

**ARTICLE 7-04
PLANT INDUSTRIES**

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**CHAPTER 7-04-01
PEST PREVENTION - BLACK STEM RUST QUARANTINE**

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7-04-01-01. Definitions.

The following terms as used in this chapter, except where the context otherwise requires, shall include both the singular and the plural and shall be construed to mean:

1. "Black stem rust" means the disease caused by the organism *puccinia graminis* pers.
2. "Certificate" means a document issued or authorized by the commissioner to allow movement of regulated articles to any destination.
3. "Commissioner" means the commissioner of the department of agriculture of this state or any officer or employee of the department, or other person, to whom the authority to act in the commissioner's stead has been or hereafter may be delegated.
4. "Compliance agreement" means a written agreement between a person engaged in growing, handling, or moving regulated articles and the department of agriculture, wherein the former agrees to comply with the requirements of this chapter.
5. "Limited permit" means a document issued or authorized by the commissioner to allow movement of noncertified regulated articles to a specified destination for limited handling or utilization.
6. "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved.
7. "One year's growth" means the growth of a plant during all growing seasons of any calendar year.
8. "Person" means any individual, corporation, company, society, or association, or other organized group.
9. "Regulated article" means any article described in the quarantine.

10. "Restricted destination permit" means a document issued or authorized by the commissioner to allow the movement of regulated articles not certified under all applicable quarantines to a specific destination for other than scientific purposes.
11. "Rust-resistant plants" means berberis, mahoberberis, and mahonia plants listed as rust-resistant by the director of the plant protection division, United States department of agriculture in the "Manual of Administratively Authorized Procedures to be Used Under the Black Stem Rust Quarantine".
12. "Scientific permit" means a document issued by the commissioner to allow the movement of regulated articles to a specific destination for scientific purposes.
13. "Seedlings" mean any plant grown from seed within the genus berberis of less than two year's growth.
14. "Two year's growth" means the growth of a plant during all growing seasons of two successive calendar years.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-01

7-04-01-02. Regulated area.

The entire state is the regulated area.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-04

7-04-01-03. Regulated articles.

No person shall move into or within this state any of the following regulated articles except in accordance with conditions prescribed in this chapter:

1. Black stem rust (*puccinia graminis pers*) spores in any living stage.
2. All plants, seeds, fruits, and other parts of plants which are capable of propagation, and belong to the genera berberis, mahoberberis, or mahonia, except mahonia cuttings for decorative purposes.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-04

7-04-01-04. Conditions governing the movement of regulated articles.

The following regulated articles may be moved into and within the state if all of the applicable conditions as specified in this section have been fulfilled and if certificates or permits have been issued:

1. **Rust-resistant berberis, mahoberberis and mahonia plants.**
 - a. Seedlings of rust-resistant berberis plants may be moved into or within this state if accompanied by a permit, to any destination authorized by such permit.
 - b. Rust-resistant berberis plants of at least two year's growth, mahoberberis and mahonia plants, and cuttings taken from such plants, may be moved into and within the state to any destination if the commissioner determines that the plants and cuttings are true to type and if the plants and cuttings are accompanied by a certificate or permit.

2. **Seeds and fruits of rust-resistant berberis plants.** Seeds and fruits of rust-resistant berberis plants originating within an eradication area may be moved into or within the state if accompanied by a permit.
3. **Seeds and fruits of rust-resistant mahonia plants.** Seeds and fruits of rust-resistant mahonia plants may be moved into and within this state if accompanied by a permit.
4. **Any regulated article.** Any regulated article may be moved to a specified destination for scientific purposes under such conditions as may be authorized by the commissioner under a scientific permit.
5. **Black stem rust spores.** Living spores originating from any other state may be moved into and within the state if accompanied by a scientific permit. Application for the permit may be made to the commissioner.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-04

7-04-01-05. Issuance and cancellation of certificates and permits.

1. Certificates may be issued for any regulated articles by the commissioner if the commissioner determines that they are eligible for certification for movement to any destination under all state plant quarantines applicable to such articles and upon examination they have been found to be free from evidence of black stem rust and to be rust-resistant.
2. Limited permits may be issued by the commissioner to allow intrastate movement of regulated articles, not eligible for certification under this chapter, to specified destinations for limited handling or utilization, when upon evaluation of the circumstances involved in each specific case the commissioner determines that such movement will not result in the spread of the black stem rust and requirements of other applicable state plant quarantines have been met.
3. Restricted destination permits may be issued by the commissioner to allow the intrastate movement of regulated articles for other than scientific purposes to any destination permitted under all applicable state plant quarantines, if such articles are not eligible for certification under all such quarantines, but would otherwise qualify for certification under this chapter.
4. Scientific permits may be issued by the commissioner to allow the intrastate movement of regulated articles for scientific purposes under such conditions as may be prescribed in each specific case by the commissioner.
5. Certificate, limited permit, and restricted destination permit forms may be issued by the commissioner to any person for use by the latter for subsequent shipments provided such person is operating under a compliance agreement. Any such person may be authorized by the commissioner to reproduce such forms on shipping containers or otherwise. Any such person may use the certificate forms or reproductions of such forms for the intrastate movement of regulated articles from the premises of the person identified in the compliance agreement if the person has made the determination specified in subsection 1 with respect to such articles. Any such person may use the limited permit forms or reproductions of such forms, for intrastate movement of regulated articles to specific destinations authorized by the commissioner in accordance with subsection 2. Any such person may use the restricted destination permit forms or reproductions of such forms, for the intrastate movement of regulated articles not eligible for certification under all state plant quarantines applicable to such articles, under the conditions specified in subsection 3.
6. Any certificate or permit which has been issued or authorized may be withdrawn by the commissioner if the commissioner determines that the holder thereof has not complied with any condition for the use of such document imposed by this chapter.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-04

7-04-01-06. Compliance agreements and cancellation thereof.

1. Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles. Compliance agreement forms may be obtained from the commissioner.
2. Any compliance agreement may be canceled by the commissioner whenever the commissioner finds, after notice and reasonable opportunity to present views has been accorded to the other party thereto, that such other party has failed to comply with the conditions of the agreement.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-04

7-04-01-07. Assembly and inspection of regulated articles.

Persons, other than those authorized to use certificates, limited permits, or restricted destination permits, or reproductions thereof, who desire to move intrastate regulated articles which must be accompanied by a certificate or permit shall as far in advance as possible request the commissioner to examine the articles prior to movement. Such articles shall be assembled at such points and in such manner as the commissioner designates to facilitate inspection.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-04

7-04-01-08. Attachment and disposition of certificates or permits.

1. If a certificate or permit is required for the intrastate movement of regulated articles, the certificate or permit shall be securely attached to the outside of the container in which such articles are moved, except that where the certificate or permit is attached to the waybill or other shipping document, and the regulated articles are adequately described on the certificate, permit, or shipping document, the attachment of the certificate or permit to each container of the articles is not required.
2. In all cases, certificates or permits shall be furnished by the carrier to the consignee at the destination of the shipment.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-04

7-04-01-09. Inspection and disposal of regulated articles.

The commissioner is authorized to stop, inspect, seize, destroy, or otherwise dispose of, or require disposal of regulated articles in such manner as the commissioner deems necessary.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-05

7-04-01-10. Nonliability of the department.

The department of agriculture disclaims liability for any costs incidental to inspections or compliance with provisions of this chapter, other than for the services of the commissioner.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-05