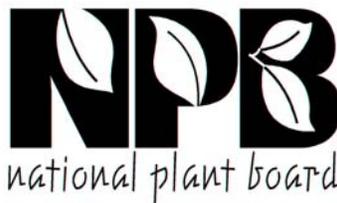


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October 24, 2011

Ms. Rebecca Bech

Deputy Administrator for Plant Protection and Quarantine  
USDA-APHIS

Jamie L. Whitten Federal Building  
14<sup>th</sup> Street and Independence Avenue, SW  
Room 301-E  
Washington, DC 20250

Dear Rebecca:

The National Plant Board continues to appreciate the USDA, APHIS, PPQ response and support related to the *Phytophthora ramorum* issue. Our membership clearly understands this is a complex issue and the decisions are not routine.

At the NPB business meeting on August 11, 2011, our membership was very pleased in regards to the issuance of the recent federal order (FO) requiring shipping nurseries in regulated and quarantined areas to notify recipient states prior to shipment of high-risk host plants for *Phytophthora ramorum*. Our membership supports the intent, as outlined in this document, permitting states receiving *P. ramorum*-host nursery stock to assign and prioritize resources, provide direct traceability for high-risk nursery stock (as defined under 7 CFR 301.92-2) and to assure rapid response if *P. ramorum* is detected at the originating nursery.

Following the issuance of the federal order, National Plant Board members have now been able to practically assess implementation in the field and to determine how these actions continue to prevent and safeguard. The membership requests for USDA, APHIS, PPQ to factor these continuing concerns in their decision-making process when moving forward with the federal order.

As outlined in the guidance document, after a six-month period, those nurseries previously providing pre-notification and currently not positive for *P. ramorum* would no longer be required to provide trace-forward documentation. As such, unregulated receiving states would then be expected to shoulder the burden of administration, data maintenance, and enforcement of this federal order without compensation and in many cases without the authority to do so. The burden falls to the state to conduct trace forward activities in response to a positive find in a nursery regulated under the federal order and to maintain the records themselves. There would be no mechanism for receiving states or USDA to be confident all notification information is being provided or received. Previously, positive shipping nurseries were required to provide shipment information to USDA and this information was passed along to the receiving states, ensuring completeness and accuracy. With the burden on receiving states, only states receiving pre-notification would have shipping information. States that may have been shipped plants without being pre-notified

would not have any records and there would be no way to confirm. Trace forward costs and sample processing costs incurred by the states continue to remain of concern. Many of our states simply lack the authority to enforce the provisions of the order, even if they had the resources to do so, and therefore are at a disadvantage in the event of non-compliance.

It is highly likely SPHDs would not be aware of federally-regulated activities in their states and as such would need to depend on the state agencies to voluntarily communicate these activities to them thus marginalizing their role as federal regulatory personnel at the state level. SPHDs clearly need to be in the loop on any regulatory action involving a federally regulated pathogen.

The only way to prevent these unfortunate consequences is for shipping nurseries to be required to maintain shipping data in case a future trace-forward requires the submission of that data to USDA to ascertain that all states receiving plants from a positive nursery have been notified.

The federal order also outlines a penalty for shipping nurseries that are found to have shipped plants in violation of the federal order. However, it does not address the penalty for a nursery that repeatedly sends shipments in violation of the federal order. This information surfaces only when the nursery is found to be positive and a nationwide trace-forward is initiated. This violation is much more serious than a single shipment without pre-notification that can be inspected and tested upon discovery of the violation. The penalty for this, more-serious, infraction should be specified in the federal order.

Finally, USDA must enforce the federal order as outlined. The federal order outlines that affected nurseries are required to send advance notification to the office of the State Plant Regulatory Official (SPRO) in the receiving State at the time of shipment. This requirement must be enforced such that receiving states can realistically predict the likely arrival time for each shipment of plants for which prenotification is provided. Failure to enforce the federal order undermines the authority of the order, as well as its overall effectiveness.

The intent of the National Plant Board membership is to continue to engage USDA, APHIS, PPQ in discussions related to this issue and to assist in fine-tuning the implementation of this federal order.

Sincerely,

A handwritten signature in black ink that reads "Michael E. Cooper". The signature is written in a cursive, slightly slanted style.

Mike Cooper  
President, National Plant Board

cc: National Plant Board Regional Presidents  
Vic Harabin, Director, Eastern Region  
Phil Garcia, Director, Western Region  
Paula Henstridge, Assistant Deputy Administrator