

# FRESH PRODUCE ASSOCIATION OF THE AMERICAS

Post Office Box 848  
Nogales, Arizona 85628-0848  
www.fpaota.org



(520) 287-2707  
Fax (520) 287-2948/287-5430  
info@fpaota.org

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Chuck Ciruli  
*Chairman*

William Sykes  
*Vice-Chairman*

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Lee Frankel  
*President*

Mike Masaoka Associates  
*Washington Representative*

Michelle Fisher  
U.S. Department of Health and Human Services  
U.S. Food and Drug Administration  
College Park, MD 20740

Dear Ms. Fisher:

Thank you for your interest in learning more about the process by which produce is imported through Nogales, Arizona. The FPA and its members are deeply concerned about the negative ramifications that we believe an 8-hour prior notice will cause to national security, the health of U.S. residents, the federal budget, as well as our own businesses. Virtually all of the potential benefits that could arise from an 8-hour prior notice are already captured through the OASIS computer database that FDA uses to monitor the ports of entry and to target specific individual shipments for further inspection and testing.

We are pleased to provide the following information in response to the several questions you posed to us about the process of importing fresh produce from Mexico.

**What is the general practice of trucking produce from the grower to the buyer at the border? What is the typical scenario?**

Produce is loaded onto trucks at secure packinghouses or cooling facilities that are located close to the original fields of production. Most facilities have guarded gates, where a driver must check-in to be allowed admission to the facility.

When the truck is loaded, information regarding the contents of the trailer is submitted by the grower to the U.S. importer, the U.S. Customhouse broker, and the Mexican Customhouse broker. The Customhouse brokers will then begin to prepare the paperwork necessary for the product to cross. The U.S. Customhouse broker will also submit the information to U.S. Customs and to the FDA to be evaluated by the OASIS system. However, since each grower uses their own methods to transmit their information, the customhouse brokers frequently make minor corrections regarding exact box count and the size of the produce within each box.

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Depending on the distance from the border, the truck may be stopped several times by the Mexican army and the Mexican Justice Department for potential inspections for contraband and also by Mexican agricultural officials inspecting to safeguard special pest and animal disease free zones in Northern Mexico. Some trucks are sealed during the trip, i.e., trucks carrying produce subject to special phytosanitary rules, such as, mangoes.

At the present time with the current Mexican inspection system in place, the travel time for approximately 30 percent of the volume imported through Nogales is less than eight hours. Approximately 55 percent of the volume comes from areas between 8 hours and 24 hours distant. The remaining 15 percent comes from regions more than 24 hours distant from the border.

The Mexican government has discussed adopting techniques and installing equipment (e.g., gamma ray scanners, density meters) similar to those used by U.S. Customs for their contraband inspections. This would lead to shorter inspection times (hence shorter transportation times) and increase the overall volume of produce shipped within the 8-hour transportation time-limit zone.

It should also be noted that for the ports of San Luis, Arizona and Calexico, California, virtually all of the produce imported through those ports are grown within the 8-hour zone. The majority of the product shipped through the port of Otay Mesa in San Diego also is grown within the 8-hour zone. Furthermore, it is important to note that a significant volume of Mexican produce from the interior of Mexico is re-packaged in by Tijuana wholesalers for shipment to the Los Angeles market. That means the trucks are loaded for entry into the US well within 8 hours of importation.

Main production areas for Nogales within the 8-hour zone include: agricultural valleys around the Sonoran cities of Caborca, Hermosillo, Guaymas, Ciudad Obregón, and Navajoa. Navajoa is approximately 350 miles south of Nogales.

Major areas within the 8 to 24 hour zone include the valleys around the Sinaloa cities of Los Mochis, Guasave, Guamúchil, Culiacán, La Cruz, and Esquinapa, which is nearly 800 miles south of Nogales.

Some production regions in the states of Nayarit and Jalisco at times may be less than 24 hours away, depending on delays and traffic levels.

Other Mexican growing regions that almost always need more than 24 hours to ship to Nogales include the states of Colima, Michoacán, Guerrero, Morelos, Oaxaca, Chiapas, and Veracruz.

When the truck arrives in Nogales, Sonora (which is the Mexican side of the border), the truck and driver typically report to a staging compound. At this compound, the drivers on their own will verify the safety and weight of their truck,

and collect their papers for Mexican Customs. Occasionally, the paperwork will lack sufficient information (e.g., exact size designations, precise number of cartons, etc.) and new papers are generated. The U.S. Customhouse broker is notified of the changes to allow for the modification of the paperwork and electronic submission of the information.

Roughly one-half of the trucks are subject to a mandatory quality inspection by the U.S. Department of Agriculture as a condition of importation. That means the entire load is taken out of the truck. As the U.S. Customs compound is too small for the volume of produce that needs to be inspected, all grade inspections take place in other locations. Commodities that require USDA inspections include tomatoes, grapes, onions, and oranges.

If a portion of the load is not found to meet the import requirements mandated by USDA-administered marketing orders or other commercial requirements, the good portion of the original lot may be separated from the rest of the load and combined with product from other shipments or producers to make a full trailer. Such reloading and reconfiguration require that the information be resubmitted and reprinted for Mexican and U.S. government agencies. Again, the shipment is available for entry into the US in much less than eight hours.

Another important factor is the creation of an entirely new truckload of produce from Mexican trucks that are too heavy for US highways. Because freight costs in Mexico are very high, many shippers that are far from Nogales take advantage of the higher weight limits for trucks that exist on many Mexican highways by loading extra pallets of produce. In essence, this spreads the cost of the freight over a larger number of boxes of produce, reducing the per box cost of shipment. In Nogales, Sonora, the excess product is removed from the truck and loaded onto another truck to make up a new load from excess products from other trucks. This effort to keep the product competitive and affordable for the U.S. consumer delays the process of providing the exact information regarding the quantity, markings, size of the product and information regarding the driver and the trailer that will cross the product. The new information may not be ready until just hours before the product will cross the border.

Once the driver has the final load to be crossed in to the US and has received the Mexican Customs documentation, the truck will proceed to Mexican Customs. Officials there will then scan the Mexican data into its system, verify that the merchandise has received its electronic entry number from U.S. Customs, and then allow the truck to proceed towards the United States Customs facilities, approximately seven miles away.

At the US border, the driver will pick up the U.S. paperwork, which needs to be physically stamped by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, and proceed to a screening area. In this screening area, 100 percent of all trucks and trailers are examined by U.S. Customs,

weighed for Federal and State weight requirements, and reviewed by transportation inspectors. If there are no anomalies or concerns, the trucks are allowed to proceed to a booth staffed by personnel from U.S. Customs and the Arizona Division of Motor Vehicles. The truck, cargo, and driver information are entered into the Customs-FDA database.

If no agency has placed any hold on the entry, the truck is allowed to proceed to the U.S. importer's warehouse. If any agency has placed a hold on the shipment for further inspection, the trailer is sent into the commercial cargo compound. At that time, the agencies may review the paperwork, the product, the trailer, and the truck and even offload and remove product for analytical analysis depending on the agency's criteria. Once all of the agencies (Customs, USDA, APHIS, FDA, INS, DEA, DOT, state inspectors) have released the product to enter the United States, the truck is allowed to leave the compound and travel to the importer's warehouse in the commercial zone of Nogales, AZ.

**If the 8-hour prior notice requirement were put into practice, how would the business practice change in Nogales (or at the border)? What will be the effect of the 8-hour prior notice? Will the shipment be held at the border or at the growing area until the eight hours is over?**

As mentioned before, the geographic proximity to the border of many of the production regions, combined with the U.S. Department of Agriculture-required inspections, and high Mexican freight costs for product from distant sources from the border all reduce the ability of the industry to meet an 8-hour rule.

It must be remembered, however, that the FDA already has an electronic system in place (OASIS) that instantly reviews all entries of fresh produce. The OASIS system automatically places a hold on product based on criteria established by FDA. Through the use of OASIS, FDA can allocate its resources most effectively and accurately. This system allows FDA to focus on those shipments that are outside of the normal flow of goods from high volume/low risk exporters and importers. Forcing a manual review of all shipments will only serve to distract and unnecessarily occupy FDA staff, thereby lessening their time to focus on higher risk shipments.

Given the above-mentioned factors, trailers of fresh produce would still be sent towards the border in the same historical fashion. With the new, proposed prior-notice requirement, FDA will face many corrections to the information first transmitted by the importer through the U.S. customhouse broker eight hours in advance. This is because the importer will be making final corrections upon final movement of the product from Nogales, Sonora to Nogales, Arizona with respect to the exact box counts and product sizes necessary to meet existing FDA requests for information.

Because of the difficulties the prior notice requirement will create, the product will generally wait at the border for the 8-hour period to pass. Given that there is no

adequate infrastructure for secure holding facilities, trucks will park by the side of the road waiting for the 8 hours to expire. This holding of the trucks in insecure areas will actually **increase** the likelihood of tampering with the product. This problem will be compounded even further for trucks arriving in the afternoon in Nogales, Sonora. Such trucks will have to pass the whole night in unprotected areas waiting for FDA and Customs to reopen the following morning. (US Customs hours, during the height of the produce season from December to May are from 8 a.m. to 7 p.m.)

In short, the likely effects of the implementation of the 8-hour rule will be to have trailers full of perishable commodities sitting unsecured by the side of the highway, thereby, increasing the opportunity and likelihood of product tampering.

