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Docket No. 00-003-2
Regulatory Analysis and Development, PPD
Animal and Plant Health Inspection Service
Suite 3C03
4700 River Road, Unit 118
Riverdale, Maryland 20737-1238

**Re: Proposed Rule To Expand Mexican Hass Avocado Import
Program; Docket No. 00-003-2**

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 proposed 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. 66 Fed. Reg. 36892 (July 13, 2001). These comments are fully endorsed by the North American Perishable Agricultural Receivers (NAPAR), which is an association in alliance with FMI.

As discussed more fully below, FMI and NAPAR encourage USDA's Animal and Plant Health Inspection Service (APHIS) to adopt the regulations proposed by the agency to increase the availability of Hass avocados to American consumers. Refusing to allow importation into states that have comparable climactic conditions to the states into which importation is now allowed would be 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 unnecessarily limiting and should be modified, if not 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, more than 2000 shipments of avocados have entered the U.S. market. 66 Fed. Reg. at 36896. 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 a May, 2000 report to the House Appropriations Subcommittee on Agriculture, APHIS advised that “no quarantine significant pests were found during the inspections.”

In 1999, the Mexican government petitioned APHIS to amend its regulations regarding the importation of Hass avocados (1) to increase the number of states into which the avocados may be imported and (2) to allow the shipping season to begin one month earlier and to end one month later.¹ 66 Fed. Reg. at 36892. In response, APHIS published a request for comments on Mexico’s request. 65 Fed. Reg. 30365 (May 11, 2000). FMI and NAPAR filed comments on August 9, 2000 urging APHIS to amend its regulations to expand the area of distribution of Hass avocados and to increase the length of the shipping season. APHIS received 265 comments, the majority of which also encouraged APHIS to adopt this approach.

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 and have helped to maintain a high quality fruit for consumers. Consumers are now driving demand for avocados to an all time-high. According to the California Avocado Commission, seventy percent of avocado consumers are buying avocados at least once a month.

The California avocado industry is working very hard to build consumer demand for their avocados. By permitting pest-free, imported avocados into the United States in the off-season, 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 To States Equivalent To Approved States Is Arbitrary and Capricious

The current regulation limits importation of Mexican Hass avocados to nineteen specific states. 7 C.F.R. § 319.56-2ff(a)(3). The states were chosen, at least in part, because of their climactic conditions. Specifically, USDA determined that the Mexican fruit fly is less active and oviposits less at temperatures below 70 °F. See 65 Fed. Reg. at 30365. Accordingly, since temperatures in the specified states are lower than 70 °F during the winter, the agency determined that importing avocados to those states

¹ Recently, Mexico petitioned APHIS to amend its regulations to permit the importation of Hass avocados throughout the United States on a year round basis. APHIS intends to consider this request separately. 66 Fed. Reg. at 36893.

presented only a low risk that fruit flies would survive should any of the pests slip past the production and inspection safeguards imposed earlier in the process.

Expanding the regulation to permit Mexican Hass avocados to be imported into states whose climactic conditions are comparable to those now specified is consistent with the “sound science” approach the Agency adopted in promulgating the regulations in 1997. Indeed, if the climactic conditions are comparable, the Agency would be hard-pressed to justify the exclusion 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 finding that no quarantine significant pests were found during import inspections – the Agency should reconsider the imposition of any geographic import limitations. Similarly, if the climactic conditions of the extended time period requested by the Mexican government are consistent with those currently permitted, APHIS should amend its regulations to increase the time during which Mexican Hass avocados may be imported.

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.

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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 and NAPAR respectfully urge the Department to expand the current Mexican Hass Avocado Import Program to allow imported avocados to enter additional states over a longer period of time.

Sincerely,

Tim Hammonds
President and CEO

cc: Patrick Davis
President, NAPAR