

# Proposed Rules

Federal Register

Vol. 70, No. 25

Tuesday, February 8, 2005

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 Parts 300 and 301

[Docket No. 04–092–1]

#### Phytophthora Ramorum; Vacuum Heat Treatment for Bay Leaves

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference in the Code of Federal 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 would provide an alternative to the currently approved hot water dip used to treat greenery of host plants, specifically California bay laurel leaves, which ruins the suitability of the leaves for use as a dried spice.

**DATES:** We will consider all comments that we receive on or before April 11, 2005.

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

- **EDOCKET:** Go to <http://www.epa.gov/feddoCKET> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the “View Open APHIS Dockets” link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04–092–1, 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. 04–092–1.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. 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.

**Other Information:** You may view APHIS documents published in the **Federal Register** and related information on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Writer, Agriculturist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–7121.

#### SUPPLEMENTARY INFORMATION:

##### Background

*Phytophthora ramorum* is a harmful fungus that attacks certain plants, particularly trees and shrubs. *P. ramorum* is also commonly referred to as sudden oak death or ramorum leaf blight and ramorum dieback. Symptoms of infection may include new growth that droops or turns from yellow to brown, the appearance of a bleeding canker; burgundy-red to tar-black thick sap oozing on the bark surface, or leaf spotting and stem canker infections.

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 and restrict the interstate movement of regulated articles from those areas.

In addition, on December 21, 2004, the Animal and Plant Health Inspection Service (APHIS) issued a Federal Order, effective January 10, 2005, which expands 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. This order replaces the order of April

22, 2004, and the clarification of that order which was issued on April 23, 2004. The December 21, 2004, order is available on the Internet at <http://www.aphis.usda.gov/ppq/ispm/sod/>.

Regulated articles are identified in § 301.92–2 of the regulations. The list of regulated articles includes, among other things, unprocessed 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 hispidula*), coast live oak (*Quercus agrifolia*), huckleberry (*Vaccinium ovatum*) (except fruit), 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*).

In the December 21, 2004, Federal Order, APHIS expanded the list of regulated articles to include 16 additional confirmed hosts of *P. ramorum*. These additional regulated articles are: *Camellia* spp., Canyon live oak (*Quercus chrysolepis*), coast redwood (*Sequoia sempervirens*), doublefile viburnum (*Viburnum plicatum* var. *tomentosum*), Douglas fir (*Pseudotsuga menziesii* var. *menziesii*), False Solomon’s Seal (*Maianthemum racemosum* formerly *Smilacina racemosa*), Fraser’s Photinia or Red tip (*Photinia fraseri*), Heather (*Calluna vulgaris*), Himalaya pieris (*Pieris formosa*), Japanese pieris (*Pieris japonica*), laurustinus (*Viburnum tinus*), pieris “Brouwer’s Beauty” (*Pieris floribunda* x *japonica*), pieris “Forest Flame” (*Pieris formosa* x *japonica*), western starflower (*Trientalis latifolia*), witch hazel (*Hamamelis virginiana*), and wood rose (*Rosa gymnocarpa*).

Regulated articles must meet the conditions specified in the regulations before they may be moved interstate from a quarantined area. One of the conditions for movement is treatment. The Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual), which is maintained by APHIS, contains approved treatment schedules for many plant pests and diseases and is incorporated by



reference into the Code of Federal Regulations at 7 CFR 300.1. Approved treatments for some articles can also be found in the regulations. Currently, the only approved treatment for unprocessed wreaths, garlands, and greenery of host plants moving interstate from the quarantined areas is listed in § 301.92–10 of the regulations. This treatment consists 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.

APHIS has received several requests from a spice company in California to approve the use of vacuum heat treatment as an alternative method of treatment for California bay laurel leaves that are moving interstate from a quarantined area for use as a dried spice. Vacuum heat treatment is an already existing industry standard method for treating California bay laurel leaves harvested outside the quarantined area. Research<sup>1</sup> conducted by APHIS' Treatment Quality Assurance Unit at the Center for Plant Health Science and Technology has demonstrated that vacuum heat treatment effectively eliminates *P. ramorum* on leaves of the California bay laurel. Therefore, we are proposing to amend the PPQ Treatment Manual to add vacuum heat treatment as an acceptable treatment method for bay leaves used as a dried spice. This action would provide an alternative to the hot water dip that is currently being used to treat greenery of the California bay laurel in the quarantined areas. The treatment procedure we would add to the PPQ Treatment Manual is described in the following paragraph.

#### Treatment Procedure

Place greenery 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.

In addition to adding this vacuum heat treatment schedule, which would be designated as T101–m–2–1–2, to the PPQ Treatment Manual, we would also amend the PPQ Treatment Manual's

incorporation by reference in 7 CFR 300.1 to reflect the date of the treatment's inclusion in the manual. In addition, we would amend 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.

#### 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.

We are proposing to amend the PPQ Treatment Manual 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 would 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 <sup>1</sup> ..	\$25.00/metric ton of commodity treated.
Total cost .....	\$29.41/metric ton of commodity treated.

<sup>1</sup> 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 the SBA definition, 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 proposed 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 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

<sup>1</sup> Information concerning this research may be obtained from the person listed under FOR FURTHER INFORMATION CONTACT.



State and local officials. (See 7 CFR part 3015, subpart V.)

#### 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 will be preempted; (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

This interim 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 300

Incorporation by reference, Plant diseases and pests, Quarantine.

##### 7 CFR Part 301

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

Accordingly, we are proposing to amend 7 CFR parts 300 and 301 as follows:

#### PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

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

2. Section 300.1 would be amended as follows:

a. In paragraph (a)(8), by removing the word “and”.

b. In paragraph (a)(9), by removing the period and adding the word “; and” in its place.

c. By adding a new paragraph (a)(10) to read as set forth below:

##### **§ 300.1 Plant Protection and Quarantine Treatment Manual.**

(a) \* \* \*  
(10) Treatment T101–m–2–1–2, dated\_\_\_\_.  
\* \* \* \* \*

#### PART 301—DOMESTIC QUARANTINE NOTICES

3. The authority citation for part 301 would continue 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).

4. Section 301.92–10 would be revised to read as follows:

##### **§ 301.92–10 Treatments.**

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy *Phytophthora ramorum* are authorized for use on certain regulated articles. The Plant Protection and Quarantine Treatment Manual is incorporated by reference at § 300.1 of this chapter. 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.

Done in Washington, DC, this 2nd day of February 2005.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 05–2322 Filed 2–7–05; 8:45 am]

**BILLING CODE 3410–34–U**

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 923

[Docket Nos. AO–F&V–923–3; FV03–923–01]

##### **Sweet Cherries Grown in Designated Counties in Washington; Secretary's Decision and Referendum Order on Proposed Amendments to Marketing Agreement and Order No. 923; Correction**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule and referendum order; correction.

**SUMMARY:** The Agricultural Marketing Service published in the **Federal Register** on January 14, 2005, a Secretary's Decision and Referendum Order on proposed amendments to the Washington sweet cherry marketing order. This docket corrects the representative period for voting in the referendum from April 1, 2003, through March 31, 2004, to April 1, 2004, through February 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office

Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Secretary's decision and referendum order that are the subject of this correction propose amendments to the marketing agreement and order (order) and provide growers with the opportunity to vote in a referendum to determine if they favor the proposed amendments.

##### **Need for Correction**

As published, the representative period for the purpose of the referendum is being changed from April 1, 2003, through March 31, 2004, to April 1, 2004, through February 28, 2005, to reflect the most recent crop year.

##### **Correction of Publication**

Accordingly, the publication of the proposed rule and referendum order (Docket Nos. AO–F&V–923–3; FV03–923–01), which was the subject of FR Doc. 05–825 published on January 14, 2005 (70 FR 2573) is corrected as follows:

1. On page 2574, column one, under **DATES**; the dates “April 1, 2003, through March 31, 2004,” are corrected to read “April 1, 2004, through February 28, 2005.”

**Authority:** 7 U.S.C. 601–674.

Dated: February 3, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–2388 Filed 2–7–05; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

##### 14 CFR Part 25

[Docket No. NN301; Notice No. 25–05–01–SC]

##### **Special Conditions: Boeing Model 747SP; NASA Stratospheric Observatory for Infrared Astronomy (SOFIA); Cryogenic Systems Using Liquid Nitrogen and Liquid Helium**

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

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

**SUMMARY:** This notice proposes special conditions for the Boeing Model 747SP airplane. This airplane, as modified by L–3 Communications/Integrated