

Another commenter stated that APHIS' relaxation of U.S. standards, while foreign trading partners continue to strengthen their opposition to similar standards, is multiplying the economic harm to American agricultural interests and amounts to "unilateral agricultural disarmament" in the international trade arena. Our regulations are based on pest risk assessments, survey data, and other science-based considerations. We analyze each amendment to the regulations concerning the admissibility of specific fruits and vegetables, and fruits and vegetables in general, independent of foreign export agreements. The amendments to the regulations in this rule are not a relaxation of our standards.

One commenter asked us to assure U.S. agricultural industries that the proposed amendments will not lessen the sanitary and phytosanitary standards of protection afforded to U.S. fruits and vegetables against infestation or disease from imports.

A major responsibility of the U.S. Department of Agriculture (the Department) is preventing the introduction and spread of plant pests; indeed, the Plant Protection Act requires the Department to carry out this responsibility. APHIS is responsible for implementing the regulations that carry out the intent of the Plant Protection Act. As part of this responsibility, we ensure that our resources are adequate to carry out our day-to-day functions such as verifying that agricultural commodities meet U.S. phytosanitary entry requirements at ports of entry and working with our cooperators to conduct plant pest surveys and eradication programs when necessary.

The amendments we are making to the regulations in this rule are not a reduction of sanitary and phytosanitary standards of protection. The amendments either strengthen or clarify the protection that the regulations provide. For instance, the amended packaging requirements for tomatoes from Spain, France, Morocco, and Chile will strengthen that protection by requiring that packaging safeguards remain intact upon arrival in the United States. Further, as discussed below, removing the criterion of "without risk" is intended to clarify the regulations to make them consistent with sound science.

#### *Removing the "Without Risk" Criterion*

Several commenters disagreed with our proposal to remove the "without risk" criterion from the regulations in § 319.56–2(e)(3) and (e)(4) that specify that certain fruits and vegetables may be imported from a definite area or district

if that area or district is free of all or certain injurious insects (referred to elsewhere as pest-free areas) and the importation of the fruits and vegetables can be authorized "without risk."

One concern commenters expressed with the removal of the "without risk" criterion from the regulations is that this amendment will broaden APHIS' discretion without adequately ensuring that the phytosanitary security of our borders will be fully maintained.

Several commenters were concerned that this amendment would allow trade or political issues to take precedence over the protection of U.S. agriculture.

Because the removal of the "without risk" criterion from the regulations is merely an administrative action to remove an impractical criterion, its removal will not affect APHIS' discretion or our responsibility to guard against the introduction of pests. This change will not affect the purpose of our regulations—to protect the United States from the introduction or spread of plant pests—nor will it cause trade or political issues to take precedence over our responsibility. Further, the regulations in § 319.56–6 provide APHIS with discretion to refuse entry, require treatment, or require destruction of shipments of fruits and vegetables. In this rule, we are strengthening this requirement by specifying that imported fruits and vegetables must be fully disclosed at the port of first arrival.

Another concern raised by commenters was that commodities such as citrus from South Africa and Australia are currently being imported into the United States under the criterion of "without risk" and therefore our removal of that criterion would be misleading. We believe that this comment reinforces the need to remove the "without risk" criterion because it indicates that we need to clarify our regulations—no fresh agricultural commodity may be imported "without risk." While the regulations prescribe inspection and, in some cases, as with citrus from South Africa and Australia, provide additional safeguards to reduce risk and guard against the introduction of quarantine pests, risk cannot be completely eliminated. The International Plant Protection Convention (IPPC) of the United Nations' Food and Agriculture Organization addresses this issue in the International Standards for Phytosanitary Measures (ISPM) No. 1, "Principles of Plant Quarantine as Related to International Trade." The specific principle for managed risk states that "because some risk of the introduction of a quarantine pest always exists, countries shall agree to a policy

of risk management when formulating phytosanitary measures." Thus the fact that some risk does exist is an internationally recognized principle.

One commenter stated that the "without risk" language should not be changed because such a change is not specifically mandated in the Plant Protection Act and is contrary to § 412 (7 U.S.C. 7712) of the Act. Instead, this commenter stated, retaining the "without risk" criterion grants the appropriate importance to APHIS' mandate to protect U.S. agriculture from quarantine pests that could cause substantial economic loss and other devastation to U.S. agriculture.

While the Plant Protection Act did not expressly direct the Department to remove the "without risk" criterion from the regulations, we disagree that the removal of the language is contrary to the Plant Protection Act. In fact, in its findings accompanying the Plant Protection Act, Congress stated in § 402(3) (7 U.S.C. 7701(3)) that "it is the responsibility of the Secretary to facilitate exports, imports, and interstate commerce in agricultural products and other commodities that pose a risk of harboring plant pests or noxious weeds in ways that will reduce, to the extent practicable, as determined by the Secretary, the risk of dissemination of plant pests or noxious weeds." Given that the Act directs the Secretary to reduce risk "to the extent practicable"—and not to zero—we believe that removing the impractical and unrealistic "without risk" criterion from the regulations is consistent with the intent of Congress as expressed in the Plant Protection Act.

One commenter stated that omitting a definition of acceptable risk would lead to a regulatory process that will be less based on sound science and that APHIS is seeking to avoid defining what "without significant risk" means for future importations. Further, commenters voiced concern that we are not replacing the "without risk" criterion with a standard that indicates an acceptable level of risk. It is APHIS' belief, which is based on sound science, that it is not appropriate to define an acceptable level of risk for all future imports. The risks associated with importations of fruits and vegetables vary depending upon the pest-commodity-origin complex. Further, the Plant Protection Act does not define the term "acceptable level of risk" or require the Secretary to define it, nor does the Plant Protection Act require the Secretary to prohibit imports unless he or she can conclude that there is zero risk of pest introduction. Instead, the Act gives the Secretary discretion to