

Approved: June 16, 1995.

Donald E. Campbell,

Deputy Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is adopting the interim regulation codified at 5 CFR part 2610, published at 57 FR 33267-33272 (July 28, 1992), as corrected at 59 FR 34755 (July 7, 1994), as a final regulation with the following amendment:

PART 2610—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

1. The authority citation for part 2610 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1); 5 U.S.C. App. (Ethics in Government Act of 1978).

2. In §2610.106, the word "ineligible" in the third sentence of paragraph (a) is revised to read "eligible".

[FR Doc. 95-18613 Filed 7-27-95; 8:45 am]

BILLING CODE 6345-01-U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 95-035-1]

Black Stem Rust; Addition of Rust-Resistant Varieties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the black stem rust quarantine and regulations to add three varieties to the list of rust-resistant *Berberis* species. This change will allow for the interstate movement of these newly developed varieties without unnecessary restrictions.

DATES: This rule will be effective on September 26, 1995, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before August 28, 1995.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Docket No. 95-035-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your submission refers to Docket No. 95-035-1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m.

and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, Suite 4C03, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-6365.

SUPPLEMENTARY INFORMATION:

Background

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 that reduces the quality 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 wind-borne 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.

Section 301.38-2 of the regulations includes a listing of regulated articles and indicates species of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, known to be rust-resistant. Although rust-resistant species are included as regulated articles, they may be moved into or through protected areas if accompanied by a certificate. In accordance with the procedures described below under "Effective Date," this direct final rule will add *Berberis candidula* 'Amstelveen', *Berberis thunbergii* 'Lustre green', and *Berberis thunbergii* 'Monry', to the list of rust-resistant *Berberis* species in § 301.38-2(b).

The addition of the species listed above to the list of rust-resistant *Berberis* species is based on recent testing to determine rust-resistance conducted by the Agricultural Research Service of the United States Department of Agriculture (USDA) at its Cereal Rust

Laboratory in St. Paul, MN. The testing is performed in the following manner: In a greenhouse, the suspect plant or test subject is placed under a screen with a control plant—a known rust-susceptible species 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 percent humidity. This causes the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20-80 percent relative humidity. If the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, the test results indicate that the test plants are rust-resistant. This test must be performed 12 times, and all 12 tests must yield the same result before USDA can make a determination as to whether the test plants are rust-resistant. The test may be conducted on 12 individual plants, or it may be performed multiple times on fewer plants (e.g., six plants tested twice or three plants tested four times). The tests must be performed on new growth, just as the leaves are unfolding. Therefore, the tests are usually conducted in the spring or fall, during the growing season. All 12 tests generally cannot be conducted on the same day because of the plants' different growth stages. Based on over 30 years of experience with this test, we believe that 12 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 this procedure 12 times and being determined by USDA to be rust-resistant.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a

proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we received no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

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 process required by Executive Order 12866.

This rule will allow the interstate movement of *Berberis candidula* 'Amstelveen,' *Berberis thunbergii* 'Lustre Green,' and *Berberis thunbergii* 'Monry,' 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 three nurseries that might propagate the new species and numerous retail sales nurseries that might purchase or resell the varieties. This rule will enable those nurseries to move the species into and through protected areas and to propagate and sell the species in States or parts of States designated as protected areas. It is unlikely that the addition of these varieties to the list of rust-resistant *Berberis* species will have any effect on prices, investment, productivity, or our international competitive position. It is possible that this rule will positively affect innovation by allowing nurseries that develop new rust-resistant *Berberis* varieties the opportunity to market those varieties in protected areas. It is also possible that this rule will have some positive effect on nurseries that are small businesses by providing an opportunity for increased sales of rust-resistant *Berberis* species in protected areas. We cannot predict the exact number of nurseries that might be affected by this rule change, nor can we predict the level of demand for these new species or the impact on nurseries producing or selling them. It is likely, however, that any economic effects will not be significant as a result of additional plant sales.

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 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict 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 rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant disease and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR part 301 is amended as follows:

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.38–2, paragraph (b) is amended by adding, in alphabetical order, the following rust-resistant *Berberis* species:

§ 301.38–2 Regulated articles.

- * * * * *
- (b) * * *
- B. candidula* 'Amstelveen'
- * * * * *
- B. thunbergii* 'Lustre Green'
- * * * * *
- B. thunbergii* 'Monry'
- * * * * *

Done in Washington, DC, this 18th day of July 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–18573 Filed 7–27–95; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 95–003F]

RIN 0583–AB88

Products From Foreign Countries; Eligibility for Import Into the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending those paragraphs of the imported products sections of the Federal meat and poultry products inspection regulations that contain the phrase "at least equal to" by replacing that phrase with the words "equivalent to." This action will amend language in the Federal meat and poultry products inspection regulations to correctly reflect the language used in the Uruguay Round Agreements Act, which was enacted to comply with the General Agreement on Tariffs and Trade, 1994 (GATT).

Subtitle B, section 431, paragraph (k) of Title IV of the Uruguay Round Agreements Act of 1994, Pub. L. No. 103–465, 108 Stat. 4809 (1994), amends section 17(d)(1) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. § 466(d)(1)) to require that all imported poultry or poultry products intended for human consumption be subject to foreign inspection that achieves a level of sanitary protection equivalent to that achieved under United States standards. Imported poultry and poultry products must also be processed by the exporting country in facilities and under conditions that achieve that same level of sanitary protection. In addition, paragraph (k) amends section 17(d)(2) of the PPIA (21 U.S.C. § 466(d)(2)) to allow the Secretary of Agriculture to treat the meat and poultry standards of exporting countries as "equivalent to" United States standards if the exporting countries provide the Secretary with sufficient scientific evidence to demonstrate that their standards achieve the level of sanitary protection achieved under the United States standard. Subtitle B, section 431, paragraph (l),