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DEPARTMENT OF AGRICULTURE
Animal and Plant Health Inspection Service
7 CFR Part 301
[Docket No. APHIS-2010-0088]
Black Stem Rust; Additions 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 by adding four varieties to the list of rust-resistant Berberis species or cultivars in the regulations. This action will allow for the interstate movement of these newly developed varieties without unnecessary restrictions.
DATES: This rule will be effective on November 8, 2010, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before October 8, 2010. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the Federal Register withdrawing this rule before the effective date.
ADDRESSES: You may submit comments or written notice of intent to submit adverse comments by either of the following methods:
• Federal eRulemaking Portal: Go to (http://www.regulations.gov/ fdspublic/component/main?main=DocketDetail&d=APHIS-2010-0088) to submit or view comments and to view supporting and related materials available electronically.
• Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0088, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0088.
Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.
Other Information: Additional information about APHIS and its programs is available on the Internet at (http://www.aphis.usda.gov).
FOR FURTHER INFORMATION CONTACT: Mr. Prakash K. Hebbar, National Program Manager, Black Stem/Barberry Rust Program, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737-1231; (301) 734-5717.
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. 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. Section 301.38-2 of the regulations includes a listing of regulated articles and indicates those species and varieties of the genera Berberis, Mahoberberis, and Mahonia that are 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 “Dates,” this direct final rule will add the B. thunbergii cultivars ‘Velglozam’ (Velvet Glow™), ‘Ghrozan’ (Green Hornet™), ‘Pyruszam’ (Pygmy Ruby™), and ‘24kagozam’ (24 Karat Gold™) to the list of rust-resistant Berberis species in § 301.38-2(a)(1).

The addition of those 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 the test procedure 12 times and being
potentially affected by this rule are classified within the following industries: Nursery and Tree Production (NAICS 111421), and Floriculture Production (NAICS 111422). According to the Census of Agriculture, these two categories included 52,845 farms in 2007, and represented 3 percent of all farms in the United States. 

These entities are considered small by SBA standards if their annual sales are $750,000 or less. Over 93 percent of the farms in these industries had annual sales of less than $500,000. Barberry plants are not one of the crops tracked by the Census and therefore data on production and number of producers are not available. Nurseries producing barberry plant species and cultivars will not be negatively affected. In fact, they will benefit from being able to market the four varieties interstate. In addition, the rule does not require any additional reporting, recordkeeping, or other compliance measures beyond what is already in place.

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 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent 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 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 301

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

 Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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).

2. In § 301.38–2, paragraph (a)(1) is amended by adding, in alphabetical order, four rust-resistant Berberis species to read as follows.

§ 301.38–2 Regulated articles.

(a) * * *

(1) * * *

B. thunbergii ‘24kagozam’ (24 Karat GoldTM) * * * *

B. thunbergii ‘Grhozam’ (Green HornetTM) * * *

B. thunbergii ‘Pyruzam’ (Pygmy Rubytm) * * *

B. thunbergii ‘Velglozam’ (Velvet Glow™) * * *

Done in Washington, DC, this 1st day of September 2010.

Gregory Parham
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–22363 Filed 9–7–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39


RIN 2120–AA64

Airworthiness Directives; Bombardier-Rotax GmbH 912 F Series and 912 S Series Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct