

Proposed Rules

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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. 97-053-1]

Black Stem Rust; Addition of Rust-Resistant Varieties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the black stem rust quarantine and regulations by adding 15 varieties to the list of rust-resistant *Berberis*, *Mahoberberis*, and *Mahonia* species. This change would allow for the interstate movement of these newly developed varieties without unnecessary restrictions.

DATES: Consideration will be given only to comments received on or before May 22, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97-053-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-053-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, suite 4C03, 4700 River Road, Unit 134, Riverdale, MD 20737-1236; (301) 734-8247; or e-mail: spoe@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of infected wheat, oat, barley, and rye crops by robbing host plants of food and water. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis*, *Mahoberberis*, and *Mahonia*. The fungus is spread from host to host by wind-borne spores.

The black stem rust quarantine and regulations, contained in 7 CFR 301.38 through 301.38-8 (referred to below as the regulations), quarantine the conterminous 48 States and the District of Columbia, and govern the interstate movement of certain plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of spreading black stem rust or of contributing to the development of new races of the rust; rust-susceptible plants do pose such risks.

Section 301.38-2 of the regulations includes a listing of regulated articles and indicates species of the genera *Berberis*, *Mahoberberis*, and *Mahonia* known to be rust-resistant. Although rust-resistant species are included as regulated articles, they may be moved into or through protected areas if accompanied by a certificate. We are proposing to add *Berberis aggregata* X *Berberis wilsoniae* "Pirate King", *Berberis candidula* X *Berberis verruculosa* "Amstelveen", *Berberis gangepainii* "Chenault", *Berberis integerrima* "Wallichs Purple", *Berberis soulieana* "Claret Cascade", *Berberis thunbergii* "Aurea Nana", *Berberis thunbergii* "Bail Green", *Berberis thunbergii* "Concorde", *Berberis thunbergii* "Crimuzam" Crimson Ruby, *Berberis thunbergii* "Green Carpet", *Berberis thunbergii* "Midruzam" Midnight Ruby, *Berberis thunbergii* "Royal Burgundy", and *Berberis thunbergii* "Royal Cloak" to the list of rust-resistant *Berberis* species in § 301.38-2(b); add *Mahoberberis aquifolium* "Smaragd", to the list of rust-resistant *Mahoberberis* species in § 301.38-2(c)(1); and add *Mahonia japonica* X *Mahonia lomariifolia*

"Charity", to the list of rust-resistant *Mahonia* species in § 301.38-2(c)(2).

The nurseries that developed these rust-resistant species of *Berberis*, *Mahoberberis*, and *Mahonia* have provided identification guides to the Animal and Plant Health Inspection Service (APHIS) and to the receiving States. The proposed addition of these species to the list of rust-resistant species is based on recent testing to determine rust-resistance conducted by the Agricultural Research Service (ARS) of the United States Department of Agriculture (USDA) at its Cereal Rust Laboratory in St. Paul, MN. The testing is performed in the following manner: In a greenhouse, the suspect plant or test subject is placed under a screen with a control plant—a known rust-susceptible species of *Berberis*, *Mahoberberis*, or *Mahonia*. Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100 percent humidity. This causes the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20-80 percent relative humidity. If the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, the test results indicate that the test plants are rust-resistant. This test must be performed 12 times, and all 12 tests must yield the same result before USDA can make a determination as to whether the test plants are rust-resistant. The test may be conducted on 12 individual plants, or it may be performed multiple times on fewer plants (e.g., six plants tested twice or three plants tested four times). The tests must be performed on new growth, just as the leaves are unfolding. Therefore, the tests are usually conducted in the spring or fall, during the growing season. All 12 tests generally cannot be conducted on the same day because of the plants' different growth stages. Based on over 30 years of experience with this test, we believe that 12 is the reliable test sample size on which USDA can make its determination. We do not know of any plant that was subsequently discovered to be rust-susceptible after undergoing this procedure 12 times and being determined by USDA to be rust-resistant.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule would allow the interstate movement of 15 new varieties of *Berberis*, *Mahoberberis*, and *Mahonia*, which are resistant to black stem rust, into and through States or parts of States designated as protected areas in accordance with the requirements in the regulations. Based on the information provided to us, we have determined that this proposed rule, if adopted, would affect four nurseries that might propagate the new species and numerous retail sales nurseries that might purchase or resell the varieties. This proposed rule would enable those nurseries to move the species into and through protected areas and to propagate and sell the species in States or parts of States designated as protected areas.

Currently, 123 varieties of barberry plants are listed as rust-resistant. Of the 123 varieties currently listed as rust-resistant, many of those varieties are not used any more. Many consumers are choosing newer varieties that are horticulturally more attractive. This rule would add 15 new varieties to the current list of 123 varieties. The addition of these 15 new varieties would only create a greater selection of barberry plant varieties from which consumers can choose. This rule could encourage innovation by allowing nurseries that develop new rust-resistant *Berberis*, *Mahoberberis*, and *Mahonia* varieties the opportunity to market those varieties in protected areas; however, there is no indication that the periodic introduction of new varieties to the market has any effect on overall sales volumes. Therefore, we do not anticipate that there will be any significant economic impact on those nurseries that handle the new varieties.

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 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 proposed 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 in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant disease and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 would be amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 301.38-2 would be amended as follows:

a. Paragraph (b) would be amended by adding, in alphabetical order, 13 rust-resistant *Berberis* species to read as set forth below.

c. Paragraph (c)(1) would be amended by adding, in alphabetical order, one rust-resistant Genera *Mahoberberis* species to read as set forth below.

d. Paragraph (c)(2) would be amended by adding, in alphabetical order, one rust-resistant Genera *Mahonia* species to read as set forth below.

§ 301.38-2 Regulated articles.

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(b) * * *

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B. aggregata X *B. wilsoniae* 'Pirate King'

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B. candidula X *B. verruculosa* 'Amstelveen'

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B. gagnepainii 'Chenault'

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B. integerrima 'Wallichs Purple'

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B. soulieana 'Claret Cascade'

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B. thunbergii 'Aurea Nana'

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B. thunbergii 'Bail Green'

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B. thunbergii 'Concorde'

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B. thunbergii 'Criruzam' Crimson

Ruby

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B. thunbergii 'Green Carpet'

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B. thunbergii 'Midruzam' Midnight

Ruby

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B. thunbergii "Royal Burgundy"

B. thunbergii "Royal Cloak"

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(c) * * *

(1) * * *

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M. aquifolium 'Smaragd'

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(2) * * *

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M. japonica X *M. lomariifolia* "Charity"

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Done in Washington, DC, this 1st day of April 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-9050 Filed 4-6-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF JUSTICE**Immigration and Naturalization Service****8 CFR Part 274a**

[INS No. 1819-96]

RIN 1115-AE70

Limiting Liability for Certain Technical and Procedural Violations of Paperwork Requirements

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations of the Immigration and Naturalization Service (Service) by limiting liability for certain technical and procedural violations of paperwork requirements for those employers that have made a good faith attempt to comply with a particular employment verification requirement. This rule is necessary to implement section 411 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Public Law 104-208.

DATES: Written comments must be submitted on or before June 8, 1998.