

# Proposed Rules

Federal Register

Vol. 83, No. 122

Monday, June 25, 2018

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2015–0101]

RIN 0579–AE30

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

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

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

**DATES:** We will consider all comments that we receive on or before August 24, 2018.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0101>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0101, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0101> or in our reading room, which 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) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Karen Maguylo, National Policy Manager, Pest Management, PPQ, APHIS, 4700 River Road, Riverdale, MD 20737–1238; (301) 851–3128.

#### SUPPLEMENTARY INFORMATION:

##### Background

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

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

*P. ramorum* was first discovered in the natural environment in 14 counties in California and portions of 1 county in Oregon. When the disease was subsequently discovered in certain nurseries on the west coast that shipped nursery stock interstate, the Animal and Plant Health Inspection Service (APHIS) issued an interim rule published in the **Federal Register** on February 14, 2002 (67 FR 6827–6837, Docket No. 01–054–1). The interim rule established a new

subpart, “Subpart—*Phytophthora ramorum*” (7 CFR 301.92 through 301.92–12, referred to below as the regulations), which contains APHIS’ regulations to address the spread of *P. ramorum*.

Section 301.92–3 of the regulations designates certain States and portions of States as quarantined areas for *P. ramorum*. The regulations also designate other States or portions of States as regulated areas for *P. ramorum*. Quarantined areas are areas in which *P. ramorum* has been confirmed by an inspector to exist in the natural environment, in which there is reason to believe *P. ramorum* exists in the natural environment, or which APHIS considers to be inseparable for quarantine enforcement purposes from localities in which *P. ramorum* has been found in the natural environment.

Regulated areas are defined in the regulations as areas in which *P. ramorum* has been found on nursery stock in commercial nurseries, but in which *P. ramorum* has not been found in the natural environment. The quarantined areas for *P. ramorum* are designated in paragraph (a) of § 301.92–3. Regulated areas for *P. ramorum* are designated in paragraph (b) of § 301.92–3. Quarantined areas include 14 counties in California and a portion of 1 county in Oregon. Regulated areas include the remainder of California and Oregon, as well as the State of Washington.

Section 301.92–2 of the regulations designates nursery stock of proven host taxa for *P. ramorum* as regulated articles for *P. ramorum*. It also designates nursery stock of taxa associated with *P. ramorum*, but not proven to be hosts, as associated articles for *P. ramorum*. Nursery stock of taxa that are neither designated as proven hosts nor as associated with *P. ramorum* are considered to be non-hosts.

Section 301.92–4 of the regulations contains conditions for the interstate movement of regulated and non-host nursery stock from quarantined areas for *P. ramorum*. This section also contains conditions for the interstate movement of regulated and non-host nursery stock from regulated areas for *P. ramorum*. The conditions for movement of both regulated and non-host nursery stock from a quarantined area for *P. ramorum* are found in paragraphs (a) and (c) of § 301.92–4, while the conditions for

interstate movement of both regulated and non-host nursery stock from a regulated area for *P. ramorum* are found in paragraph (d) of that section.

Paragraph (d) requires certificates to be issued in order for regulated nursery stock to be shipped interstate from a regulated area for *P. ramorum*, and also requires certificates to be issued for the interstate movement of non-host nursery stock, if the nursery from which the nursery stock originates contains regulated or associated articles for *P. ramorum*. If the nursery contained only non-host nursery stock, then certificates are not required, provided that the nursery is inspected and found free of evidence of *P. ramorum*. (We discuss the inspection protocols, which are found in § 301.92–11 of the regulations, in the following paragraphs.)

Section 301.92–5 of the regulations requires that, in order for nurseries in quarantined or regulated areas for *P. ramorum* to ship regulated or non-host nursery stock interstate under a certificate, the nurseries have to be inspected annually in accordance with inspection and sampling protocols. The inspection and sampling protocols are found in § 301.92–11 of the regulations. The inspection and sampling protocols for nurseries in quarantined areas for *P. ramorum* that ship regulated or non-host nursery stock interstate are found in paragraphs (a) and (b) of § 301.92–11, respectively, while the inspection and sampling protocols for nurseries in regulated areas for *P. ramorum* that ship regulated or non-host nursery stock interstate are found in paragraphs (c) and (d) of § 301.92–11, respectively.

