

*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.

- B. lologensis* 'Mystery Fire'  
*B. manipurana*  
*B. media* 'Park Jewel'  
*B. media* 'Red Jewel'  
*B. mentorensis*  
*B. pallens*  
*B. poiretii* 'BJG 073', 'MTA'  
*B. potanini*  
*B. Renton*  
*B. replicata*  
*B. sanguinea*  
*B. sargentiana*  
*B. sikkimensis*  
*B. soulieana* 'Claret Cascade'  
*B. stenophylla*  
*B. stenophylla diversifolia*  
*B. stenophylla gracilis*  
*B. stenophylla irwini*  
*B. stenophylla nana compacta*  
*B. taliensis*  
*B. telomaica artisekala*  
*B. thunbergii*  
*B. thunbergii* 'Admiration'  
*B. thunbergii* 'Antares'  
*B. thunbergii argenteo marginata*  
*B. thunbergii atropurpurea*  
*B. thunbergii atropurpurea erecta*  
*B. thunbergii atropurpurea erecta Marshalli*  
*B. thunbergii atropurpurea* 'Golden Ring'  
*B. thunbergii atropurpurea* 'Intermedia'  
*B. thunbergii atropurpurea* 'Knight Burgundy'  
*B. thunbergii atropurpurea* 'Moretti Select'  
*B. thunbergii atropurpurea nana*  
*B. thunbergii atropurpurea* 'Redbird'  
*B. thunbergii atropurpurea* 'Rose Glow'  
*B. thunbergii aurea*  
*B. thunbergii* 'Aurea Nana'  
*B. thunbergii* 'Bagatelle'  
*B. thunbergii* 'Bailgreen' (Jade Carousel™)  
*B. thunbergii* 'Bailone'  
*B. thunbergii* 'Bailone' (Ruby Carousel®)  
*B. thunbergii* 'Bailtwo'  
*B. thunbergii* 'Bailtwo' (Burgundy Carousel®)  
*B. thunbergii* 'Bonanza Gold'  
*B. thunbergii* 'Concorde'  
*B. thunbergii* 'Crimson Ruby'  
*B. thunbergii* 'Crimson Pygmy'  
*B. thunbergii* 'Criruzam' Crimson Ruby™  
*B. thunbergii* 'Dwarf Jewell'  
*B. thunbergii erecta*  
*B. thunbergii* 'Fireball'  
*B. thunbergii* 'globe'  
*B. thunbergii* 'golden'  
*B. thunbergii* 'Golden Carpet'  
*B. thunbergii* 'Golden Devine'  
*B. thunbergii* 'Golden Pygmy'  
*B. thunbergii* 'Golden Rocket'  
*B. thunbergii* 'Golden Ruby'  
*B. thunbergii* 'Green Carpet'  
*B. thunbergii* 'Harlequin'  
*B. thunbergii* 'Helmond Pillar'  
*B. thunbergii* 'Kobold'  
*B. thunbergii* 'Lime Glow'  
*B. thunbergii* 'Lustre Green'  
*B. thunbergii* 'Maria'  
*B. thunbergii maximowiczii*  
*B. thunbergii* 'Midruzam' Midnight Ruby™  
*B. thunbergii minor*  
*B. thunbergii* 'Monlers'  
*B. thunbergii* 'Monomb'  
*B. thunbergii* 'Monry'  
*B. thunbergii* 'Orange Rocket'  
*B. thunbergii* 'Painter's Palette'  
*B. thunbergii* 'Pink Queen'  
*B. thunbergii pluriflora*  
*B. thunbergii* 'Pow Wow'  
*B. thunbergii* 'Red Carpet'  
*B. thunbergii* 'Red Rocket'  
*B. thunbergii* 'Rosy Rocket'  
*B. thunbergii* 'Royal Burgundy'  
*B. thunbergii* 'Royal Cloak'  
*B. thunbergii* 'Sparkle'  
*B. thunbergii* 'Sparkler'  
*B. thunbergii* 'Talago'  
*B. thunbergii* 'Thornless'  
*B. thunbergii* 'Tiny Gold'  
*B. thunbergii* 'Upright Jewell'  
*B. thunbergii variegata*  
*B. thunbergii xanthocarpa*  
*B. thunbergii* 'x'Bailsel' (Golden Carousel®)  
*B. thunbergii* 'x'Tara' (Emerald Carousel®)  
*B. triacanthophora*  
*B. triculosa*  
*B. verruculosa*  
*B. virgatorum*  
*B. workingensis*  
*B. xanthoxylon*  
*B. xcarminea* 'Pirate King'  
*B. xfrikartii* 'Amstelveen'  
 (2) All plants, seedlings, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Mahoberberis* and *Mahonia* species and varieties, except *Mahonia* cuttings for decorative purposes:

- (i) Genus *Mahoberberis*:  
*M. aquicandidula*  
*M. aquifolium* 'Smaragd'  
*M. aquisargentiae*  
*M. miethkeana*  
*M.* × 'Magic'
- (ii) Genus *Mahonia*:  
*M. amplexans*  
*M. aquifolium*  
*M. aquifolium atropurpurea*  
*M. aquifolium compacta*  
*M. aquifolium compacta* 'John Muir'  
*M. aquifolium* 'Donewell'  
*M. aquifolium* 'Kings Ransom'  
*M. aquifolium* 'Orangee Flame'  
*M. aquifolium* 'Undulata'  
*M. aquifolium* 'Winter Sun'  
*M.* 'Arthur Menzies'  
*M. bealei*  
*M. dictyota*  
*M. fortunei*  
*M.* 'Golden Abundance'  
*M. japonica*  
*M. japonica* × *M. lomariifolia* 'Charity'  
*M. lomariifolia*  
*M. nervosa*  
*M. pinnata*  
*M. pinnata* 'Ken Hartman'  
*M. piperiana*  
*M. pumila*  
*M. repens*  
*M.* × *media* 'Charity'  
*M.* × *media* 'Winter Sun'

(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.

(4) Any other product or article not listed in paragraphs (a)(1) through (a)(3) of this section that an inspector determines presents a risk of spread of black stem rust. The inspector must notify the person in possession of the product or article that it is subject to the provisions of this subpart.

(b) A person may request that an additional rust-resistant variety be added to paragraph (a)(1) or (a)(2) of this section. The person requesting that a rust-resistant variety be added to paragraph (a)(1) or (a)(2) of this section must provide APHIS with a description of the variety, including a written description and color pictures that can be used by an inspector to clearly identify

the variety and distinguish it from other varieties.

(Approved by the Office of Management and Budget under control number 0579-0186)

[67 FR 8179, Feb. 22, 2002, as amended at 71 FR 5778, Feb. 3, 2006; 72 FR 32167, June 12, 2007; 72 FR 72233, Dec. 20, 2007]

### § 301.38-3 Protected areas.

(a) The Administrator may designate as a protected area in paragraph (d) of this section any State that has eradicated rust-susceptible plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* under the cooperative Federal-State eradication program. In addition, the State must employ personnel with responsibility for the issuance and withdrawal of certificates in accordance with § 301.38-5, and maintain and enforce an inspection program under which every plant nursery within the State is inspected at least once each year to ensure that they are free of rust-susceptible plants. During the requisite nursery inspections, all nursery stock shall be examined to determine that it consists only of rust-resistant varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, and that the plants are true to type. Plants that do not meet this criteria must be destroyed.

(b) The Administrator may designate as a protected area any county within a State, rather than the entire State, if areas within the State have eradicated rust-susceptible plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* under the cooperative Federal-State program, and;

(1) The State employs personnel with responsibility for the issuance and withdrawal of certificates in accordance with § 301.38-5;

(2) The State is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles, as determined by the Administrator; and

(3) The State maintains and enforces an inspection program under which every plant nursery within the county is inspected at least once each year to ensure that plant nurseries within that area are free of rust-susceptible plants of the genera *Berberis*, *Mahoberberis*,