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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]

§ 301.38-2 Regulated articles.

(a) The following are regulated articles:³

(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. buxifolia
B. buxifolia nana
B. calliantha
B. candidula
B. candidula 'Amstelveen'
B. *candidula* × *B. verruculosa* 'Amstelveen'
B. cavallieri
B. chenaulti
B. chenaulti '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. gyalaiica
B. heterophylla
B. horvathi
B. hybrido-gagnepaini
B. insignis

³Permit and other requirements for the interstate movement of black stem rust organisms are contained in part 330 of this chapter.

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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
B. lologensis 'Mystery Fire'
B. manipurana
B. media 'Park Jewel'
B. media 'Red Jewel'
B. mentorensis
B. pallens
B. poirettii '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 artisepala
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 nana
B. thunbergii atropurpurea 'Redbird'
B. thunbergii atropurpurea 'Rose Glow'
B. thunbergii aurea
B. thunbergii 'Aurea Nana'
B. thunbergii 'Bagatelle'
B. thunbergii 'Bailgreen' (Jade CarouselTM)
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 'Cruzam' Crimson Ruby™
B. thunbergii 'Dwarf Jewell'
B. thunbergii erecta
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 '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 'Talago'
B. thunbergii 'Thornless'
B. thunbergii 'Tiny Gold'
B. thunbergii 'Upright Jewell'
B. thunbergii variegata
B. thunbergii xanthocarpa
B. thunbergii×'Bailsel' (Golden Carousel[®])
B. thunbergii×'Tara' (Emerald Carousel[®])
B. triacanthophora
B. triculosa
B. verruculosa
B. virgatorum
B. workingensis
B. xanthoxylon
B.×carminea 'Pirate King'
B.×frikartii '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. aqui-candidula
M. aquifolium 'Smaragd'
M. aqui-sargentiae
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

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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]

§ 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*, and *Mahonia*. 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.

(c) All seed used to propagate plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* in protected areas, and all seed used to propagate plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* that are certified as rust-resistant for interstate movement into protected areas, must be produced at properties where a State inspector has verified that no wild or domesticated rust-susceptible plants are growing at or within one-half mile of the property.⁴

(d) The following are designated as protected areas:

(1) The States of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, West Virginia, Wisconsin, and Wyoming.

⁴Persons performing the inspections must be able to recognize rust-susceptible varieties of *Berberis*, *Mahoberberis*, and *Mahonia*. Inspectors must work side by side, 10 to 20 feet apart, and walk outward away from the property a distance of one-half mile measured from the edge of the property, and observe all plants growing in the half-mile band. The distance between the inspectors may vary within this range, depending upon the visibility of the plant growth. In areas with low brush and flat terrain, the inspectors may be the maximum distance of 20 feet apart if they can observe all plants growing within 10 feet of them. In areas of high plant growth or hilly terrain, the inspectors must be closer together due to limited or obstructed visibility. Inspectors must observe all plants growing between themselves and the mid-point of the distance between themselves and the next inspector. This process must be repeated so that the entire band, measured from the border of the property to the circumference of an imaginary circle having the property as its mid-point, is visually inspected in this manner.