GROWERTALKS

Features

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Regulation Strangulation

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If you receive cuttings that come from South America, Africa or anywhere outside of the continental U.S., you've probably heard of the USDA'S agency called APHIS. If you're not familiar with it, it stands for Animal and Plant Health Inspection Service, which is in charge of making sure the seed, cuttings, plants and cut flowers that are imported into the country are free of insects and diseases. Over the years, APHIS has developed different protocols and standards for their trading partners to follow in order to avoid the risks of a massive disease or insect outbreak.

It's a necessary function, to be sure, but at times, suppliers and transport brokers find themselves scrambling to meet new or more enforced regulations, which is what has been happening recently.

Phytosanitary certificates

Earlier this year, APHIS announced that they were going to enforce a plant import requirement that until now hadn't ever been enforced. The rule has to do with how plant names are listed on the phytosanitary certificates (PC), which dates back to 2008.

For example, before, you could list the name on the PC as simply "Lobelia spp." But now, APHIS will require the suppliers to list the exact genus name of cultivars, so it would have to be specifically listed as "Lobelia monostachya." APHIS will place the plants or cuttings on hold for a period of time if there's failure to include the full proper name, which is bad news for a perishable product.

Until now, APHIS had been using paper documentation to check and track all of the plants and seeds that were coming into the U.S., but a new automated electronic system, called ARM for Agriculture Risk Management, showed that the rule wasn't being enforced. So in January, the agency told AmericanHort, breeders and transport companies that it would immediately start to routinely and consistently enforce the rule—right at the peak of cutting shipping season.

According to the Ball Seed Traffic Department, it would have been virtually impossible for the production sites to comply right away, especially since many of them are in Central America, South America and Africa, and they don't have the technology to change as quickly.

So suppliers and transport brokers asked APHIS if they could wait until after the majority of their shipping was completed. The agency agreed and said they would wait to start enforcing the rule until April 15.

“The ARM system will benefit shippers and breeders in the long run because it helps to keep track of everything. And combining all documentation electronically will help APHIS manage all aspects of the inspection and release of goods,” said Jeanne Porter, sales and logistics manager for Perishable Transport Solutions. “The point is to expedite the product through the border.”

Regulations on biotechnology

USDA recently announced its intention to develop a more “modernized” federal regulatory system for biotechnology products (see callout). These would be the first substantial changes to their genetic engineering regulations (7 CFR, part 340) in nearly 30 years. After holding listening sessions this past fall, USDA published a Notice of Intent (NOI) in January to amend the regulatory process. In a nutshell, USDA’s goal is to be more transparent and provide greater certainty that the products going out into the marketplace have been properly evaluated and do not pose a noxious weed or pest risk.

> *According to APHIS, a phytosanitary certificate is an accountable inspection certificate used to certify only domestic plants, and unprocessed or unmanufactured plant products for export. The purpose is to certify that plants and plant products conform with the current phytosanitary requirements of the importing country to ensure they’re insect and disease-free. Most importing countries require phytosanitary certificates for regulated articles, which includes plants, bulbs and tubers, or seeds for propagation, fruits and vegetables, cut flowers and branches, grain and growing medium.*

Right now, APHIS is charged with regulating the introduction, interstate movement and environmental release of certain organisms that have been genetically engineered (GE) and are more apt to pose a plant pest risk. However, the new proposal would significantly expand their regulatory authorities, giving them reach well beyond GE or genetically modified organisms (GMOs), and granting them oversight of plant products that resulted from techniques, which, in some cases, have been around for 50 years or more.

“They want to have the authority to look at older techniques, like doubled haploid and embryo rescue, as well as some of the newer breeding techniques, like gene editing,” explained Joe Bischoff, a VP for Cornerstone Government Affairs, a lobbying and advocacy group.

USDA’s proposed approach would be new territory for the department and goes way beyond GMOs and the crops that are typically subject to this oversight. According to Joe, “Breeders in all sectors of agriculture need to take a hard look at this proposal because the new oversight, coupled with the noxious weed authority, has the potential to put their ability to develop new varieties very much at risk.”

These biotechnology, but non-GMO, breeding techniques involve working with the genes already available through gene-flow found in nature, but can now be accomplished in a more directed and faster method. However, USDA wants to be able to evaluate the new varieties to ensure they don't lend themselves to becoming a noxious weed risk.

> *APHIS deems "biotechnology" as laboratory-based techniques used to create or modify a genome that results in a viable organism with intended altered phenotypes. Merriam-Webster defines biotechnology as the manipula-tion (as through genetic engineering) of living organisms or their components to produce useful commercial products (such as pest-resistant crops, new bacterial strains or novel pharmaceuticals).*

Something that Joe finds at odds with traditional oversight authorities is the fact that USDA would be regulating on a development process rather than the product. Marketing programs are typically process-based, like "organically produced vegetables" or "cage-free chickens" and regulations focused on product. "So a new variety developed through biotechnology techniques would be treated one way, but the same plant developed through field-based, traditional breeding would have no oversight," said Joe. Breeders and seed organizations, like the American Seed Trade Association (ASTA) and the Seed Biotechnology Center at the University of California-Davis, share these concerns.

The new regulations will slow down the process of introducing and shipping seeds, plus there will be costs incurred to get through the new regulatory hurdles. Also, the broader the regulations are, the more room there is for interpretation, which means a higher likelihood of it being challenged, including facing possible legal issues.

"From a grower or breeder perspective, it could stifle innovation," said Joe. "You're worried not only about getting approval, but you run the risk of litigation at the end of getting the product approved."

Although the intention of greater transparency and mitigating risks of noxious weeds and plant pests are noble, many agriculture groups believe the USDA proposal misses the mark. For breeders of ornamentals, and fruit and vegetable crops who have been using particular techniques for years and look to some new breeding methods for solutions like disease resistance or drought tolerance, this new proposal threatens their efforts, said Joe.

Organizations like Cornerstone are doing their best to ring the alarm bells, as many fruit, vegetable and ornamental producers wouldn't have known about this proposal. The comment period could have come and gone without their knowledge, allowing for a very unpleasant surprise the next time they tried to introduce a new variety.

"We wanted to make sure they knew because USDA is broadening what they're going to regulate. And what they're saying they want to regulate is so broad that it's right in your wheelhouse; it impacts all of these crops,

so you need to be engaged," said Joe.

As of press time, USDA had extended the comment period to April 21, 2016 because of push-back by some ag and hort companies. Now they'll have to wait to see how USDA reacts to the comments.

"It did need to be addressed, especially at the higher level of how the different agencies [USDA, FDA and EPA] work together," said Joe. "It's a lot to think about and there's a huge impact; these are things that are going to potentially impact agriculture for decades. So we've got to be thoughtful in how we go about it." **GT**