

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 04–003–2]

#### Black Stem Rust; Movement Restrictions and Addition of Rust-Resistant Varieties

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the black stem rust quarantine and regulations by changing the movement restrictions in order to allow clonally propagated offspring of rust-resistant *Berberis* cultivars to move into or through a protected area without completing a 2-year growth period. This change will lessen an unnecessarily strict movement requirement. We are also adding 13 varieties to the list of rust-resistant *Berberis* species. This change allows for the interstate movement of these newly developed varieties without unnecessary restrictions.

**DATES:** Effective February 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Dr. Vedpal Malik, Agriculturalist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6774.

#### SUPPLEMENTARY INFORMATION:

##### Background

Black stem rust is one of the most destructive plant diseases that is known to exist in the United States. The disease is caused by a fungus that reduces the quality of 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 windborne 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.

On October 12, 2005, we published in the **Federal Register** (60 FR 59280–59283, Docket No. 04–003–1) a proposal to amend the regulations to allow clonally propagated offspring obtained from black stem rust resistant *Berberis* cultivars of more than 2 years' growth to be moved into or through protected areas without undergoing a 2-year growth period. We also proposed to add 13 new varieties to the list of rust-resistant *Berberis* species and to make several editorial and organizational changes to the regulations to improve their accuracy or clarity.

We solicited comments concerning our proposal for 60 days ending December 12, 2005. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

#### Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Making this rule effective immediately will allow interested nurseries and others in the marketing chain to benefit during this year's nursery stock shipping and marketing season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be

effective upon publication in the **Federal Register**.

#### 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.

This rule adds 13 new varieties of *Berberis* to the list of species that have been determined to be resistant to black stem rust and that are thus eligible to be moved interstate 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 rule will affect fewer than five nurseries that might propagate the new species and numerous retail nurseries that might purchase and resell the varieties. This rule will enable those nurseries to move the new varieties into and through protected areas and to propagate and sell those varieties in States of parts of States designated as protected areas.

The addition of these 13 new varieties will provide 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 barberry varieties the opportunity to market those varieties in protected areas; however, there is no indication that the periodic introduction of new varieties has any effect on overall sales volumes. Therefore, we do not anticipate that there will be any significant economic impact on those nurseries that might handle the new varieties.

Additionally, this rule allows nurseries that produce clonally propagated offspring from rust-resistant *Berberis* cultivars to sell them without first undergoing a 2-year growth period.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities and to use flexibility to provide regulatory relief when regulations create economic disparities between different-sized entities. According to the Small Business Administration's (SBA's) Office of Advocacy, regulations create economic disparities based on size when they have a significant economic impact on a substantial number of small entities.

Plant nursery farms and greenhouses are classified as small businesses if they receive less than \$750,000 in annual sales receipts. According to the 1997 Census of Agriculture, an average U.S. nursery had annual sales of approximately \$160,000. Therefore, it appears that the majority of U.S. nurseries qualify as small businesses under SBA's standards.

Those nurseries that produce rust-resistant *Berberis* varieties will benefit from this rule in that they will not have to undergo a 2-year waiting period before they are able to sell the clonally propagated offspring of rust-resistant *Berberis* cultivars in protected areas or move those plants through protected areas. While we are unable to qualify those benefits without knowing the number of entities that may avail themselves of this relaxation of movement related restrictions for clonally propagated rust-resistant *Berberis* plants, we do not expect that the savings in production costs will be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This final 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, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

### PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 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).

■ 2. Section 301.38–1 is amended as follows:

■ a. By adding, in alphabetical order, a definition of *clonally propagated* to read as set forth below.

■ b. In the definition of *protected area*, by removing the citation “§ 301.38–3(c)” and adding the citation “§ 301.38–3(d)” in its place.

■ c. In the definition of *rust-resistant plants*, by removing the word “species” and by removing the citation “§ 301.38–2(a)(2) and (a)(3)” and adding the citation “§ 301.38–2(a)(1) and (a)(2)” in its place.

■ d. In the definition of *rust-susceptible plants*, by removing the word “species” and by removing the citation “§ 301.38–2(a)(2) and (a)(3)” and adding the citation “§ 301.38–2(a)(1) and (a)(2)” in its place.

■ e. In the definition of *regulated article*, by removing the words “through (a)(4)” and adding the words “through (a)(3)” in their place and by removing the citation “§ 301.38–2(a)(5)” and adding the citation “§ 301.38–2(a)(4)” in its place.

#### § 301.38–1 Definitions.

\* \* \* \* \*

*Clonally propagated.* Reproduced asexually through cuttings, tissue culture, suckers, or crown division. For the purposes of this subpart, a *Berberis* plant will be considered clonally propagated only if its parent stock is, or was derived from, a seed-propagated black stem rust-resistant plant of more than 2 years' growth.

\* \* \* \* \*

■ 3. Section 301.38–2 is amended as follows:

■ a. By removing paragraph (a)(1) and redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a)(1) through (a)(4), respectively.

■ b. In newly redesignated paragraph (a)(1), by adding the words “and varieties” after the word “species” and by adding, in alphabetical order, 13 new entries to the list of rust-resistant species to read as set forth below.

■ c. In newly redesignated paragraph (a)(2), by adding the words “and varieties” after the word “species”.

■ d. By revising newly redesignated paragraph (a)(3) to read as set forth below.

■ e. In newly redesignated paragraph (a)(4), by removing the words “through (a)(4)” and adding the words “through (a)(3)” in their place.

■ f. In paragraph (b), in both the first and second sentences, by removing the words “(a)(2) or (a)(3)” and adding the words “(a)(1) or (a)(2)” in their place.

#### § 301.82–2 Regulated articles.

(a) \* \* \*

(1) \* \* \*

*B. thunbergii* ‘Admiration’

\* \* \* \* \*

*B. thunbergii* ‘Crimson Ruby’

\* \* \* \* \*

*B. thunbergii* ‘Golden Carpet’

*B. thunbergii* ‘Golden Devine’

\* \* \* \* \*

*B. thunbergii* ‘Golden Rocket’

*B. thunbergii* ‘Golden Ruby’

\* \* \* \* \*

*B. thunbergii* ‘Maria’

\* \* \* \* \*

*B. thunbergii* ‘Pow Wow’

*B. thunbergii* ‘Red Carpet’

*B. thunbergii* ‘Red Rocket’

*B. thunbergii* ‘Rosy Rocket’

\* \* \* \* \*

*B. thunbergii* ‘Talago’

\* \* \* \* \*

*B. thunbergii* ‘Tiny Gold’

\* \* \* \* \*

(3) All plants, seeds, fruits, and other plant parts capable of propagation from rust-susceptible species and varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, except *Mahonia* cuttings for decorative purposes.

\* \* \* \* \*

#### § 301.38–3 [Amended]

■ 4. In § 301.38–3, paragraphs (a) and (f) are amended by removing the words “paragraph (c)” and adding the words “paragraph (d)” in their place.

■ 5. In § 301.38–4, paragraphs (a) and (b) are revised to read as follows:

#### § 301.38–4 Interstate movement of regulated articles.

(a) *Non-protected areas.* Interstate movement of regulated articles into or through any State or area that is not designated as a protected area under § 301.38–3(d) is allowed without restriction under this subpart.

(b) *Protected areas.* (1) *Prohibited movement.* The following regulated articles are prohibited from moving interstate into or through any protected area:

(i) All rust-susceptible *Berberis*, *Mahoberberis*, and *Mahonia* plants,

seeds, fruits, and other plant parts capable of propagation, except *Mahonia* cuttings for decorative purposes.

(ii) All seed-propagated plants of the *Berberis* species and varieties designated as rust-resistant in § 301.38–2(a)(1) of this subpart that are of less than 2 years' growth, and any seeds, fruits, and other plant parts capable of propagation from such plants.

