

January 9, 2015

Administrator Kevin Shea
Animal and Plant Health Inspection Service
Docket No. APHIS-2010-0082,
Regulatory Analysis and Development,
PPD, APHIS Station 3A-03.8,
4700 River Road, Unit 118
Riverdale, MD 20737-1238

Dear Administrator Shea:

We write today on behalf of the U.S. Apple Association (USApple) and the Northwest Horticultural Council (NHC) to provide comments on the proposed rule entitled “Establishing a Performance Standard for Authorizing the Importation and Interstate Movement of Fruits and Vegetables” included in Docket Number APHIS-2010-0082.

As you may know, USApple is the national trade association representing all segments of the apple industry. Our members include 36 state apple associations representing apple growers throughout the country as well as packers, shippers, processors, importers, exporters, brokers and affiliated companies across the integrated marketing chain. Altogether, approximately 7,500 apple growers contribute more than \$2.7 billion annually to their local economies across 32 states. The NHC is a trade association founded in 1947 and based in Yakima, Washington. We represent on national and international policy issues the growers, packers, and shippers of deciduous tree fruits harvested in Idaho, Oregon, and Washington. The Pacific Northwest is responsible for over 50 percent of the apples, pears, and sweet cherries commercially produced each year in the United States.

We understand that the intent of the Animal and Plant Health Inspection Service (APHIS) in proposing this rule is to streamline the approval process for the importation of fruits and vegetables without putting U.S. producers at risk for pests and diseases transported from other countries. While not explicitly expressed in the proposed rule, it is also our understanding that one of the objectives of the proposal is to facilitate trade. Representing an industry that both relies heavily on exports and is highly sensitive to pest concerns, we appreciate and share that goal. However, we are concerned that neither we nor perhaps APHIS yet fully understand the practical ramifications of the proposed rule as currently written. Therefore, we respectfully request that the agency provide a 90-day extension to the public comment period. Equally important, we request that APHIS compose a working group comprised of experts within the fruit and vegetable industry to work with the agency to review, and if necessary improve, the



proposed rule. We would welcome the opportunity to provide a representative to participate on such a panel.

Specifically, APHIS is proposing to replace the region and commodity-specific phytosanitary import requirements that are codified in the U.S. Code of Federal Regulations (CFR) with general phytosanitary requirements, or performance standards, which can be applied to all fruit and vegetable commodities. The country and commodity-specific requirements of most concern are contained in 7 CFR 319.56, including §319.56-22 (Apples and pears from certain countries in Europe); §319.56-27 (Apples from Japan and the Republic of Korea); §319.56-29 (Ya pears from China); §319.56-39 (Fragrant pears from China); §319.56-57 (Sand pears from China). APHIS states that these requirements would continue to be listed in its Plant Protection and Quarantine's (PPQ) Fruits and Vegetables Import Requirements (FAVIR) database, accessible via the APHIS web site.

APHIS also states that under this proposal the unique requirements currently found in §§319.56-20 through 319.56-70 would be replaced by the designated phytosanitary measures listed in §319.56-4(b) of the regulations. The potential significance of the proposed changes to §§319.56-20 through 319.56-70 is unclear and is one of the topics that would benefit from additional discussion with APHIS during an extended comment period with a stakeholder working group.

As mentioned previously, we view opportunities in this proposal to help in streamlining consideration of import requests while affording stakeholders and PPQ the prospect of a more useful dialogue. USDA APHIS PPQ has a history of evaluating efficacy of mitigation measures based on specific technical protocols and data-driven decision-making. Measures such as verification of pest-free areas and specific stand-alone treatment protocols are clear examples where evaluation of the effectiveness of the measure is enabled by the data requirements necessitated under international protocols. Much of the information necessary to evaluate these discrete treatments is not only archived at PPQ but also available in referred scientific publications. It is for this reason that our industry did not substantively oppose the August 17, 2007, decision to move to notice-based rulemaking if the product in question was imported subject to one or more of the designated phytosanitary measures in 7 CFR 319.56-4(b).

However, the proposal at hand substantially increases the types of measures, in an almost unlimited way, as part of systems approaches which could be used to import fruits and vegetables from anywhere in the world under notice-based rulemaking. The challenge, of course, is that the efficacy of these measures, alone and/or in aggregate, is likely not as effectively and dispassionately documented as the types of measures green-lighted in 2007. APHIS-2010-0082 that proposes this new approach refers to these as performance-based measures but it is unclear how a given performance standard is/would be set and where stakeholders would turn to understand how efficacy/performance was measured. It is proposed that the risk management document (RMD) would be the vehicle with which to detail and evaluate the potential effectiveness of the measures. However, while the RMD is a useful tool



to understand the outline of the eventual work plan, RMD's do not necessarily include all data required to allow stakeholders to evaluate efficacy.

An example of this is the RMD for apples from China, in which fruit bagging is proposed as a mitigation step for internal feeders. The only data cited to document efficacy comes from a government database with restricted access, which is clearly not the most transparent approach of documentation. It is for this type of situation that, prior to implementation of an expanded notice-based rule-making process, the proposal to convene a joint PPQ/stakeholder group is critical. It is our goal for the group to identify a procedure for any eventual rulemaking process that will not only effectively communicate proposed import actions to stakeholders but that also enhances stakeholders ability to more effectively evaluate risk of importation under the proposed mitigation measures.

To reiterate, we have no objection to improving a regulatory process to facilitate trade so long as the process remains adequately protective of our plant resources and does expand exports of tree fruits. However, we still have a number of technical and operational questions regarding the proposed rule, and are uncertain that a notice-based process would, in fact, facilitate the export of U.S. apples and other deciduous tree fruits to countries with historically restrictive import approval procedures.

We believe that a 90-day extension and the creation of a stakeholder working group to review the proposed rule is important. This process should embrace a discussion of how any final rule would serve to remove politically-sensitive phytosanitary trade barriers in specific countries that are targeted by the United States for increased exports while ensuring that there are no unintended consequences as we go forward.

Sincerely,



Jim Bair
President and CEO
U.S. Apple Association



Christian Schlect
President
Northwest Horticultural Council