Paragraph (c) of § 301.92–11 contains the following inspection and sampling protocol for nurseries in regulated areas for *P. ramorum* that ship regulated nursery stock interstate: Visual inspection of the nurseries for symptoms of *P. ramorum*; sampling of plants showing symptoms of infection with *P. ramorum*; and testing of those samples using an approved test (approved tests and testing protocols for *P. ramorum* are found in § 301.92–12 of the regulations). While testing is ongoing, the symptomatic plants, the lot containing the symptomatic plants, and plants located within 2 meters of that lot cannot be moved interstate. Nurseries in quarantined areas for *P. ramorum* are subject to a similar protocol with more stringent inspection requirements. Finally, nurseries in quarantined and regulated areas for *P. ramorum* that contain and ship only non-host nursery stock are subject to a similar inspection protocol, but are only subject to sampling and testing if an inspector

found plants showing symptoms of *P. ramorum*.

Over a 9-year period, from 2004, when we implemented these protocols, to 2013, APHIS and the State plant protection authorities of California, Oregon, and Washington inspected approximately 3,050 nurseries annually. During that time period, *P. ramorum* was never detected at a nursery located in a regulated area for *P. ramorum* and that contains and ships interstate only non-host nursery stock. Additionally, *P. ramorum* was discovered in the natural environment of only one area that had been regulated for *P. ramorum*, a portion of Curry County, OR.

Additionally, of the nurseries in regulated areas for *P. ramorum* that contain and ship interstate regulated nursery stock, *P. ramorum* was detected at a very small percentage—usually no more than 3 percent annually. The vast majority of the nurseries were found free of *P. ramorum* each time they were inspected.

If *P. ramorum* was detected at a nursery during one of these inspections, however, it often was not limited to infected plants. Rather, multiple sources of the inoculum often were detected at the nursery; these include growing media, pots used for nursery stock, standing water, drainage water, and water used for irrigation. This is also true of nurseries that are located in quarantined areas for *P. ramorum* and in which the disease was detected.

Finally, between 2004 and 2013, APHIS detected *P. ramorum* in 120 nurseries in areas that are neither quarantined nor regulated for *P. ramorum*, and in which APHIS has no reason to believe *P. ramorum* exists in the natural environment. Most of these nurseries were retailers that sell directly to consumers and do not engage in interstate commerce. However, some did ship regulated, restricted, and associated articles interstate. Several of those nurseries tested positive for *P. ramorum* in their soil, standing water, water for irrigation, or growing media.

This data led us to reevaluate our regulatory strategy for addressing the artificial spread of *P. ramorum* within the United States. As a result of this reevaluation, we no longer saw a need for regulating geographical areas for *P. ramorum* unless we determined that the area met the criteria for designation as a quarantined area for *P. ramorum*. However, we did see a need to regulate nurseries outside of quarantined areas for *P. ramorum* if the nurseries shipped regulated, restricted, or associated articles interstate and sources of *P. ramorum* were discovered at the nursery.

Accordingly, in a Federal Order issued on January 10, 2014, and a Federal Order issued on April 3, 2015, we restructured the domestic quarantine program for *Phytophthora ramorum*.<sup>1</sup> Specifically:

- We deregulated all regulated areas for *P. ramorum*, and removed all regulatory restrictions specific to those areas.
- Instead of regulated areas for *P. ramorum*, we implemented regulated establishments for *P. ramorum*. A regulated establishment is a nursery that is not located in a quarantined area for *P. ramorum*, that ships regulated, restricted, or associated articles interstate, and in which sources of *P. ramorum* inoculum are detected on nursery stock, or in soil, growing media, pots used for nursery stock, standing water, drainage water, water used for irrigation, or any other regulated, restricted, or associated articles at the nursery.
- We instituted inspection and sampling protocols for regulated establishments.
- We implemented restrictions on the interstate movement of regulated, restricted, and associated articles from regulated establishments.
- We revised the inspection and sampling protocol for nurseries in quarantined areas, as well as the conditions for interstate movement of regulated, restricted, and associated articles from certain of those nurseries.

We are proposing to update the regulations to reflect the changes made by the Federal Orders to the *Phytophthora ramorum* domestic quarantine program. Additionally, we are proposing to update the lists of regulated and associated articles for *P. ramorum*, and establish conditions for the interstate movement of soil samples from areas quarantined for *P. ramorum*.

Below, we discuss these amendments to the regulations at greater length.

#### *Removal of Regulated Areas and Establishment of Regulated Establishments*

As we mentioned earlier in this document, paragraph (b) of § 301.92–3 lists areas designated as regulated areas for *Phytophthora ramorum*. Proposed paragraph (b) would provide conditions for the designation and deregulation of regulated establishments. Specifically, it would state that the Administrator would designate a nursery that is not located in a quarantined area for *P.*

<sup>1</sup> [https://www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/phytophthora-ramorum/ct-phytophthora\\_ramorum\\_sudden\\_oak\\_death](https://www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/phytophthora-ramorum/ct-phytophthora_ramorum_sudden_oak_death).

*ramorum* as a regulated establishment for *P. ramorum* if the nursery ships regulated, restricted, or associated articles interstate and sources of *P. ramorum* are detected on nursery stock, or in soil, growing media, pots used for nursery stock, standing water, drainage water, water used for irrigation, or any other regulated, restricted, or associated articles at the nursery. It would also state that the Administrator would withdraw regulation of a regulated establishment if, for 3 consecutive years, each time the nursery is inspected by an inspector, it is found free of sources of *P. ramorum* inoculum. We discuss the inspection and sampling protocols for regulated establishments later in this document.

Currently, paragraph (d) of § 301.92–4 contains conditions for interstate movement of both regulated and non-host nursery stock from a regulated area for *Phytophthora ramorum*. Proposed paragraph (d) would contain conditions for the movement of regulated, restricted, and associated articles from regulated establishments. In order for such articles to be moved interstate, the regulated establishment would have to enter into a compliance agreement with APHIS, and the articles would have to be accompanied by a certificate issued in accordance with § 301.92–5. We are also proposing to amend the heading of the section so that it is clear that it contains conditions for the interstate movement of regulated, restricted, and associated articles from regulated establishments.

Within § 301.92–5, paragraph (b) contains conditions for the issuance of certificates for regulated articles of nursery stock, associated articles, and non-host nursery stock from nurseries in regulated areas. Proposed paragraph (b) would contain conditions for the issuance of certificates for regulated, restricted, and/or associated articles from regulated establishments. Under the proposal, in order for a certificate to be issued for such articles, an inspector would have to determine that the nursery entered into a compliance agreement with APHIS and abided by all terms and conditions of that compliance agreement, the nursery had been inspected in accordance with the inspection and sampling protocols specified in § 301.92–11, the articles to be shipped interstate are free from *P. ramorum* inoculum, and the movement of the articles would not be subject to additional restriction under the PPA or other Federal domestic plant quarantines and regulations.

Within § 301.92–11, paragraph (c) contains inspection and sampling protocols for nurseries in regulated

areas that ships regulated articles of nursery stock or associated articles interstate. Proposed paragraph (c) would contain inspection and sampling protocols for regulated establishments shipping regulated, restricted, or associated articles interstate.

Specifically, proposed paragraph (c) would require that regulated establishments be inspected at least twice annually for symptoms of *P. ramorum* infestation by an inspector. The inspection would focus on regulated plants and other potential sources of *P. ramorum* inoculum. Additionally, during such inspections, samples would be taken from host plants, soil, standing water, drainage water, water for irrigation, growing media, and any other articles determined by the inspector to be possible sources of *P. ramorum* inoculum. The number of samples taken could vary depending on the possible sources of *P. ramorum* identified at the nursery, as well as the number of host articles in the nursery. Finally, samples would be labeled and sent for testing to a laboratory approved by APHIS in accordance with the regulations.

If all samples tested returned negative results for *P. ramorum*, an inspector could certify that the nursery is free of *P. ramorum* at the time of the inspection, and all regulated, restricted, and associated articles at the nursery would be considered free from *P. ramorum* inoculum for purposes of § 301.92–5(b) until the time of the next inspection. Additionally, as we mentioned previously in this document, if, for 3 consecutive years, the nursery is determined to be free of sources of *P. ramorum* inoculum each time it is inspected by an inspector, it would be deregulated.

If any samples tested return positive results for *P. ramorum*, the nursery could ship lots of regulated, restricted, or associated articles interstate under a certificate only if the lot is determined to be free from *P. ramorum* inoculum. (In other words, the articles at the nursery are not presumed to be free from *P. ramorum* inoculum because of the positive samples, and would be evaluated on a lot-by-lot basis.) The method for this determination would be specified within the nursery's compliance agreement with APHIS.

Paragraph (d) of § 301.92–11 contains an inspection and sampling protocol for nurseries in regulated areas for *P. ramorum* that ship non-host nursery stock interstate, and do not contain regulated or associated articles. Because we are proposing to remove regulated areas from the regulations, and nurseries that only contain and ship interstate

non-host nursery stock would not be designated as regulated establishments, we are proposing to remove the inspection and sampling protocol contained in paragraph (d) of § 301.92–11 from the regulations.

We are also proposing to make several harmonizing changes to other sections of the regulations to reflect the removal of regulated areas for *P. ramorum* and implementation of regulated establishments for *P. ramorum*.

Section 301.92 contains general restrictions on the interstate movement of regulated, restricted, and associated articles, as well as other nursery stock. Paragraph (b) of § 301.92 states that no person may move nursery stock interstate from a nursery in a regulated area for *P. ramorum* except in accordance with the regulations. Proposed paragraph (b) would specify that no person may move restricted, regulated, or associated articles from a regulated establishment except in accordance with the regulations.

Currently, paragraph (c) of § 301.92 states that no person may move regulated, restricted, or associated articles interstate from a quarantined or regulated area for *P. ramorum* if the articles have been tested with a test approved by APHIS and found infected with *P. ramorum*, or if the articles are part of a plant that was found infected with *P. ramorum*, unless the articles are moved in accordance with 7 CFR part 330 (*i.e.*, our regulations governing the interstate movement of plant pests). Proposed paragraph (c) would prohibit the interstate movement from quarantined areas or regulated establishments of articles that have been found infected with *P. ramorum* or that are part of a plant that has been found infected with *P. ramorum*.

Section 301.92–1 contains definitions of terms used in the regulations. The section includes a definition of *regulated area*. Since that term is no longer used in the *P. ramorum* domestic quarantine program, we are proposing to remove the definition from § 301.92–1. We are also proposing to add a definition of *regulated establishment* to § 301.92–1. The definition would state that a *regulated establishment* is any nursery regulated by APHIS pursuant to paragraph (b) of § 301.92–3 of the regulations.

#### *Revisions to Inspection and Sampling Protocols for Quarantined Areas*

As we mentioned earlier in this document, paragraph (a) of § 301.92–11 contains an inspection and sampling protocol for nurseries in quarantined areas for *P. ramorum* that ship regulated nursery stock interstate, while

paragraph (b) of § 301.92–11 contains an inspection and sampling protocol for nurseries in quarantined areas for *P. ramorum* that ship non-host nursery stock interstate.

Proposed paragraph (a) would contain two separate inspection and sampling protocols. Pursuant to the January 2014 Federal Order, if *P. ramorum* has not been discovered at the nursery since March 31, 2011, the inspection and sampling protocol for the nursery would be substantially similar to the one currently stated in the regulations. The only change would be the minimum number of samples that would be tested at the nursery: Whereas the regulations provide for a minimum of 40 samples, under the Federal Order the minimum number of samples is set on a nursery-by-nursery basis depending on the amount of regulated, restricted, and associated articles at the nursery. We are proposing to revise paragraph (a) to align the regulations with changes made by the Federal Order.

Proposed paragraph (a) would also provide that if, however, *P. ramorum* has been discovered at the nursery since March 31, 2011, the nursery would be subject to the same inspection and sampling protocol as that specified for regulated establishments. Unlike regulated establishments, however, if a nursery in a quarantined area is tested and found free of *P. ramorum* inoculum for 3 consecutive years, it would not be released from regulation, but rather reverted to the previous inspection and sampling protocol.

We are proposing minor revisions to paragraph (b) of § 301.92–11 to reflect these changes to paragraph (a).

We are also proposing to make one additional amendment to § 301.92–11. The introductory text to the section contains a table to aid nurseries in determining what inspection and sampling protocol they are subject to. One of the primary purposes of the table is to delineate the different inspection and sampling protocols for regulated areas, which is no longer necessary. Another primary purpose of the table is to clarify that inspection and sampling protocols for nurseries in quarantined areas differed based on whether the nursery ships regulated nursery stock interstate. This is no longer necessarily the case; a nursery in a quarantined area for *P. ramorum* that ships only regulated nursery stock interstate would be subject to the same inspection and sampling protocol as a nursery that ships non-host nursery stock interstate if *P. ramorum* had not been discovered at the nursery since March 31, 2011. For these reasons, we are proposing to remove the table from the regulations.

As we mentioned earlier in this document, § 301.92–12 of the regulations contains approved tests and testing protocols for *P. ramorum*.

Paragraph (a) is written in a manner which considers all samples tested for *P. ramorum* using an optional ELISA prescreening to be plants or plant products. As a result of our proposed revisions to § 301.92–11, samples tested using an optional ELISA prescreening may not always be from plants or plant products; for example, they may come from standing water or water used for irrigation. Therefore, we are proposing to revise paragraph (a) of § 301.92–12 accordingly.

#### *Revisions to the Lists or Regulated and Associated Articles*

As we mentioned previously in this document, § 301.92–2 of the regulations designates nursery stock of proven host taxa for *P. ramorum* as regulated articles for *P. ramorum*. It also designates nursery stock of taxa associated with *P. ramorum*, but not proven to be hosts, as associated articles for *P. ramorum*. We are proposing to add *Cinnamomum camphora* and *Gaultheria procumbens* to the list of regulated articles, and *Ilex cornuta*, *Illicium parviflorum*, *Larix kaempferi*, *Magnolia denudata*, *Mahonia nervosa*, *Molinadendron sinaloense*, *Trachelospermum jasminoides*, and *Veronica spicata* Syn. *Pseudolysimachion spicatum* to the list of associated articles.

#### *Conditions for the Interstate Movement of Soil Samples*

As we mentioned previously in this document, paragraph (a) of § 301.92–4 provides conditions for the interstate movement of regulated articles from quarantined areas for *P. ramorum*. Paragraph (a)(2) of that section provides conditions for the interstate movement of regulated articles without a certificate.

On June 1, 2016, we issued a Federal Order<sup>2</sup> authorizing the interstate movement of soil samples for chemical or physical (compositional analysis) from quarantined areas for *P. ramorum* without a certificate, provided that they are moved to a laboratory, and that laboratory:

- Has entered into and is operating under a compliance agreement with APHIS in accordance with § 301.92–6;
- Is abiding by all terms and conditions of that compliance agreement; and
- Is approved by APHIS to test and/or analyze such samples.

<sup>2</sup>To view the Federal Order, go to [https://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/pram/downloads/pdf\\_files/DA-2016-34.pdf](https://www.aphis.usda.gov/plant_health/plant_pest_info/pram/downloads/pdf_files/DA-2016-34.pdf).

We are proposing to amend paragraph (a)(2) of § 301.92–4 based on the provisions of this Federal Order.

#### **Executive Orders 12866 and 13771 and Regulatory Flexibility Act**

This proposed 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. This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866. Further, APHIS considers this rule to be a deregulatory action under Executive Order 13771 as the action would remove regulated areas for *P. ramorum* from the regulations, as well as the regulatory requirements specific to such areas, thus relieving restrictions on affected entities located in those areas.

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

This proposed rule would revise the *P. ramorum* domestic regulations to accord with Federal Orders issued 2013–2016. The Federal Orders have allowed APHIS and State regulatory agencies to focus regulatory controls on the nurseries that present a significant risk of spreading the pathogen and away from those nurseries that pose a negligible risk of contributing to its artificial spread, thereby more efficiently apportioning resources and regulatory burden.

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

The annual cost of complying with the *P. ramorum* management requirements in the regulations averages about \$15,000 per nursery. Thus, the cost savings for the 1,500 operations relieved of these management requirements totals \$22.5 million per year. In addition, by not requiring annual certification by APHIS or State

officials, there are public cost savings of \$252,000.

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

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

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

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

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information

Collection Coordinator, at (301) 851-2483.

