

FEDERAL ORDER

Domestic quarantine *Phytophthora ramorum*

DA-2014-02

This Federal Order is issued pursuant to the regulatory authority provided by the Plant Protection Act of June 20, 2000, as amended, Section 412(a), 7 U.S.C. 7712(a), which authorizes the Secretary of Agriculture to prohibit or restrict the movement in interstate commerce of any plant, plant part, or article, or means of conveyance, if the Secretary determines the prohibition or restriction is necessary to prevent the dissemination of a plant pest within the United States, and is likewise issued pursuant to the regulations, promulgated under the Plant Protection Act, and found at 7 CFR 301.92 *et seq.*

The domestic quarantine regulations for *Phytophthora ramorum* are located at 7 CFR Part 301.92 *et seq.* The regulations designate certain articles, including nursery stock, as restricted, regulated, or associated articles for *P. ramorum*, and specify the conditions under which such articles may be moved interstate from an area that is quarantined or regulated for *P. ramorum*. The current quarantined areas for *P. ramorum* are designated in paragraph (a) of 7 CFR 301.92-3. The current regulated areas for *P. ramorum* are designated in paragraph (b) of 7 CFR 301.92-3.

Regulated Areas

This Federal Order revises the *P. ramorum* domestic quarantine regulations to immediately relieve and/or impose regulatory requirements for certain nurseries in *P. ramorum* regulated areas. Currently, under 7 CFR 301.92-5(b) and 301.92-11(c), in order to ship regulated nursery stock interstate, nurseries in regulated areas must be inspected annually by an inspector for symptoms of *P. ramorum*, and samples of regulated plants and/or associated articles at the nursery must be tested for *P. ramorum*, with negative results. (Under 7 CFR 301.92-5(a) and 301.92-11(a) and (b), nurseries in *P. ramorum* quarantined areas are subject to similar, more stringent inspection requirements in order to ship regulated nursery stock interstate.)

Effective March 31, 2014, if *P. ramorum* has not been detected at a nursery in a regulated area within the last three years (on or after March 31, 2011) as a result of such inspections, we will no longer require the nursery to be inspected and samples from the nursery to be tested in order for it to ship regulated or associated nursery stock interstate. The Administrator has determined that, based on regulatory data from annual inspections conducted pursuant to 7 CFR 301.92-5(b) and 301.92-11(c), if sources of *P. ramorum* inoculum exist within or in proximity to a nursery, it is highly unlikely that plants at the nursery will test negative for *P. ramorum* for three consecutive years.

Conversely, if *P. ramorum* has been detected at a nursery in a regulated area within the past three years as a result of such inspections, we are requiring that, during the next annual inspection conducted pursuant to 7 CFR 301.92-5(b) and 301.92-11(c), or any other inspections conducted pursuant to the Plant Protection Act, samples from host plants, soil, standing water, drainage water, water for irrigation, growing media, and any other articles designated by an inspector as possible sources of *P. ramorum* inoculum at the nursery ***must be*** tested for *P. ramorum*. We are taking this measure because, based on regulatory data from annual inspections conducted pursuant to 7 CFR 301.92-5(b) and 301.92-11(c), if regulated plants at a nursery test positive for *P. ramorum*, it is highly likely that sources of *P. ramorum* exist within or in proximity to a nursery.

If any such samples test positive for *P. ramorum*, the nursery ***must enter*** into a compliance agreement with APHIS in order to continue to ship interstate any regulated or associated articles for *P. ramorum*. In this compliance agreement, the nursery must agree to address sources of *P. ramorum* determined to exist at the nursery in order to prevent the spread of *P. ramorum* through the interstate movement of such regulated or associated articles. All critical control points identified by APHIS must be addressed within this compliance agreement. In order to ship interstate from the nursery regulated or associated articles for *P. ramorum*, an inspector must evaluate those particular articles and determine that the risk they present of spreading *P. ramorum* has been mitigated.

Conversely, if all samples obtained from the nursery test negative for *P. ramorum*, the nursery will be allowed to ship nursery stock under a certificate pursuant to the current regulations at 7 CFR 301.92-5(b). If all samples obtained from the nursery according to an APHIS-approved testing protocol test negative for three consecutive years, following Federal corroboration of the third year's test results, we will no longer require the nursery to be inspected in order for it to ship regulated or associated nursery stock interstate, and certificates will no longer be required for such interstate movement.

