

## § 301.38

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of the time period must be based on the day degrees model for the specific fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

### Subpart—Black Stem Rust

SOURCE: 54 FR 32791, Aug. 10, 1989, unless otherwise noted.

#### § 301.38 Notice of quarantine; restrictions on interstate movement of regulated articles.

The conterminous 48 States and the District of Columbia are quarantined in order to prevent the spread of black stem rust. No person shall move interstate any regulated article except in accordance with this subpart.<sup>1</sup>

[54 FR 32791, Aug. 10, 1989, as amended at 66 FR 21050, Apr. 27, 2001]

#### § 301.38–1 Definitions.

In this subpart the following definitions apply:

*Administrator.* The Administrator, Animal and Plant Health Inspection Service (APHIS), or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*Black stem rust.* The disease commonly known as the black stem rust of grains (*Puccinia graminis*).

<sup>1</sup>Any properly identified employee of the Animal and Plant Health Inspection Service is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to destroy, or otherwise dispose of regulated articles as provided in sections 414 and 421 of the Plant Protection Act (7 U.S.C. 7714 and 7731).

*Certificate.* A document in which an inspector, or a person operating under a compliance agreement, affirms that a specified regulated article has met the criteria in § 301.38–5(b) of this subpart and may be moved interstate to any destination.

*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.

*Compliance agreement.* A written agreement between a State that is a protected area or that encompasses a protected area and a person who moves regulated articles interstate, or in a non-protected area between APHIS and such person, in which that person agrees to comply with this subpart.

*Departmental permit.* A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes, and that the regulated article is eligible for interstate movement under the conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the introduction of rust-susceptible varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia* into protected areas.

*Inspector.* Any APHIS employee or other person authorized by the Administrator in accordance with law to enforce this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document issued by an inspector to allow the interstate movement into or through a protected area of regulated articles not eligible for certification under this subpart to a specified destination outside the protected area.

*Moved (movement, move).* Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved. "Movement" and "move" shall be construed in accordance with this definition.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

*Protected area.* Those States or counties designated in §301.38-3(d) of this subpart.

*Rust-resistant plants.* All plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, and their progeny, that have proven resistant to black stem rust during testing by the United States Department of Agriculture,<sup>2</sup> and that are listed as rust-resistant under §301.38-2 (a)(1) and (a)(2).

*Rust-susceptible plants.* All plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* not listed as rust-resistant under §301.38-2 (a)(1) and (a)(2).

*Regulated article.* Any article listed in §301.38-2 (a)(1) through (a)(3) of this subpart or otherwise designated as a regulated article in accordance with §301.38-2(a)(4) of this subpart.

*Seedling.* Any plant of the genera *Berberis*, *Mahoberberis*, and *Mahonia* grown from seed and having less than 2 years' growth.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory or possession of the United States.

*Two years' growth.* The growth of a plant during all growing seasons of 2 successive calendar years.

[54 FR 32791, Aug. 10, 1989; 54 FR 38494, Sept. 18, 1989; 67 FR 8178, Feb. 22, 2002; 71 FR 5778, Feb. 3, 2006]

<sup>2</sup>Testing is performed by the Agricultural Research Service of USDA as follows: In a greenhouse, the suspect plant, or test subject, is placed under a screen with a control plant, *i.e.*, a known rust-susceptible variety 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% humidity, causing the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20-80% relative humidity. This test procedure is repeated 12 times. If in all 12 tests, the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, USDA will declare the test plant variety rust-resistant. The tests must be performed on new growth, just as the leaves are unfolding.

### § 301.38-2 Regulated articles.

(a) The following are regulated articles:<sup>3</sup>

(1) All plants, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Berberis* species and varieties.

*B. aggregata*×*B. wilsoniae* 'Pirate King'  
*B. 'Amstelveen'*  
*B. aridocalida*  
*B. beaniana*  
*B. burifolia*  
*B. burifolia nana*  
*B. calliantha*  
*B. candidula*  
*B. candidula 'Amstelveen'*  
*B. candidula*×*B. verruculosa* 'Amstelveen'  
*B. cavallieri*  
*B. chenaulti*  
*B. chanaulti* 'Apricot Queen'  
*B. circumserrata*  
*B. concinna*  
*B. coxii*  
*B. darwini*  
*B. dasystachya*  
*B. dubia*  
*B. feddeana*  
*B. formosana*  
*B. franchetiana*  
*B. gagnepainii*  
*B. gagnepaini* 'Chenault'  
*B. gilgiana*  
*B. gladwynensis*  
*B. gladwynensis* 'William Penn'  
*B. gyalatica*  
*B. heterophylla*  
*B. horvathi*  
*B. hybrido-gagnepaini*  
*B. insignis*  
*B. integerrima* 'Wallichs Purple'  
*B. julianae*  
*B. julianae* 'Nana'  
*B. julianae* 'Spring Glory'  
*B. koreana*  
*B. koreana*×*B. thunbergii* hybrid *Bailsel*  
*B. koreana*×*B. thunbergii* hybrid *Tara*  
*B. lempergiana*  
*B. lepidifolia*  
*B. linearifolia*  
*B. linearifolia* var. 'Orange King'  
*B. lologensis*

<sup>3</sup>Permit and other requirements for the interstate movement of black stem rust organisms are contained in part 330 of this chapter.