it to the regulations as a new § 305.29 in the “Heat Treatments” subpart.

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

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The regulations have required that the greenery of *P. ramorum* host plants, which include California bay laurel, grown in a quarantined area be treated with a hot water dip before being moved interstate from a quarantined area. Making this rule effective immediately will provide entities that produce and market spices with an alternative treatment for bay laurel leaves produced in areas quarantined because of *P. ramorum* that will not render the leaves unsuitable for their intended use as a dried spice. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This final rule amends the phytosanitary treatments regulations to allow leaves of the California bay laurel to be treated with vacuum heat before being moved interstate from any area quarantined because of *P. ramorum*. This action will provide an alternative

to the currently approved hot water dip used to treat California bay laurel leaves, which ruins the suitability of the leaves for use as a dried spice.

Vacuum heat treatment costs are similar to costs of vapor heat and hot-air treatment systems. All three treatments require substantial initial capital investments ranging from \$55,000 to \$200,000 for larger

commercial facilities. By comparison, hot water immersion treatment systems can be assembled for less than \$8,000. Clearly, hot-water immersion treatment is less expensive, but in this case it is not feasible because it renders the treated article—bay leaves—unsuitable for its use as a dried spice.

Table 1 shows that representative unit costs for hot air or vapor heat treatments

total less than \$30 per ton of commodities treated. The cost of vacuum heat treatment is comparable. This cost is higher than the unit cost of hot water immersion, given the large difference in capital costs indicated above, but is relatively minor when compared to the value of the commodity being treated.

TABLE 1.—REPRESENTATIVE COSTS OF HOT AIR OR VAPOR HEAT TREATMENT OF A PERISHABLE COMMODITY

Capital costs	\$4.41/metric ton of commodity treated.
Operating costs ¹	\$25.00/metric ton of commodity treated.
Total cost	\$29.41/metric ton of commodity treated.

¹ Labor, energy, maintenance, and insurance.

One pound of dried bay leaves sells for \$3.75, that is, \$8,267.33 per metric ton. Thus, the representative cost shown in table 1 is equal to less than 0.4 percent of the sales price of the spice. Compared to other costs, such as harvesting, storage, processing, packaging, and transport, the cost of the vacuum heat treatment is relatively insignificant overall.

We also note that use of the vacuum heat treatment would be on a voluntary basis to qualify dried bay leaves for interstate movement from the quarantined counties.

According to the 2002 Agricultural Census, there were approximately 600 nurseries in the 14 California counties operating under quarantine for *P. ramorum*. The 600 nurseries reported approximately \$882 million in annual sales. A small nursery, according to Small Business Administration size standards (SBA), is one with \$750,000 or less in annual receipts. APHIS does not have information on the size distribution of the nurseries in the 14 counties, in terms of annual receipts. We also do not have information on the number of these nurseries that have bay laurel trees and seedlings for sale, or of the quantity of bay laurel leaves they produce and the percentage sold to customers outside the quarantined area.

It is expected that, primarily, producers/processors of bay leaves will conduct the vacuum heat treatment. According to the 2002 Economic Census, there were approximately 44 spice and extract manufacturing establishments (NAICS 311942) in California, employing 1,521 people (or an average of 34 persons per entity). No data are available for California by county. According to SBA's criteria, the size standard for a small entity in this industry is 500 or fewer employees. However, information on the size distribution of these establishments was

unavailable. Even though the number and size of the entities that could be affected by the final rule is unknown, we have no evidence indicating that there would be a significant economic impact on any entity, large or small.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 301

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

7 CFR Part 305

Agricultural commodities, Chemical treatment, Cold treatment, Garbage treatment, Heat treatment, Imports, Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Quick freeze, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR parts 301 and 305 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7701–7772; 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. Section 301.92–10 is revised to read as follows:

§ 301.92–10 Treatments.

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

(a) *Soil*—Heat to a temperature of at least 180 °F for 30 minutes in the presence of an inspector.

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

PART 305—PHYTOSANITARY TREATMENTS

■ 3. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 4. In § 305.1, a definition for *vacuum heat treatment* is added, in alphabetical order, to read as follows:

§ 305.1 Definitions.

* * * * *

Vacuum heat treatment. The treated commodity is held in a gas-tight

enclosure and heated to a specified temperature for a specific time period to kill targeted pests.

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■ 5. Section 305.2 is amended as follows:

■ a. In the introductory text of paragraph (h)(2), by adding the words “§ 305.29 for vacuum heat (VCH),” after the word “(FHA),”.

■ b. In paragraph (h)(2)(ii), the table is amended by adding, under “Areas in the United States under Federal Quarantine for the listed pest”, an entry for bay leaves to read as follows:

§ 305.2 Approved treatments.

* * * * *

- (h) * * *
- (2) * * *
- (ii) * * *

Location	Commodity	Pest	Treatment schedule
* * * * *	* * * * *	* * * * *	* * * * *
	Bay leaves	<i>Phytophthora ramorum</i>	VCH T111–a–1
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■ 6. A new § 305.29 is added to read as follows:

§ 305.29 Vacuum heat treatment schedule.

T111–a–1. Place bay leaves in a vacuum chamber. Starting at 0 hour, gradually reduce to 0.133 Kpa vacuum at 8 hours. Maintain the vacuum until the end of the treatment. Gradually increase the temperature in the vacuum chamber from ambient temperature at 0 hour to 60 °C at 5 hours. After 5 hours, gradually lower the temperature to 30 °C at 22 hours. The length of the treatment is 22 hours.

Done in Washington, DC, this 17th day of June, 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 04–011–2]

Highly Pathogenic Avian Influenza; Additional Restrictions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Technical amendment.

SUMMARY: In an interim rule published in the **Federal Register** on May 10, 2004, we amended the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of birds, poultry, and bird and poultry products from regions that have reported the presence

of the H5N1 subtype of highly pathogenic avian influenza and to establish additional permit and quarantine requirements for U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States. In the preamble of the interim rule, we specified that the additional restrictions in part 94 would apply only to unprocessed bird and poultry products, but mistakenly omitted the word “unprocessed” in the rule portion; in this document, we are correcting this error.

DATES: This amendment is effective June 23, 2005.

FOR FURTHER INFORMATION CONTACT: For information concerning bird and poultry products, contact Dr. Tracye Butler, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277. For information concerning live birds and poultry, contact Dr. Julie Garnier, Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION: In an interim rule published in the **Federal Register** on May 10, 2004 (69 FR 25820–25826, Docket No. 04–011–1), we amended the animal import regulations in 9 CFR parts 93, 94, and 95 to prohibit or restrict the importation of birds, poultry, and bird and poultry products from regions that have reported the presence of the H5N1 subtype of highly pathogenic avian influenza (HPAI) and to establish additional permit and quarantine requirements for U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States.

In the May 2004 interim rule, we specified in the preamble that unprocessed bird and poultry carcasses, parts, and products from regions where HPAI subtype H5N1 exists would be eligible for importation only if accompanied by an import permit and only if they are research or educational materials destined for a museum, educational institution, or research institution. However, in the rule portion of the interim rule we mistakenly omitted the word “unprocessed,” thereby holding both processed and unprocessed bird and poultry products to these restrictions. Therefore, in this document we are amending § 94.6, paragraph (e), to correct this omission.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.6 [Amended]

■ 2. In § 94.6, the paragraph heading and first sentence of paragraph (e) are amended by removing the word “Carcasses” and by adding the words “Unprocessed carcasses” in their place.