



655 15th Street, N.W.
Washington, DC 20005-5701
Tel: (202) 452-8444
Fax: (202) 429-4519
E-mail: fmi@fmi.org
Website: www.fmi.org

July 23, 2004

Docket No. 03-022-3
Regulatory Analysis and Development, PPD
Animal and Plant Health Inspection Service
Station 3C71
4700 River Road, Unit 118
Riverdale, Maryland 20737-1238

Re: Response to Request for Comments on Mexican Hass Avocado Import Program; Docket No. 03-022-3

Dear Sir or Madam:

The Food Marketing Institute (FMI) is pleased to respond to the U.S. Department of Agriculture's (USDA's) request for comments regarding the potential expansion of the Mexican Hass Avocado Import Program with respect to the time and location restrictions that currently apply to the importation of Hass avocados from Mexico. 69 Fed. Reg. 29466 (May 24, 2004).

As discussed more fully below, FMI encourages USDA's Animal and Plant Health Inspection Service (APHIS) to expand the Mexican Hass Avocado Import Program and increase the availability of Hass avocados to American consumers. Refusing to allow importation into all areas of the United States despite the Secretary's finding that phytosanitary measures already in place virtually eliminate the threat of a plant pest or noxious weed being introduced into the United States is an arbitrary and capricious use of the agency's authority. Given the success of the safeguards APHIS has imposed on the production of Mexican Hass avocados, the time and location restrictions for importing the fruit are unnecessary and should be eliminated entirely.

A. Background

Section 319.56-2ff of APHIS's regulations provides for the Mexican Hass Avocado Import Program, which limits importation of Hass avocados from Mexico in several important respects. 7 C.F.R. 319.56-2ff. Specifically, Hass avocados may be imported from Mexico only during the months of November, December, January and February, and they may only be distributed in the states specified in the regulation. 7 C.F.R. 319.56-2ff(a). The importation restrictions are part of a nine-step "systems approach" that is intended to prevent the introduction and dissemination of plant pests in conjunction with the importation of Hass avocados from Mexico. The regulatory systems approach also imposes significant requirements on Mexican producers, including field surveys, trapping and field bait treatments, field sanitation practices, and post-harvest safeguards. See 7 C.F.R. 319.56-2ff(c). Additional inspection safeguards are in place once the avocados arrive in the United States.

Since the Mexican Hass Avocado Import Program began in 1997, thousands of shipments of avocados have entered the U.S. market. As required by the regulatory “systems approach” APHIS has examined these shipments to verify phytosanitary documents and to ensure that the fruit is free of pests. In its proposed rule, it is explained that, “APHIS has 6 years worth of data from the avocado import program which gives us confidence that the systems approach currently in place provides adequate safeguards against avocado pests.” 69 Fed. Reg. at 29467.

The Mexican government recently petitioned APHIS to amend its regulations regarding the importation of Hass avocados (1) to allow importation of Hass avocados to all 50 states and (2) to allow the imports year round. 69 Fed. Reg. at 29466. In response, APHIS proposed these recommended changes to the Hass Avocado Import Program and intends to consider a variety of information, including its most recent pest risk assessment. 69 Fed. Reg. at 29466. The agency has also requested the public’s comments on the proposed rule. Toward that end, FMI offers the following comments.

B. Mexican Hass Avocado Import Program Beneficial To Consumers

The Mexican Hass Avocado Import Program has allowed U.S. consumers to enjoy avocados year-round. Imports from Mexico have helped to moderate U.S. prices somewhat and have helped to maintain a high quality fruit for consumers. Consumers are now driving demand for avocados to an all time-high, despite the fact that prices remain high.

The California avocado industry is working very hard to build consumer demand for their avocados, but consumption is currently limited by both price and availability. *The Packer* recently estimated that only 32% of likely consumers purchased avocados in the past year. By permitting pest-free, imported avocados into the United States, consumers will begin to expect avocados on a year-round basis. This will increase avocado sales overall and will benefit U.S. producers as well as consumers.

C. Failure To Expand Program States Is Arbitrary and Capricious

The current regulation limits importation of Mexican Hass avocados to 31 specific states. 7 C.F.R. 319.56-2ff(a)(3). The states were chosen, at least in part, because climactic conditions minimize the risk of pest infestation.

Expanding the regulation to permit Mexican Hass avocados to be imported into all 50 states is entirely consistent with the “sound science” approach the Agency adopted in promulgating the original regulations in 1997. The agency’s pest risk assessment found that “based on the statistical models we have used to estimate sampling efficacy, it is slightly more likely that zero infested avocados will enter the United States than one infested avocado.” 69 Fed. Reg. at 29467. Under these circumstances the Agency would be hard-pressed to justify the exclusion of avocados from any state, including California, Florida and Hawaii and, indeed, would be vulnerable to the challenge that its regulation was arbitrary and capricious. Moreover, given the efficiency of the production safeguards APHIS requires - which is evidenced by APHIS’s pest risk assessment - the Agency should indeed remove the current limitations.

In addition to the implications under U.S. law, the imposition of import restrictions that are not based on sound science may subject the U.S. to trade barriers from abroad. If the U.S. government wants other countries to adopt regulations that are based on sound science and are not simply trade barriers, the U.S. government should lead by example.

Expanding the program in a manner that is consistent with the Agency's sound science approach will allow consumers to enjoy a more abundant supply of avocados without jeopardizing the legitimate agricultural interests of U.S. producers. Accordingly, FMI respectfully urges the Department to expand the current Mexican Hass Avocado Import Program to allow imported avocados to enter all 50 states year-round.

Sincerely,

Deborah R. White
Associate General Counsel,
Regulatory Affairs