



THE GIUMARRA COMPANIES
nature's partner

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Dockets Management Branch (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, Maryland 20852
ATTN: Docket No. 02N-0278

Dear Sir or Madam:

This letter is in response to the Food and Drug Administration's (FDA's) request for comments on the implementation of Title III, Section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act), Pub. L. 107-188. The Giumarra Companies fully supports all necessary and appropriate measures to protect America's food supply but we have concerns regarding the minimum prior notice provision included in the Bioterrorism Act. We realize that the FDA cannot anticipate every situation where the implementation of the prior notice period may be extremely disruptive to commerce and in that regard, we present our situation.

We are importers of fresh produce from many countries including Chile, Argentina, Brazil, New Zealand, China and Mexico, among others. While the prior notice provision poses no foreseeable problems with produce imported from distant sources, we are greatly concerned about the substantial amount of produce that we import from sources that are less than eight hours distant from the U.S. border. Specifically, we import fresh produce from two Mexican sources that are located less than eight hours from the border, one in Hermosillo, Sonora which is only three hours from the border and the other is in Guaymas, Sonora which is five hours from the border.

The farming operation in Hermosillo produces table grapes, cantaloupes, and watermelons. For purposes of clarity, we will use as an example our spring table grape and watermelon harvest. The spring watermelon harvest begins in mid to late April and lasts for six to eight weeks. Production is approximately 1000 truckloads, each about 40,000 lb. Our table grape harvest begins in early May and ends in late June. Production for this harvest is approximately 1.3 million packages, which is in excess of 650 truckloads. During peak grape production, we expect approximately 50,000 boxes of grapes daily. The sheer volume of fruit packed on a daily basis necessitates long workdays that run well after dark. While harvest ends at sundown, the precooling operation runs around the clock, 24 hours a day, to ensure that proper temperatures are attained for this very perishable fruit.

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Once the grapes are properly precooled, they are loaded onto refrigerated trucks and shipped to us, three hours away. The USDA inspects many of these loads at sites on the Mexican side of the border and the rest are inspected by the USDA at our facility on the American side of the border.

In order to meet the demands of our customers, we pack table grapes in a variety of pack styles, bags, plastic containers, etc. This results in shipments of different quantities. An example of this is a standard load of 19 lb. bagged grapes usually consists of 1980 boxes while a load of styrofoam boxes only consists of 1800 boxes.

With this brief description of the grape operation, here are some of the issues that are of great concern to us:

Transportation

Freight rates in Mexico are substantially greater, sometimes double, than those in the United States. Typical freight rates from Hermosillo, Sonora to Nogales, AZ are about \$600 US. Refrigerated carriers typically pick up a load of fruit in Hermosillo, make the trip to Nogales, unload the fruit, and turn around to pick up another load. If these carriers are delayed a day to be in compliance of the “by noon the day before” provision, this will could limit the number of trips that they can make, perhaps by as much as 50 percent. It is not unreasonable to assume that these carriers will raise their freight rates substantially to offset their lack of productivity. Add to this that there is a finite number of refrigerated carriers available and the law of supply and demand could easily raise freight rates dramatically, possibly to \$900 or more. This is not an unlikely scenario in Mexico. A \$300 increase in freight rates times 1650 truckloads of watermelons and grapes would amount to a \$495,000 loss to the operation *just for the spring watermelons and grapes*. This does not take into consideration the possibility of a transportation shortage created by delays at the border that could result in fruit that is not able to be transported within a reasonable period of time. While that is not a certainty, if it occurred, the results could be financially catastrophic.

USDA Inspections

Inspection of grapes and watermelons are mandatory. The Inspection Service is already stretched to the limit with the staff that is available to them. If other grape producers in the area experience the same delays in crossing the border due to the prior notice provision, there will likely be a “stampede” of trucks waiting to cross from the previous day. While it is normal to see peaks and valleys of incoming loads, there would likely be a bottleneck at the beginning of each day that the USDA would be hard-pressed to meet. If the fruit is not inspected, it may not be marketed within the U.S.

Market Decline

Typically, the Mexican grape season begins with high prices that fall steadily for the first third to half of the production cycle and then stabilize. When prices are high, prices usually move in \$2.00 increments. If a shipment of grapes is delayed and suffers a day of market decline, the results could be very costly. To put it into perspective, consider a typical load of Mexican grapes consisting of 1980 packages. If the market decline is limited to \$2.00, the loss on that load would equal \$3960. If we are shipping 20 loads, that figure becomes \$79,200 *per day*. This assumes that market decline is limited to \$2.00. Such losses cannot be ignored.

Amendments

Under the current prior notice provisions, only a single amendment to the notice will be allowed. While we see the rationale behind this, it does not take every situation into consideration. For example, all loads inspected by the USDA on the Mexican side of the border have fruit that is sampled, cut, juiced, etc. and this results in boxes lost, thus altering the manifest. If any part of the load is out of grade, the entire load would have to be detained in Mexico while awaiting the reconditioning of the out of grade lot, otherwise a new prior notice would have to be given for the reconditioned lot. If that notice were to be given at any time past noon, it would take two days for that lot to be allowed to cross. Other circumstances include truck breakdowns that necessitate the changing of the carrier. This in itself would not be a problem but if the USDA were to sample fruit from the same load, a second amendment would not be allowed.

Infrastructure

If the Bioterrorism Act is enacted in its present form, it will become necessary to invest in new cold storage and precooling facilities to meet the requirements of the prior notice rules. The probable delays that are likely result would necessitate more cold storage than is currently available to properly maintain the fruit. The investment just for our operation would exceed \$1 million. That amount of money is not available for this purpose.

The points that I have listed do not address such basic things like the extra age of the fruit, the added difficulty for our customers to have their orders filled on time, the cost of implementation. The “noon the day before” provision results in a 24 hour prior notice in situations close to the border. Nevertheless, we want to do our part in ensuring the safety of the American food supply but ask that you take into consideration those operations that are located well within the 8-hour distance.

A very different example where the current prior notice provision could prove to be very costly to us are the tomatoes and cucumbers that are shipped to us from Culiacan, Sinaloa, Mexico. In order to minimize freight costs, trucks are shipped with manifests that are far too heavy to be allowed on U.S. roadway and reloaded in Nogales, Sonora. By loading an extra 10,000 lb. on these shipments, savings amount to approximately \$250K annually. The prior notice provision does not seem to allow us to do continue with this practice, thereby adding an additional \$250K cost annually.

In summary, we fully support all appropriate and necessary measures to ensure the safety of the American food supply but we ask that the position taken by the FDA in preparing a final draft of the Bioterrorism Act take into account those that will be subject to substantial financial hardship due to inflexibility in its implementation. We offer you any assistance that we can in this matter and want you to know that we are on the same team.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Walter Ram". The signature is written in a cursive style with a large, stylized initial "W".

Walter Ram
Director of Food Safety

cc: Leslye Fraser