

for Chippewa County and by adding, in alphabetical order, entries for Alger County and Luce County to read as set forth below.

■ b. Under the heading Minnesota, by adding, in alphabetical order, entries for Hennepin County and Ramsey County to read as set forth below.

■ c. Under the heading Pennsylvania, by adding, in alphabetical order, entries for Armstrong County, Indiana County, Juniata County, Washington County, and Westmoreland County to read as set forth below.

■ d. Under the heading West Virginia, by removing the entry for Fayette County and adding the words "The entire State." in its place.

■ e. Under the heading Wisconsin, by adding, in alphabetical order, entries for Brown County, Kenosha County, Milwaukee County, Racine County, and Waukesha County to read as set forth below.

■ f. By adding, in alphabetical order, new entries for Kentucky and New York to read as set forth below.

**§ 301.53-3 Quarantined areas.**

\* \* \* \* \*  
(c) \* \* \*

**Kentucky**

- Boone County.* The entire county.
- Bourbon County.* The entire county.
- Campbell County.* The entire county.
- Carroll County.* The entire county.
- Fayette County.* The entire county.
- Franklin County.* The entire county.
- Gallatin County.* The entire county.
- Grant County.* The entire county.
- Greenup County.* The entire county.
- Harrison County.* The entire county.
- Henry County.* The entire county.
- Jefferson County.* The entire county.
- Jessamine County.* The entire county.
- Kenton County.* The entire county.
- Oldham County.* The entire county.
- Owen County.* The entire county.
- Pendleton County.* The entire county.
- Scott County.* The entire county.
- Shelby County.* The entire county.
- Trimble County.* The entire county.
- Woodford County.* The entire county.

\* \* \* \* \*

**Michigan**

- Upper Peninsula:
    - Alger County.* The entire county.
    - Chippewa County.* The entire county.
- [Note: This quarantined area includes tribal land of the Bay Mills Indian Community. Movement of regulated articles on those lands is subject to tribal jurisdiction.]
- \* \* \* \* \*
- Luce County.* The entire county.
- \* \* \* \* \*

**Minnesota**

- Hennepin County.* The entire county.
- \* \* \* \* \*
- Ramsey County.* The entire county.
- \* \* \* \* \*

**New York**

- Cattaraugus County.* The entire county.
- \* \* \* \* \*
- Chautauqua County.* The entire county.
- \* \* \* \* \*

**Pennsylvania**

- \* \* \* \* \*
- Armstrong County.* The entire county.
- \* \* \* \* \*
- Indiana County.* The entire county.
- Juniata County.* The entire county.
- \* \* \* \* \*
- Washington County.* The entire county.

- Westmoreland County.* The entire county.
- \* \* \* \* \*

**Wisconsin**

- Brown County.* The entire county.
  - \* \* \* \* \*
  - Kenosha County.* The entire county.
  - Milwaukee County.* The entire county.
  - \* \* \* \* \*
  - Racine County.* The entire county.
  - \* \* \* \* \*
  - Waukesha County.* The entire county.
- Done in Washington, DC, this 19<sup>th</sup> day of May 2010.

**Kevin Shea,**  
*Acting Administrator, Animal and Plant Health Inspection Service.*  
[FR Doc. 2010-12533 Filed 5-24-10; 8:45 am]  
**BILLING CODE 3410-34-S**

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

[Docket No. APHIS-2010-0035]

**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 21 varieties to the list of rust-resistant *Berberis* species or cultivars and 2 varieties to the list of rust-resistant *Mahonia* 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 July 26, 2010, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before June 24, 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/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0035>) 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-2010-0035, 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-2010-0035.

**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 *B. media* 'Dual Jewel' and the *B. thunbergii* cultivars 'Ada', 'Ameria', 'Arlene', 'Benita', 'Brevall 8', 'Celeste', 'Chloe', 'Edda', 'Fay', 'Gail', 'Golden Torch', 'Helen', 'Joyce', 'Kasia', 'Koren', 'Lotty', 'Martha', 'Mimi', 'Phoebe', and 'Ruth' to the list of rust-resistant *Berberis* species in § 301.38-2(a)(1). Similarly, this rule will add the *Mahonia* cultivars 'Bokasio' Sioux and 'Bokrafoot' Blackfoot to the list of rust-resistant *Mahonia* species in § 301.38-2(a)(2)(ii).

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 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, on July 26, 2010, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before June 24, 2010.

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 document in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or 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 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 21 varieties to the list of rust-resistant *Berberis* species or cultivars and by adding 2 varieties to the list of rust-resistant *Mahonia* species or cultivars. 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 cultivars 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 cultivars will not be negatively affected. In fact, they will benefit from being able to market the 23 varieties interstate. In addition, the rule does not require any additional reporting, recordingkeeping, 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, 21 rust-resistant *Berberis* species to read as set forth below.

■ b. In paragraph (a)(2)(ii), by adding, in alphabetical order, 2 rust-resistant *Mahonia* species to read as set forth below.

**§ 301-38-2 Regulated articles.**

- (a) \* \* \*
- (1) \* \* \*
- \* \* \* \* \*
- B. media* ‘Dual Jewel’
- \* \* \* \* \*
- B. thunbergii* ‘Ada’
- \* \* \* \* \*
- B. thunbergii* ‘Amera’
- \* \* \* \* \*
- B. thunbergii* ‘Arlene’
- \* \* \* \* \*
- B. thunbergii* ‘Benita’
- \* \* \* \* \*
- B. thunbergii* ‘Brevall 8’
- B. thunbergii* ‘Celeste’
- B. thunbergii* ‘Chloe’
- \* \* \* \* \*
- B. thunbergii* ‘Edda’
- \* \* \* \* \*
- B. thunbergii* ‘Fay’
- \* \* \* \* \*

- B. thunbergii* ‘Gail’
- \* \* \* \* \*
- B. thunbergii* ‘Golden Torch’
- \* \* \* \* \*
- B. thunbergii* ‘Helen’
- \* \* \* \* \*
- B. thunbergii* ‘Joyce’
- B. thunbergii* ‘Kasia’
- \* \* \* \* \*
- B. thunbergii* ‘Koren’
- \* \* \* \* \*
- B. thunbergii* ‘Lotty’
- \* \* \* \* \*
- B. thunbergii* ‘Martha’
- \* \* \* \* \*
- B. thunbergii* ‘Mimi’
- \* \* \* \* \*
- B. thunbergii* ‘Phoebe’
- \* \* \* \* \*
- B. thunbergii* ‘Ruth’
- \* \* \* \* \*
- (2) \* \* \*
- (ii) \* \* \*
- \* \* \* \* \*
- M. ‘Bokasio’* Sioux
- M. ‘Bokrafoot’* Blackfoot
- \* \* \* \* \*

Done in Washington, DC, this 19<sup>th</sup> day of May 2010.

**Kevin Shea,**  
*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2010-12529 Filed 5-24-10; 8:45 am]

**BILLING CODE 3410-34-S**

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DoD.  
**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS GRAVELY (DDG 107) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** This rule is effective May 25, 2010 and is applicable beginning May 17, 2010.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Ted Cook, JAGC, U.S. Navy, Admiralty Attorney (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone number: 202-685-5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706.

This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS GRAVELY (DDG 107) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel’s ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows: