



National Grain and Feed
Association



North American Export
Grain Association

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Regulatory Analysis and Development
Plant Protection Division
Animal and Plant Health Inspection Service
U.S. Department of Agriculture
Station 3A-03.8; Unit 118
4700 River Rd.
Riverdale, Md., 20737-1238

RE: Docket No. APHIS-2005-0106

The National Grain and Feed Association (NGFA) and North American Export Grain Association (NAEGA) appreciate the opportunity to provide this statement in response to the proposal by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), published in the April 27, 2006 *Federal Register*, to make substantive revisions to the approach used to regulate imports of fruits and vegetables into the United States.

The NGFA, established in 1896, consists of 900 member companies from all sectors of the grain, feed, processing and exporting business that operate about 6,000 facilities that handle more than 70 percent of all U.S. grains and oilseeds. The NGFA's membership includes country, terminal and export elevators; feed manufacturers; cash grain and feed merchants; end users of grain and grain products, including processors, flour millers, and livestock and poultry integrators; commodity futures brokers and commission merchants; and allied industries.

NAEGA, established in 1912, is comprised of private and publicly owned companies and farmer-owned cooperatives involved in and providing services to the bulk grain and oilseed exporting industry. NAEGA-member companies ship practically all of the bulk grains and oilseeds exported each year from the United States. The Association's mission is to promote and sustain the development of commercial export of grain and oilseed trade from the United States. NAEGA acts to accomplish this mission from its office in Washington D.C., and in markets throughout the world.

The NGFA and NAEGA memberships have direct interest in this rulemaking because of its potentially precedent-setting nature in providing a more science-based approach to address sanitary and phytosanitary regulation of imports, as well as for

ensuring compliance with World Trade Organization requirements. We believe the APHIS-proposed changes enhance the United States' ability to seek comparable treatment by foreign countries to imports of U.S. raw grains and oilseeds, as well as processed and value-added commodities. As such, the interest of NGFA and NAEGA in this rulemaking is confined to APHIS' proposals to amend 21 U.S.C Parts 319.56-4 and 319.56-5, which concern proposed revisions to procedures used by the agency for determining the importation of fruits and vegetables, and for designating pest-free areas in foreign countries, respectively.

In that regard, the NGFA and NAEGA strongly support APHIS' proposal to modify Section 319.56-4 of its regulations to simplify, streamline and expedite the process used to approve U.S. imports of fruits and vegetables, while still providing for appropriate and necessary public review of the scientific basis for the agency's determinations. As APHIS articulates, the current rulemaking process utilized to review and determine whether to permit imports of each and every fruit and vegetable product from individual countries has become cumbersome and unwieldy, taking from 18-months to three years or longer. Under the current regulations implemented in 1987, APHIS is required to undertake a lengthy rulemaking process for each import request submitted by a foreign country. Some foreign countries have alleged that these delays constitute a *de facto* trade barrier. While we may not necessarily agree with that assessment, it does point to the need to revise the current approach while still retaining proper, science-based safeguards to prevent the entry of damaging plant and animal pests into the United States.

We believe that APHIS, in its proposed amendments to Section 319.56-4 regulations governing imports of fruits and vegetables, has made significant progress in achieving a proper balance between ensuring continued protection from foreign plant pest risks while facilitating trade. Under this new approach, APHIS would shift to a notice-based approach in which it would conduct pest risk analyses for new fruits and vegetables intended for import. If those pest-risk analyses showed that the risks could be mitigated effectively by one or more of four designated phytosanitary measures: 1) port-of-entry inspection by the U.S. government; 2) approved post-harvest treatment is applied to destroy plant pests of concern; 3) certification by the national plant protection organization in the country of export that the commodity originates from a pest-free area, and is accompanied by a phytosanitary certificate attesting to this fact; and/or 4) issuance of a phytosanitary certificate by an inspector or official of the national plant protection organization of the exporting country that accompanies the shipment attesting that it is free of the specific pest(s) of concern. APHIS then would publish a notice in the *Federal Register* providing at least 60 days for public comment on the scientific documentation on which the agency based its risk analysis, providing ample opportunity for public review and comment. If the public comments received by the agency raised no substantive scientific grounds to challenge the agency's risk assessment, APHIS would publish a second notice announcing that it will begin issuing import permits. Further, APHIS proposes that the importation of fruits and vegetables that require additional phytosanitary measures beyond one or more of the four aforementioned measures would continue to require specific rulemaking before being allowed to be imported into the United States.

The NGFA and NAEGA believe the APHIS proposal to amend Section 319.56-4 to govern existing and future imports of fruits and vegetables represents a sound, science-based approach. It is protective of U.S. plant health, provides for ample public review and participation of the scientific basis used by the agency for its risk assessment decision-making, and is worthy of being used as a model for imports of other agricultural products into the United States, as well as for U.S. agricultural commodity shipments to important export markets. U.S. exports of major agricultural products currently are confronted with a disturbing and growing number of challenges based on alleged phytosanitary and sanitary concerns that are not based on scientific risk assessment or appropriate risk management strategies.

As such, we particularly support APHIS' use of the four designated phytosanitary measures outlined previously as a prudent, science-based approach to risk management. Importantly, these measures provide for appropriate recognition of the national plant protection organizations in countries of export to attest that shipments to the United States are free of pests of concern. The APHIS-proposed approach will greatly improve the U.S. position in holding the scientific "high ground" when seeking appropriate science-based reciprocity for U.S. agricultural exports.

The NGFA and NAEGA also generally support APHIS' proposal to amend Section 319.56-5 of the fruit-and-vegetable regulations to implement a similar notice-based process for expediting the agency's ability to change the pest-free status of foreign countries, areas or regions. Instead of the current rulemaking-based approach, APHIS proposes to announce its intent to change the pest-free status of a foreign country, area or region by publishing a ***Federal Register*** notice with a 60-day comment period. The criteria used by the agency to determine whether to change a given area's pest-free status would remain identical to what's required under current regulations. Under the current process, APHIS utilizes criteria published by the International Plant Protection Convention of the U.N. Food and Agricultural Organization, and/or approves the survey protocol used by the foreign country to determine and maintain its pest-free status, as well as the protocols for actions to be taken if a pest of concern is detected.

However, the NGFA and NAEGA do want to ask APHIS to be cautious concerning its proposed labeling requirements contained in Section 319.56-5 of the fruit-and-vegetable regulations. Specifically, APHIS proposes to retain existing requirements that such labels contain information on each of the following: 1) the name of the orchard or grove of origin, or the name of the grower; 2) the name of the municipality and state in which the fruits or vegetables were produced; and 3) the type and amount of fruit the box contains. While it certainly is appropriate for the type and quantity of imported products to be stated on the label or other shipping documents, we are concerned about the much more expensive labeling "traceability" being required by APHIS concerning the name of the orchard or grove of origin/name of grower and the name of the municipality and state where the fruits and vegetables were produced.

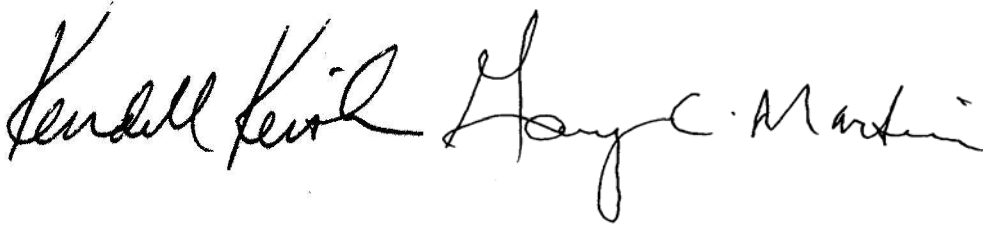
While the NGFA and NAEGA do not wish to offer a view concerning the appropriateness of these labeling requirements for fruits and vegetables – that is not our area of expertise – we do want to take this opportunity to caution that similar or parallel requirements imposed on imports of commingled U.S. bulk and processed grain and grain

products would be totally infeasible. Further, we wish to note that the specificity of these labeling requirements exceed those implemented by the U.S. Food and Drug Administration for imported food, feed and feed ingredients under the Bioterrorism Act prior-notice requirements. We stand ready to assist APHIS in determining the appropriate labeling requirements for bulk grain and processed grain and grain product imports as the agency pursues future revisions to its import regulations for various agricultural products.

In conclusion, the NGFA and NAEGA strongly support the proposed revisions to Section 319.56-4. Further, we encourage APHIS to use this approach as a model for modifying other phytosanitary and sanitary regulations governing imports of agricultural products on the basis of scientific risk-assessment and sound risk-management principles.

The NGFA and NAEGA appreciate APHIS' consideration of our comments, and would be pleased to respond to any questions the agency may have.

Sincerely,

Handwritten signatures of Kendell Keith and Gary C. Martin. The signature of Kendell Keith is on the left and the signature of Gary C. Martin is on the right.

Kendell W. Keith
President
National Grain and Feed Association

Gary C. Martin
President and Chief Executive Officer
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