**What will the effect be on the product?**

The 8-hour rule will significantly damage the product. One of the main causes of damage will result from the likelihood that the rule will add an extra day into the transportation times of the product. This extra delay will increase spoilage by approximately 2 percent. [The U.S. Department of Agriculture "Good Arrival Guidelines" for tomatoes, for example, allow for an extra 2 percent condition/decay problems when a shipment that should take one day is delayed and takes two days.]

Furthermore, truck drivers historically have turned off their refrigeration units when they are idled and waiting for paperwork or government agencies to perform their duties. Not maintaining constant cooled temperature causes the product to loss freshness, shelf life, and quality. This combined degradation to the product lowers the value of the product in Nogales and especially at the final shipping destination.

**What will be the loss in product value?**

The total direct economic impact to the industry using Nogales will be approximately 15 percent, or \$150 million, on an annual basis.

The first area of loss will be in the increased transportation, brokerage fees, labor costs, and warehousing costs that will occur as result of the 8-hour rule. As trucks spend more time idling, they are spending less time transporting product; hence, more trucks must be in service to accommodate the volume of trade. Hours of operations at the port likely will have to be extended to cross all of the perishable produce, as the process will now have become much less efficient. All of the government agencies and service providers, such as, stevedores and customhouse brokers, will need to charge more to cover their overtime work and/or additional staff. Likewise, the uncertainty of having the product cross will result in the need for larger importer warehouses to increase inventory levels as well as the higher wage costs from having extended hours of operation.

The second main loss will be the result of selling lower quality fresh fruits and vegetables. The price in general will be lower on the first sale to the customer. Price adjustments for quality problems and spoilage will also rise.

The third main area of loss will be the reduction of potential markets for the products. For instance, if a product no longer reliably has the freshness to be shipped to Boston or the Northeast, then buyers in that part of the country will no longer order/source from Nogales.

The fourth source of economic loss will be from product that can no longer be shipped out of concern for excessive spoilage losses. For example, zucchini squash is a delicate and sensitive product. Product that is harvested from a field that has been in production for a month is not as durable as product harvested from the same field on its first day of production. Therefore, harvests will be curtailed for several more fragile products, or even not planted in the first place if the commercial yields are reduced too significantly as a result of the rule.

**What is the normal wait time for a produce truck at the border?**

In general, during the peak of the season from December through May, trucks wait an average of 2 hours from the time they enter Mexican Customs to the time they leave U.S. Customs. Truck waiting time at the border is a function of traffic volume and the efficiency at which all the regulatory agencies are working. Therefore, truck wait times can range from no waiting to 10-hour delays. Before U.S. Customs made some administrative changes in 2000, it was possible for trucks to stay overnight waiting in line on the busiest days of the season.

**What is the percentage of produce that starts moving toward the border before there is a know buyer for the produce?**

Over 95 percent of the volume of produce imported through Nogales is imported on a consignment basis--that is to say, the final purchaser is not determined. In other words, the importer is under contract to act as a sales agent on behalf of the Mexican grower. The importer usually never takes title to the product. Nonetheless, the importer, commonly called a distributor, often has prior commitments and standing orders to fill in addition to spot market sales.

It is only in rare instances (less than 5 per cent) when the truck at the packinghouse is loaded for a specific customer and that the product remains intact on that specific conveyance until final destination at the customer's distribution center or warehouse. As a general practice, the importer will match the quality most appropriate for the customer after having possession of the product in their warehouse in Arizona.

**What health impacts do you anticipate on the health of U.S. residents?**

Medical experts, including the Surgeon General, have noted that physical inactivity and poor diet--of which low consumption of fruits and vegetables is a key component--causes diseases that result in the death of more than 300,000

Americans each year [*Fruits and Vegetables: Enhanced Federal Efforts to Increase Consumption Could Yield Health Benefits for Americans*, United States General Accounting Office, July 2002, GAO-02-657, p.4]. Every delay to the process of shipping and crossing the product to the United States reduces the quality of the product and raises the cost of the product. Ultimately, those delays and inefficiencies lead to higher consumer prices and reduced consumption of fresh fruits and vegetables. Nogales alone, with its 4 billion pounds of fresh produce imported each year, supplies over 5 percent of all fresh produce consumed in the United States. The FPAA estimates that Canada and Mexico, the two countries most directly affected by the 8-hour rule, supply 15 percent of the fresh produce consumed in the United States. Clearly, the 8-hour rule will increase health risks to Americans.

Once again, FPAA thanks you for your interest in this subject. I would like to invite you and your staff to come to Nogales to have a better understanding of the import process. FPAA and its members believe that the 8-hour prior notice will reduce the security and integrity of imported fresh produce, detract from the health of Americans, and impose significant new costs on the industry. The 8-hour proposal is even more troubling because virtually all of the potential benefits envisioned by the rule are already captured through the OASIS computer database of the FDA.

As always, please feel free to contact FPAA if you have any other questions.

Sincerely,



Lee Frankel  
President  
Fresh Produce Association of the Americas