

February 16, 2018

TO: Sonia N. Jimenez
Deputy Administrator
Specialty Crops Program

FROM: Heather M. Pichelman, Director
Promotion and Economics Division
Specialty Crops Program

SUBJECT: Approval of Amended Articles of Incorporation and By-laws for the Mexican Hass Avocado Importer Association

I recommend approval of the amended Articles of Incorporation and By-laws for the Mexican Hass Avocado Importer Association (MHAIA). The amended Articles of Incorporation and By-laws were discussed and approved by MHAIA Directors during their September 19, 2017 meeting. After the approval of these changes, the Promotion and Economics Division had extensive discussions with the MHAIA Executive Director and outside legal counsel to understand and approve the amendments. Minor changes were made to the By-laws based on these discussions, but they were not so substantive as to warrant another approval by the MHAIA Directors.

MHAIA is amending both their Articles of Incorporation and By-laws to make them more consistent with the way in which MHAIA has operated since its inception. MHAIA was first organized as a member-governed organization with three classes of Members: U.S. Importers, Mexican Exporters-Packers and Mexican Producers. As trade developed, the initial design exceeded the realities of the trade situation as there are now 12,000 to 14,000 Hass avocado producers in Mexico.

MHAIA was incorporated under the laws of the District of Columbia (D.C.), and the D.C. non-profit corporation statute, D.C. Code § 29-401 *et seq.* This statute permits a non-profit to be organized as either a member-governed organization, or as a board-governed organization. To align MHAIA's operations in accordance with the D.C. non-profit corporation statute, MHAIA proposed the following changes:

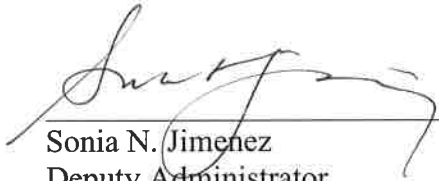
- Becoming a board-governed organization;
- Redefining "members" to include only U.S. importers of Hass avocados from Mexico;
- Continuing to have active participation by the Mexican packers/exporters and the producers through their representation of the MHAIA Board of Directors by officials designated by the Mexican exporter and producer association, APEAM, A.C.; and
- Continuing to have representatives of Mexican exporters and producers, under the amended By-laws, to fill half of the MHAIA Board seats.

The MHAIA Articles of Incorporation amendment request specifically addresses the Fourth and Fifth Articles by deleting them in their entirety and replacing references to the membership classes and direct membership to be outlined in accordance with *D.C. Code § 29-404.01(c)*. These changes will bring MHAIA up-to-date under the D.C. non-profit corporation statute, D.C. Code § 29-408.03(a) (1)-(4). The law provides nonprofit corporations the opportunity to amend their Articles of Incorporation at any time.

Updates to the By-laws were extensive, as almost every section was revamped. One of the notable additions of the document include a “Definition” section that outlines the meanings for the terms used throughout the By-laws. Changes occurred in nearly every section with few others remaining the same, but identified under a new “Article.”

The amended Articles of Incorporation along with the original is included, as well as the amended By-laws and two redlined versions showing the changes to this document.

Approved by:



Sonia N. Jimenez
Deputy Administrator
Specialty Crops Program

2/28/18

Date

Attachments:

- 1) MHAIA Original Articles of Incorporation
- 2) MHAIA Amended Articles of Incorporation
- 3) MHAIA Amended By-laws
- 4) MHAIA By-laws Redline Copy
- 5) MHAIA By-laws Redline Further Changes

BYLAWS OF THE MEXICAN HASS AVOCADO IMPORTERS ASSOCIATION

Article 1. Definitions

For the purpose of these Bylaws, the following terms shall mean:

“Act” -- The Hass Avocado Promotion, Research and Information Act of 2000, 7 U.S.C. § 7801 *et seq.*, as it may be amended from time to time.

“Alternate” – a person who has been elected or designated to serve on the Board in the event of the resignation, removal or death of a Director.

“APEAM” -- Asociación de Productores y Empacadores Exportadores de Aguacate de Mexico, A.C., which is the association of producers, packers and exporters of Hass avocados in the Republic of Mexico.

“Association” -- The Mexican Hass Avocado Importers Association, also known as MHAIA.

