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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2017-0049]

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 September 5, 2017, 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 15 varieties to the list of rust-resistant *Berberis* species and varieties and 2 varieties to the list of rust-resistant *Mahonia* species and varieties. We received two comments, which are addressed in this document.

DATES: The effective date of the direct final rule published September 5, 2017, at 82 FR 41825-41827, is confirmed as November 6, 2017.

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 September 5, 2017, the Animal and Plant Health Inspection Service (APHIS) published in the *Federal Register* (82 FR 41825-41827, Docket No. APHIS-2017-0049) a direct final rule[1] to amend the black stem rust quarantine and regulations by adding 15 varieties to the list of rust-resistant *Berberis* species and varieties and 2 varieties to the list of rust-resistant *Mahonia* species and varieties.

We solicited comments on the rule for 30 days ending October 5, 2017, and indicated that, if we received written adverse comments or written notice of intent to submit adverse 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, neither of which we consider to be adverse. One commenter questioned why rust-resistant plants must be regulated – including being added

[1] To view the direct final rule and the comments received, go to http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0049.

to the black stem rust quarantine and regulations list, as well as being accompanied by a certificate if moved interstate – if they do not pose a risk of spreading black stem rust.

APHIS' quarantine of the 48 conterminous States and the District of Columbia and restrictions on the interstate movement of *Berberis*, *Mahoberberis*, and *Mahonia* 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. All plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* are considered regulated articles, though aspects of their regulation may vary depending on their designation as either rust-resistant or rust-susceptible. Certificates that accompany rust-resistant species of barberry plants serve as a means to identify them and allow for their interstate movement into or through designated protected areas as defined in the regulations; rust-susceptible species of barberry plants are prohibited from such movement interstate.

The other commenter questioned the reliability of testing protocols to determine a plant's rust resistance, and requested assurance based on evidence that the sample size used to determine rust resistance is adequate to determine an overall species' resistance.

Testing performed by the Agricultural Research Service of the United States Department of Agriculture (USDA) at its Cereal Disease Laboratory in St. Paul, MN has been used to effectively determine rust resistance for more than 50 years. Based on our extensive experience with this test, we believe that 12 – in any of the combinations described in the direct final rule – 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 the test procedure 12 times and being determined by USDA to be rust-resistant.

Therefore, for the reasons given in the direct final rule and in this document, we are confirming the effective date as November 6, 2017.

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 30th day of October 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

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