#### List of Subjects in 7 CFR Part 301

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

Accordingly, we propose to revise 7 CFR part 301 as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

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

**Authority:** 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

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

■ 2. Section 301.92 is amended as follows:

- a. By revising paragraph (b); and
- b. In paragraph (c), by removing the words “quarantined or regulated area” and adding the words “quarantined area or regulated establishment” in their place.

The revision reads as follows:

#### § 301.92 Restrictions on interstate movement.

\* \* \* \* \*

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

\* \* \* \* \*

■ 3. Section 301.92-1 is amended as follows:

- a. By removing the definition of *Regulated area*; and
- b. By adding a definition of *Regulated establishment* in alphabetical order.

The addition reads as follows:

#### § 301.92-1 Definitions.

\* \* \* \* \*

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

\* \* \* \* \*

■ 4. Section 301.92-2 is amended as follows:

- a. In paragraph (d), by adding entries alphabetically for *Cinnamomum camphora* and *Gaultheria procumbens*; and
- b. In paragraph (e), by adding entries alphabetically for *Ilex cornuta*, *Illicium parviflorum*, *Larix kaempferi*, *Magnolia denudata*, *Mahonia nervosa*, *Molinadendron sinaloense*, *Trachelospermum jasminoides*, and *Veronica spicata* Syn. *Pseudolysimachion spicatum*.

The additions read as follows:

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

\* \* \* \* \*

(d) \* \* \*

\* *Cinnamomum camphora* Camphor tree

\* \* \* \* \*

\* *Gaultheria procumbens*, Eastern teaberry

\* \* \* \* \*

(e) \* \* \*

\* *Ilex cornuta* Buford holly, Chinese holly

\* \* \* \* \*

\* *Illicium parviflorum* Yellow anise

\* *Larix kaempferi* Japanese larch

\* \* \* \* \*

\* *Magnolia denudata* Lily tree

\* \* \* \* \*

\* *Mahonia nervosa* Creeping Oregon grape

\* \* \* \* \*

\* *Molinadendron sinaloense*

\* \* \* \* \*

\* *Trachelospermum jasminoides* Star jasmine, confederate jasmine

\* \* \* \* \*

\* *Veronica spicata* Syn.

*Pseudolysimachion spicatum* Spiked speedwell

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

#### § 301.92-3 Quarantined areas and regulated establishments.

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

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

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

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

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

**California**

- Alameda County.* The entire county.
- Contra Costa County.* The entire county.
- Humboldt County.* The entire county.
- Lake County.* The entire county.
- Marin County.* The entire county.
- Mendocino County.* The entire county.
- Monterey County.* The entire county.
- Napa County.* The entire county.
- San Francisco County.* The entire county.
- San Mateo County.* The entire county.
- Santa Clara County.* The entire county.
- Santa Cruz County.* The entire county.
- Solano County.* The entire county.
- Sonoma County.* The entire county.
- Trinity County.* The entire county.

**Oregon**

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

of the State border and U.S. Highway 101; then northwest along U.S. Highway 101 to the intersection with West Benham Lane; then west along West Benham Lane to the Pacific Coastline; then following the Pacific Coastline northwest to the point of beginning.

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

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

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

- 6. Section 301.92-4 is amended as follows:
- a. By revising the section heading; and
- b. By revising paragraphs (a)(2) and (d).

The revisions read as follows:

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

(a) \* \* \*

(2) *Without a certificate.* (i)(A) The regulated article or associated article originated outside the quarantined area and the point of origin of the article is indicated on the waybill of the vehicle transporting the article; and (B) The regulated or associated article is moved from outside of the quarantined area through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs, and the article is not unpacked or unloaded in the quarantined area.

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

- (A) Has entered into and is operating under a compliance agreement with APHIS in accordance with § 301.92-6;
- (B) Is abiding by all terms and conditions of that compliance agreement; and

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

\* \* \* \* \*

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

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

**§ 301.92-5 Issuance and cancellation of certificates.**

(a) \* \* \*

(1) \* \* \*

(iv) \* \* \*

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

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

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

\* \* \* \* \*

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

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

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

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

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

Federal domestic plant quarantines and regulations.

