

of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document 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 is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This analysis provides the basis, as required by the Regulatory Flexibility Act, for certification by the APHIS Administrator that the rule will not have a significant economic impact on a substantial number of small entities.

This direct final rule will amend 7 CFR 301.38–2 by adding two varieties to the list of rust-resistant *Berberis* species and varieties and by adding one variety to the list of rust-resistant *Mahonia* species and varieties. The nursery and floriculture industries that may be affected by this rule are largely composed of small entities. We expect these entities to benefit from the rule, by being able to market interstate barberry species and varieties that have been determined to be rust-resistant.

The introduction and spread of plant pests can result in damage to crops and losses to the U.S. agricultural sector. For the purpose of this analysis and following the Small Business Administration (SBA) guidelines, we note that a major segment of entities 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 varieties will not be negatively affected. In fact, they will benefit from being able to market the three 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. Section 301.38–2 is amended as follows:

- a. In paragraph (a)(1), by adding, in alphabetical order, two rust-resistant *Berberis* species; and
- b. In paragraph (a)(2)(ii), by adding, in alphabetical order, one rust-resistant *Mahonia* species.

The additions read as follows:

§ 301.38–2 Regulated articles.

- (a) * * *
- (1) * * *
- * * * * *
- B. thunbergii* ‘Della’
- * * * * *

B. thunbergii ‘O’Byrne’

* * * * *

(2) * * *

(ii) * * *

* * * * *

M. x media ‘Lionel Fortescue’

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Done in Washington, DC, May 8, 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–11318 Filed 5–10–13; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2012–0079]

Golden Nematode; Removal of Regulated Areas in Livingston and Steuben Counties, NY

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the golden nematode regulations by removing areas in Livingston and Steuben Counties in New York from the list of generally infested areas. Surveys have shown that certain areas in these two counties are free of golden nematode, and we determined that regulation of these areas was no longer necessary. As a result of that action, areas in Livingston and Steuben Counties in New York that had been listed as generally infested were removed from the list of areas regulated for golden nematode.

DATES: Effective on May 13, 2013, we are adopting as a final rule, without change, the interim rule published at 78 FR 1713–1715 on January 9, 2013, and corrected at 78 FR 3827–3828 on January 17, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan M. Jones, National Program Manager, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road, Unit 160, Riverdale, MD 20737; (301) 851–2128.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule¹ effective and published in the **Federal Register** on January 9, 2013 (78 FR 1713–1715, Docket No. APHIS–2012–0079) and corrected on January 17, 2013 (78 FR 3827–3828), we amended the golden nematode regulations in 7 CFR part 301 by removing areas in Livingston and Steuben Counties in New York from the list of generally infested areas.

Comments on the interim rule were required to be received on or before March 11, 2013. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301, that was published at 78 FR 1713–1715 on January 9, 2013, and that was corrected at 78 FR 3827–3828 on January 17, 2013.

Done in Washington, DC, May 8, 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–11323 Filed 5–10–13; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

RIN 0580–AB12

United States Standards for Wheat

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising the United States Standards for Wheat under the United States Grain Standards Act (USGSA) to change the definition of Contrasting classes (CCL) in the class Hard White wheat. This change will help facilitate the marketing of wheat.

DATES: *Effective Date:* May 1, 2014.

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey at GIPSA, USDA, 10383 N. Ambassador Drive, Kansas City, MO, 64153; Telephone (816) 659–8403; Fax Number (816) 872–1258; email Patrick.J.McCluskey@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The United States Grain Standards Act (USGSA) authorizes the Secretary of Agriculture to establish official standards of kind and class, quality and condition for wheat and other grains (7 U.S.C. 76). The United States Standards for Grain serve as the starting point to define grain quality in the marketplace. The United States Standards for Wheat are in the regulations at 7 CFR 810.2201–810.2205.

On November 27, 2009, GIPSA published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** (74 FR 62257) requesting public comment on what revisions, if any, are needed to the current wheat standards. GIPSA received 13 comments from wheat producers, breeders, market development groups, industry associations, and exporters.

In the April 11, 2012, **Federal Register** (77 FR 21685–21690) GIPSA invited comments to our proposed rule identifying changes to the United States Standards for Wheat to:

(1) Revise the United States Standards for Wheat under the United States Grain Standards Act (USGSA) to change the definition of Contrasting classes (CCL) in Hard White wheat, and

(2) revise the grade limits for shrunken and broken kernels (SHBN) in U.S. No. 1 and U.S. No. 2 wheat.

Proposed Rule Comment Review

GIPSA received 12 comments from wheat producer organizations, grain processor organizations, grain handlers, market developers, and others during the 60-day comment period for the proposed rule. On the basis of comments and other available information, GIPSA is implementing one of two proposed changes to the wheat standards. Some commentors requested additional changes which GIPSA believes are beyond the scope of

the regulations. GIPSA will consider these comments for future policy changes. The following paragraphs address comments received regarding the proposed changes.

Contrasting Class Definition

GIPSA proposed changing the definition of contrasting classes for Hard White wheat so that Hard Red Winter wheat and Hard Red Spring wheat are no longer contrasting classes, and are considered only as wheat of other classes. Four comments were received supporting the proposal and no comment was received opposing the proposal. Therefore as set forth in the proposal, GIPSA is amending the grain standards to change the definition of contrasting classes in Hard White wheat so that Hard Red Winter wheat and Hard Red Spring wheat are no longer contrasting classes. The grade limits will remain unchanged.

Shrunken and Broken Kernel Grade Limits

GIPSA proposed making grade limits for SHBN more restrictive for U.S. No. 1 and U.S. No. 2, leaving the grade limits unchanged for U.S. No. 3, 4, and 5. In the proposed rule, GIPSA cited data for over 100,000 official export and domestic inspection samples for all wheat classes in market years 2005 through 2009.

GIPSA received 10 comments opposing the proposal and one comment supporting the proposal. Opposing comments from wheat producers in Oklahoma stated that more restrictive standards would place Oklahoma wheat growers at a competitive disadvantage. Those stakeholders suggested that because GIPSA's data was at the national level, it did not reflect the situation that Oklahoma wheat growers experience. Most other stakeholders who opposed the proposal, did so on similar grounds. North American Millers Association opposed the proposal stating GIPSA should consider a larger reduction in the grade limits. U.S. Wheat Associates supported the proposal stating their belief that the overall economic impact on wheat producers and the U.S. wheat industry would be positive.

Because of concerns raised over the issue of whether the data supported the proposal, GIPSA will not revise the standards to reduce the grade limits on SHBN for grades U.S. No. 1 and U.S. No. 2 wheat, but may propose these changes in a future rulemaking.

Effective Date

As specified in the USGSA (7 U.S.C. 76(b)), amendments to the standards

¹ To view the interim rule, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0079>.