

or phytosanitary protection.” If a country exporting to the United States requests that APHIS recognize its phytosanitary treatments as equivalent to those in the PPQ Treatment Manual, APHIS will evaluate the exporting country’s phytosanitary treatments according to the above principle and amend the regulations to declare equivalence if the evidence warrants it. In the absence of such a request, APHIS will require that treatments performed outside the United States be performed in accordance with the PPQ Treatment Manual.

Treatment of Niger Seed

We proposed to amend the regulations to allow niger seed to be imported into the United States if it is heat treated prior to shipment to the United States in accordance with the PPQ Treatment Manual at a facility that has been approved by APHIS. The facility would be required to operate in compliance with a written agreement with the plant protection service of the exporting country, in which the treatment facility owner agrees to (1) comply with the applicable APHIS regulations and treatment requirements and (2) allow APHIS inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations.

Comment: Facilities outside the United States should not be allowed to treat niger seed for export to the United States because their lower labor costs and ability to sell directly to importing customers give them a competitive advantage over U.S. treatment facilities. This would result in a loss of jobs and business at niger seed treatment facilities in the United States.

Response: The objective of our regulatory restrictions on niger seed is to ensure that noxious weeds do not enter the United States via imports. APHIS has determined that allowing facilities outside the United States to treat niger seed before it is imported to the United States would provide the same degree of protection against noxious weed entry as allowing facilities inside the United States to treat niger seed after it has been imported.

Comment: Facilities that treat niger seed outside the United States lack adequate oversight to ensure safety. Sampling procedures used to verify the efficacy of treatment may not be properly implemented by these facilities. APHIS inspectors should enforce PPQ Treatment Manual standards at the facilities in question.

Response: The commenters did not provide any specific information to support their claims regarding inadequate oversight at foreign facilities that treat niger seed. However, if we find that oversight is inadequate at any facility that treats niger seed outside the United States, we have the option of rescinding the written agreement that allows that facility to treat niger seed for export to the United States. As noted previously, APHIS inspectors will have the option of visiting treatment facilities outside the United States to ensure that the treatment prescribed for niger seed is being performed properly. Niger seed treated outside the United States will be sampled and inspected when it enters the United States to ensure that it is free of seeds of noxious weeds at the same rate as niger seed treated within the United States is sampled and inspected to ensure that it is free of noxious weeds. We believe that the oversight provided by APHIS and the plant protection service of the exporting country, coupled with sampling and inspection at the port of entry, will be adequate to determine whether niger seed treatment facilities outside the United States are operating in accordance with the requirements of the regulations.

Comment: Importing niger seed treated at facilities outside the United States and allowing it to be sold directly to import customers will make tracking the movement of imported niger seed within the United States difficult. If noxious weeds were to enter the country along with niger seed treated outside the United States, it would be difficult to determine their origin.

Response: Once niger seed enters the country and has been released from the port of entry following inspection, it may move freely within the country. Restricting its movement when there is no evidence indicating a risk of noxious weed infestation would constitute an unwarranted restraint of trade.

Treatment of Lilac from the Netherlands

The regulations at § 319.37–5(i) prohibit the importation of plants of the genus *Syringa* (lilac) from the Netherlands unless, at the time of arrival in the United States, the phytosanitary certificate accompanying the plants contains a declaration stipulating that, among other requirements, the plants were grown in soil that was fumigated with methyl bromide according to certain conditions. The Government of the Netherlands has requested that APHIS provide an alternative to treating the soil with methyl bromide, since the use of methyl bromide is no longer permitted in the

Netherlands. We proposed to allow the soil in which the lilacs are grown to be certified free of viruliferous nematodes and other plant pests by the plant protection service of the Netherlands. For this certification to be valid, we would require that the soil be sampled and microscopically inspected by the plant protection service of the Netherlands within 12 months preceding the issuance of the certification.

Comment: It is highly unlikely that requiring that the soil in which lilacs from the Netherlands are grown be sampled and microscopically inspected would be an adequate risk mitigation measure for nematode infestation. It is well documented that air-dried golden nematode cysts can remain viable for several years and that practical and technical limitations can drastically reduce the detection efficacy of soil sampling and processing when cyst populations are low. The proposal is also inconsistent with the golden nematode regulations in APHIS’ domestic quarantine notices (7 CFR 301.85(b)), which restrict the interstate movement of specified regulated articles within the United States, including soil. APHIS should consider restricting the importation of plants grown in field soil from the Netherlands and all other countries infested with potato cyst nematodes (*Globodera rostochiensis* and *G. pallida*) unless plants are grown in greenhouses on raised benches in a growing medium approved under § 319.37–8(e)(1).

Response: Under § 319.37–5(a), APHIS currently requires a soil-sampling regimen similar to that which we describe for lilacs to be undertaken by the plant protection service of the Netherlands to ensure that other products, notably bulbs, from the Netherlands are not grown in soil infested with nematodes. This paragraph states: “Any restricted article * * * from a country listed below [of which the Netherlands is one], at the time of arrival at the port of first arrival in the United States shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was grown on land which had been sampled and microscopically inspected by the plant protection service of the country in which grown within 12 months preceding issuance of the certificate and found free from * * * *Globodera rostochiensis* (Woll.) Behrens and *G. pallida*.” This requirement has successfully prevented the introduction of nematodes associated with