\* \* \* \* \*

#### § 301.92–6 [Amended]

■ 8. Section 301.92–6 is amended as follows:

- a. By redesignating footnote 15 as footnote 12; and
- b. In the OMB citation at the end of the section, by adding the words “0579–0088 and” after the word “numbers”.

#### § 301.92–7 [Amended]

- 9. In § 301.92–7, footnote 16 is redesignated as footnote 13.
- 10. Section 301.92–11 is revised to read as follows:

#### § 301.92–11 Inspection and sampling protocols.

(a) *Nurseries in quarantined areas shipping regulated articles of nursery stock and associated articles interstate.*

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

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

(B) *Sampling.* A minimum number of plant samples must be tested per nursery location. The minimum number will be determined by APHIS on a nursery-by-nursery basis, based on the number of regulated, restricted, and associated articles contained in the nursery. Each sample may contain more than one leaf, and may come from more than one plant, but all plants in the sample must be from the same lot. Asymptomatic samples, if collected,

must be taken from regulated and associated articles and nearby plants. Inspectors must conduct inspections at times when the best expression of symptoms is anticipated and must take nursery fungicide programs into consideration. Nursery owners must keep records of fungicide applications for 2 years and must make them available to inspectors upon request.

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

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

(ii) *Pre-shipment inspection, sampling, and testing.* (A) *Inspection.* During the 30 days prior to interstate movement from a nursery in a quarantined area, regulated articles or associated articles intended for interstate movement must be inspected for symptoms of *Phytophthora ramorum* by an inspector. Inspection will focus on, but not be limited to, regulated articles and associated articles. No inspections of shipments will be conducted unless the nursery from which the shipment originates has a current and valid annual certification in accordance with this section.

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

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

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

*Phytophthora ramorum* infection in accordance with § 301.92–12.

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

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

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

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

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

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



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

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

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

(2) *Sampling.* All plants showing symptoms of infection with *Phytophthora ramorum* upon inspection will be sampled and tested in accordance with § 301.92–12. If symptomatic plants are found upon inspection, the following plants must be withheld from interstate shipment until testing is completed and the nursery is found free of evidence of *Phytophthora ramorum* in accordance with this paragraph and § 301.92–12: All symptomatic plants, any plants located in the same lot as the suspect plant, and any plants located within 2 meters of this lot of plants.

(3) *Certification.* If all plant samples tested in accordance with this section and § 301.92–12 return negative results for *Phytophthora ramorum*, or if an inspector at the nursery determines that plants in a nursery exhibit no signs of infection with *Phytophthora ramorum*, the inspector may certify that the nursery free of evidence of *Phytophthora ramorum* infestation at the time of inspection. Certification is valid for 1 year and must be renewed each year to continue shipping plants interstate.

(c) *Regulated establishments shipping regulated, restricted, or associated articles of interstate.* (1) *Inspections.* To meet the conditions of § 301.92–5(b), the regulated establishment must be inspected at least twice annually for symptoms of *Phytophthora ramorum*

infestation by an inspector. The inspection will focus on regulated plants and other potential sources of *Phytophthora ramorum* inoculum.

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

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

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

(5) *Positive results.* If any samples tested in accordance with this section and § 301.92–12 return positive results for *Phytophthora ramorum*, the nursery may ship lots of regulated, restricted, and associated articles interstate pursuant to § 301.92–5(b) only if the lot is determined to be free from *Phytophthora ramorum* inoculum. The method for this determination will be specified in the nursery's compliance agreement with APHIS.

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

#### § 301.92–12 [Amended]

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

Done in Washington, DC, this 19th day of June 2018.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2018–13560 Filed 6–22–18; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 31

[Docket No. FAA–2018–0566; Notice No. 31–18–01–SC]

**Special Conditions: Ultramagic S.A., Model M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, and V–105 Balloons; Balloon Passenger Basket, Model CV–08, Seat Installation**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for Ultramagic S.A. Model M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, and V–105 balloons. These balloons will have novel or unusual design features associated with a standard construction basket with a singular distribution that includes four occupant seats and a lower sidewall. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Send your comments on or before August 9, 2018.

**ADDRESSES:** Send comments identified by docket number FAA–2018–0566 using any of the following methods:

*Federal eRegulations Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

*Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

*Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.