(2) *Restricted movement.* The following regulated articles may be moved interstate into or through a protected area with a certificate issued and attached in accordance with §§ 301.38–5 and 301.38–7 of this subpart:

(i) Seed-propagated plants of at least 2 years' growth, clonally propagated plants of any age, seeds, fruits, and other plant parts capable of propagation of the *Berberis* species and varieties designated as rust-resistant in § 301.38–2(a)(1) of this subpart;

(ii) Plants, seeds, fruits, and other plant parts capable of propagation of the *Mahoberberis* and *Mahonia* species and varieties designated as rust-resistant in § 301.38–2(a)(2) of this subpart.

\* \* \* \* \*

Done in Washington, DC, this 30th day of January 2006.

**Kevin Shea,**

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

[FR Doc. 06–1008 Filed 2–2–06; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 30

[Docket No. 05–07]

## FEDERAL RESERVE SYSTEM

#### 12 CFR 208 and 225

[Docket No. OP–1155]

### FEDERAL DEPOSIT INSURANCE CORPORATION

#### 12 CFR Part 364

## DEPARTMENT OF TREASURY

### Office of Thrift Supervision

#### 12 CFR Parts 568 and 570

[No. 2005–11]

RIN 1550–AB97

### Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice; Correction

**AGENCIES:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

**ACTION:** Interpretive guidance and OTS final rule; correction.

**SUMMARY:** The OCC, Board, FDIC and OTS published in the **Federal Register** on March 29, 2005 interpretive guidance on the Gramm-Leach-Bliley Act (GLBA) and the Interagency Guidelines Establishing Information Security Standards (Security Guidelines). In footnote six of the interpretive guidance, the Federal Trade Commission (“FTC”) citation reads 12 CFR part 314 whereas it should read 16 CFR part 314.

**DATES:** Effective February 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** OCC: Aida Plaza Carter, Director, Bank Information Technology, (202) 874–4740; Amy Friend, Assistant Chief Counsel, (202) 874–5200; or Deborah Katz, Senior Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, at 250 E Street, SW., Washington, DC 20219.

Board: Donna L. Parker, Supervisory Financial Analyst, Division of Banking Supervision & Regulation, (202) 452–2614; or Joshua H. Kaplan, Attorney, Legal Division, (202) 452–2249, at 20th and C Streets, NW., Washington, DC 20551.

FDIC: Jeffrey M. Kopchik, Senior Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–3872; Kathryn M. Weatherby, Examiner Specialist, Division of Supervision and Consumer Protection, (202) 898–6793; or Robert Lee, Counsel, Legal Division, (202) 898–8803, at 550 17th Street, NW., Washington, DC 20429.

OTS: Lewis C. Angel, Program Manager, (202) 906–5645; Glenn Gimble, Senior Project Manager, Consumer Protection and Specialized Programs, (202) 906–7158; or Richard Bennett, Counsel, Regulations and Legislation Division, (202) 906–7409, at 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** The OCC, Board, FDIC, and OTS published a document in the **Federal Register** of March 29, 2005 (70 FR 15736), the “Interagency Guidance on Response to Programs for Unauthorized Access to Customer information and Customer Notice”. There was an error in footnote 6 of the interpretive guidance regarding the Federal Trade Commission citation. It reads 12 CFR part 314 whereas it should read 16 CFR part 314.

### List of Subjects

#### 12 CFR Part 30

Banks, banking, Consumer protection, National banks, Privacy, Reporting and recordkeeping requirements.

#### 12 CFR Part 208

Banks, banking, Consumer protection, Information, Privacy, Reporting and recordkeeping requirements.

#### 12 CFR Part 225

Banks, banking, Holding companies, Reporting and recordkeeping requirements.

#### 12 CFR Part 364

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Safety and Soundness.

#### 12 CFR Part 568

Consumer protection, Privacy, Reporting and recordkeeping requirements, Savings associations, Security measures.

#### 12 CFR Part 570

Accounting, Administrative practice and procedure, Bank deposit insurance, Consumer protection, Holding companies, Privacy, Reporting and recordkeeping requirements, Safety and soundness, Savings associations.