

FOR INFORMATION AND ACTION
DA- 2009-15
April 14, 2009

SUBJECT: Special Need Request to Allow States to Regulate the Interstate Movement of Light Brown Apple Moth, *Epiphyas postvittana* (Walker) and *Phytophthora ramorum* Host Material in a Manner that Differs from Current Federal Regulations

TO: STATE AND TERRITORY AGRICULTURAL OFFICIALS

On March 6, 2009, APHIS received two separate special need requests to allow States to regulate the interstate movement of light brown apple moth (*Epiphyas postvittana*, LBAM) and sudden oak death (*Phytophthora ramorum*, SOD) host material in a manner that differs from current regulations. Since these are the first such special need requests we have received, we think it is useful to provide an overview of the actions APHIS undertakes in response to such a request.

Under the regulations in 7 CFR 301.1, a State or group of States can request to impose additional prohibitions or restrictions on the interstate movement of regulated articles beyond those established by APHIS regulations. In order to do so, they need to demonstrate to APHIS that there is a special need, based on sound science or a thorough risk assessment, for these additional regulatory restrictions.

Once APHIS evaluates the request to make sure that it satisfies the requirements of the regulations, we will publish a notice in the *Federal Register*. The notice will inform the public of the special need request and make the request and its supporting information available for review and comment for at least 60 days.

Based on the information provided in the initial request and received during the comment period, we will publish a follow-up notice to announce that the request has either been approved or denied. If we grant the request, we will authorize the State to impose any prohibitions and restrictions that were contained in the request and approved by APHIS, and we will coordinate with the State to ensure that the prohibitions and restrictions that they are enforcing are consistent with the request. If we deny the request, we will notify the State in writing of the reason for the denial and allow them to submit additional information for reconsideration of the request. We will also provide the public with the rationale for our denial of the request in the follow-up notice.

If we grant a request, it will be applicable for 2 years, pending a request for renewal.

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We hope this clarifies the follow-up actions that APHIS takes in response to these requests. For additional information, contact Paula Henstridge at (202) 720-1737, or visit http://www.aphis.usda.gov/plant_health/special_needs_request/index.shtml

/s/ Rebecca A. Bech

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