Even if a nursery is no longer subject to the annual testing and inspection requirements as a result of this Federal Order, in order for the nursery to ship regulated or associated articles interstate that were not propagated within the nursery, these articles must be obtained from a nursery in the regulated area that is certified pursuant to 7 CFR part 301.92 or that has been released from testing and inspection requirements as a result of this Federal Order. State departments of agriculture in the regulated areas will maintain a list of all such nurseries in their State.

Quarantined Areas

Additionally, this Federal Order immediately revises the *P. ramorum* domestic quarantine regulations to require certain nurseries in *P. ramorum* quarantined areas to undergo further sampling for possible sources of *P. ramorum*. Effective March 31, 2014, if *P. ramorum* has been detected at a nursery located in a *P. ramorum* quarantined area within the past three years (on or after March 31, 2011) as a result of an annual inspection conducted pursuant to 7 CFR 301.92-5(a) and 301.92-11(a) and (b), or through other inspections conducted pursuant to the Plant Protection Act, we are requiring that, during the next annual inspection conducted at the nursery,

samples from host plants, soil, standing water, drainage water, water for irrigation, growing media, and any other articles designated by an inspector as possible sources of *P. ramorum* inoculum at the nursery must be tested for *P. ramorum*. Currently, only nursery stock and other regulated, restricted, and associated articles are inspected and tested.

If any such samples test positive for *P. ramorum*, the nursery **must enter** into an amended compliance agreement with APHIS in order to continue to ship interstate any regulated, restricted, and associated articles for *P. ramorum*. In this compliance agreement, the nursery must agree to address sources of *P. ramorum* determined to exist at the nursery in order to prevent the spread of *P. ramorum* through the interstate movement of such regulated, restricted, or associated articles. All critical control points identified by APHIS must be addressed within this amended compliance agreement. In order to ship interstate from the nursery regulated, restricted, or associated articles for *P. ramorum*, an inspector must evaluate those particular articles and determine that the risk they present of spreading *P. ramorum* has been mitigated.

Conversely, if all samples obtained from the nursery test negative for *P. ramorum*, the nursery will be allowed to ship nursery stock under a certificate pursuant to the current regulations at 7 CFR 301.92-5(a).

In summary, unlike in the regulated areas, nurseries located in the **quarantine areas** that have no *P. ramorum* detections will continue to be regulated. This is based on the presence of *P. ramorum* in the surrounding natural environment, the inseparability of the areas for quarantine enforcement purposes, and the strategy for risk mitigation.

Nurseries Outside of Regulated or Quarantined Areas

Finally, this Federal Order also immediately revises the *P. ramorum* domestic quarantine regulations so that certain nurseries that are not located in *P. ramorum* quarantined or regulated areas may be subject to regulatory requirements. Effective March 31, 2014, if a nursery is not located in a quarantined or regulated area, but ships regulated, restricted, or associated articles interstate, APHIS will regulate it if any of the following sources of inoculum are detected at the nursery on or after March 31, 2014:

- *P. ramorum* is detected on nursery stock.
- *P. ramorum* is detected in soil, standing water, or drainage water within the nursery.
- *P. ramorum* is detected in water used for irrigation.
- *P. ramorum* is detected in growing media, in pots used for nursery stock, in any other regulated, restricted, or associated articles at the nursery, or in any other articles at the nursery designated by an inspector as possible sources of *P. ramorum* inoculum.

Such regulated nurseries **must enter** into a compliance agreement with APHIS in order to continue to ship interstate any regulated, restricted, or associated articles. In this compliance agreement, the nursery must agree to address sources of *P. ramorum* determined to exist at the nursery in order to prevent the spread of *P. ramorum* through the interstate movement of such regulated, restricted, or associated articles. All critical control points identified by APHIS must be addressed within this compliance agreement. The nursery may not ship interstate regulated,

restricted, or associated articles for *P. ramorum* until an inspector has evaluated those particular articles and determined that the risk they present of spreading *P. ramorum* has been mitigated.

This Federal Order will allow APHIS and State Regulatory Agencies to refocus resources away from those nurseries that we consider to pose a minimal risk of contributing to the artificial spread of *P. ramorum*, and focus them instead on those nurseries that present a significant risk of spreading *P. ramorum*, while also minimizing the overall burden on the nursery industry.

To receive additional details on the Federal *Phytophthora ramorum* regulatory program, please call APHIS' National Policy Manager Prakash Hebbar, Ph.D. at 301-851-2228 or National Operations Manager Stacy Scott at 970-494-7577.

Background

APHIS first enacted a Federal quarantine for *P. ramorum* when it was discovered in the natural environment in fourteen counties in California and portions of one county in Oregon. When the disease was subsequently detected in certain nurseries on the West Coast that shipped nursery stock interstate, we issued an emergency Federal Order that regulated the movement of regulated nursery stock from the entire States of California, Oregon, and Washington in order to prevent the spread of the disease from these States.

When we subsequently codified this Federal Order through an interim rule, we substantially retained this regulatory structure. As a result, the regulations at 7 CFR part 301.92-5 not only place restrictions on the movement of regulated articles from nurseries in areas quarantined for *P. ramorum* (currently 14 counties in California and portions of 1 county in Oregon), but also restrict the movement of regulated articles from all other areas in California and Oregon, as well as the State of Washington. The regulations at 7 CFR part 301.92-3(b) designate these other areas in California and Oregon, as well as the entire State of Washington, as regulated areas for *P. ramorum*.

Currently, under 7 CFR 301.92-5(b) and 301.92-11(c), in order to ship regulated nursery stock interstate, nurseries in regulated areas must be inspected annually by an inspector for symptoms of *P. ramorum*, and samples of any symptomatic plants must be tested for *P. ramorum*, with negative results. As a result of this regulatory requirement, APHIS or State Regulatory Agencies currently inspect approximately 1,500 nurseries annually in California, Oregon, and Washington in order to certify them to move regulated nursery stock interstate.

However, since these inspections began, *P. ramorum* has been detected in a very small percentage of these nurseries within regulated areas—usually no more than three percent annually. The vast majority of inspected nurseries have been found free of *P. ramorum* each time they have been inspected. Based on the absence of detections over a prolonged period of time, we do not consider there to be a sufficient risk basis to continue inspecting the nurseries.

Additionally, of those nurseries within regulated areas where *P. ramorum* was detected, a majority had detections in the first years of the program that were traced to shipments of infested nursery stock into the nursery. In conjunction with their respective State departments of

agriculture, the nurseries adopted APHIS protocols to rid their establishments of the pathogen and prevent future introductions through shipments of infested nursery stock. The nurseries have also been subject to rigorous inspection and sampling protocols by their State departments of agriculture to determine the presence or absence of the disease. Accordingly, the vast majority of these nurseries have not had detections of *P. ramorum* in their nurseries for at least the past three years.

Between the years 2001 and 2011, nursery stock, soil, potting media, and/or standing water tested positive for *P. ramorum* at more than 460 nurseries. As we noted above, most of the nurseries in the regulated areas that tested positive for *P. ramorum* did so only because they received shipments of infested nursery stock from other nurseries. Since that time, those nurseries have taken measures to address this source of introduction, and the pathogen has not been detected within the nurseries.

Approximately twenty-six percent of the approximately 460 nurseries that tested positive within this ten-year time period are located in areas other than quarantined or regulated areas for *P. ramorum*. Most of these nurseries are retailers that sell directly to consumers and are not engaged in interstate commerce. However, some do ship regulated nursery stock interstate. Several of these retail nurseries have tested positive for the pathogen in their soil, standing water, and/or growing media. **Accordingly, to address the risk that such nurseries pose of contributing to the spread of *P. ramorum* within the United States, we have decided that it is necessary to immediately regulate nurseries located outside of the quarantined and regulated areas for *P. ramorum* that move regulated, restricted, or associated nursery stock interstate if *P. ramorum* is detected within the nurseries.**

Additionally, *P. ramorum* has been detected in drainage ponds or water reservoirs that nurseries use for irrigation in seven States that are neither quarantined nor regulated for the disease. While the nurseries that use these reservoirs for irrigation have not tested positive to date, we do consider there to be a significant risk that *P. ramorum* from these reservoirs could infect plants at the nurseries that are destined to be shipped interstate. **For this reason, we have decided that it is necessary to immediately regulate nurseries that use drainage ponds or water reservoirs in which *P. ramorum* has been detected for irrigation, if the nurseries move regulated, restricted, or associated nursery stock interstate.**