



This document is scheduled to be published in the Federal Register on 03/22/2016 and available online at <http://federalregister.gov/a/2016-06476>, and on FDsys.gov

BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2015-0079]

Black Stem Rust; Additions of Rust-Resistant Species and Varieties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On January 22, 2016, the Animal and Plant Health Inspection Service published a direct final rule. The direct final rule notified the public of our intention to amend the black stem rust quarantine and regulations by adding nine varieties to the list of rust-resistant Berberis species and varieties. We received two comments, which are addressed in this document.

DATES: The effective date of the direct final rule published January 22, 2016, at 81 FR 3701, is confirmed as March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Dr. Richard N. Johnson, National Policy Manager, Black Stem Rust, Pest Management, PHP, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737-1231; (301) 851-2109.

SUPPLEMENTARY INFORMATION: 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 (Puccinia graminis) that reduces the quality and yield of infected wheat, oat, barley, and rye crops. 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, which are 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 January 22, 2016, the Animal and Plant Health Inspection Service (APHIS) published in the Federal Register (81 FR 3701-3702)¹ a direct final rule to add the following B. thunbergii varieties to the list of rust-resistant Berberis species in § 301.38-2(a)(1):

- B. thunbergii ‘BailAnna’ Moscato;
- B. thunbergii ‘BailElla’ Lambrusco;
- B. thunbergii ‘Daybreak’;
- B. thunbergii ‘BailErin’ Limoncello;
- B. thunbergii ‘BailJulia’ Toscana;
- B. thunbergii ‘NCBT1’;
- B. thunbergii x calliantha ‘NCBX3’;
- B. thunbergii x media ‘NCBX1’; and
- B. thunbergii x media ‘NCBX2’.

We solicited comments on the rule for 30 days ending February 22, 2016, and indicated that, if we received written adverse comments or written notice of intent to submit adverse

¹ To view the direct final rule and the comments received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0079>.

comments, we would publish a document in the Federal Register withdrawing the direct final rule before the effective date.

We received two comments by that date. One commenter fully supported the rule. The other commenter stated that the rule should not be promulgated because it promoted interstate commerce of Berberis plants, which are considered an invasive species in the Midwest and Eastern United States. However, the only supporting information that the commenter provided was a Web site link to a page related to varieties of Berberis in the natural environment, and not the commercially produced and marketed cultivars that were the subject of the rule. Moreover, APHIS' restrictions on the interstate movement of Berberis spp. plants are imposed to ensure that those plants do not pose a risk of spreading black stem rust or contributing to the development of new races of the rust. Thus, considerations regarding the potential invasiveness of the Berberis spp. plants themselves are outside the scope of this rulemaking. Therefore, for the reasons given in the direct final rule, we are confirming the effective date as March 22, 2016.

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 16th day of March 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016-06476 Filed: 3/21/2016 8:45 am; Publication Date: 3/22/2016]