“Board” -- the Board of Directors of the Association.

“Board Secretary” – the Secretary of the Board of Directors.

“C.F.R.” – the Code of Federal Regulations.

“Director” – a person who has been elected or designated to serve on the Board.

“Fiscal Year” – July 1 of any year through June 30 of the following year.

“Order” -- The Hass Avocado Promotion Order, 7 C.F.R. Part 1219, as it may be amended from time to time.

“USDA Secretary” – the Secretary of the U.S. Department of Agriculture, or his/her authorized representative.

Article 2. Purpose

The purpose of the Association and these Bylaws shall be to carry out a coordinated program of advertising, promotion, development, information and research for Hass avocados imported from Mexico in accordance with the provisions of the Act and the Order.

Article 3. Place of Business

MHAIA is incorporated under the laws of the District of Columbia. However, the Board may decide to maintain the Association's principal place of business elsewhere in the United States.

Article 4. Direction of the Association

All corporate powers of the Association shall be exercised by or under the authority of the Board, and the activities and affairs of the Association shall be managed by or under the direction of, and subject to the oversight of, the Board. Any provision of law requiring notice to, the presence of, or the vote, consent or other actions by, members of a nonprofit corporation in connection with a matter shall be satisfied by notice to, the presence of, or the vote, consent or other action by, the Board.

Article 5. Members

Section A. Pursuant to section 1205 (h) (9) (B) of the Act, and upon completion of all implementation procedures by USDA's Agricultural Marketing Service (AMS), all importers of Hass avocados from Mexico shall be Members of the Association, provided that such importers shall have the opportunity to opt-out of such membership by notifying the Association and the Hass Avocado Board in writing. The term "importer" shall carry the same meaning as provided in 7 C.F.R. §1219.14 as it pertains to Hass avocados from Mexico. Consistent with the provisions of D.C. Code § 29-404.01(c), such Members shall have only those rights and obligations set forth in these Bylaws. An importer may not be a Member if that importer is a member of any other organization receiving funds from the Hass Avocado Board for promotion, research or information activities under the Order relating to Hass avocados produced in Mexico. However, an importer may be a Member if it is also a member of another organization receiving funds from the Hass Avocado Board for promotion, research or information activities relating to Hass avocados produced in a country other than Mexico.

Section B. The Board shall establish and maintain a registry of Members. The Board shall remove from such registry any importer that elects to opt-out of membership in the Association.

Article 6. Annual Meetings

Section A. There shall be an initial meeting of individuals and organizations eligible to be Members of the Association. The initial meeting of Members may take place by teleconference with voting by facsimile or by electronic mail. A majority of those eligible Members participating shall elect the initial Board and adopt Bylaws for the conduct of the affairs of the Association.

Section B. Individuals and organizations who are eligible to be Members may be required by the organizers to pre-register at least two days before the initial meeting in order to be able to participate in the initial meeting and be certified as Members by the Board.

Section C. During each Fiscal Year, there shall be an Annual Meeting of the Association at a time and place, and in the manner, determined by the Board, at which the Directors and Alternates elected or designated in accordance with these Bylaws shall be seated for the following Fiscal Year; and at which the Board shall conduct such other business as shall come before the Association. The Annual Meeting shall ordinarily be in September of each year, and may take place in a formal meeting with personal attendance, or by teleconference with voting by facsimile or electronic mail. The Board Secretary shall give notice of the Annual Meeting to all Directors, Alternates and Members not less than fifteen (15) days before the Annual Meeting.

Article 7. Special Meetings

The Chairman may at his own discretion, or upon request of a majority of the Directors, call a special meeting of the Board at such time and place as the Chairman determines. The Chairman shall provide Directors with notice not less two (2) business days before such special meeting. Special meetings of the Board may take place in a formal meeting with personal attendance, or by teleconference with voting by facsimile or electronic mail.

Article 8. Notice

Any notice required under these Bylaws may be given by electronic mail, and shall be deemed delivered when sent to the appropriate and correct email address.

Article 9. Quorum and Voting

At all meetings of the Association or Board, attendance or participation of a majority of the Directors shall be sufficient to constitute a quorum for the transaction of business.

Unless otherwise provided in these Bylaws, all decisions shall be taken by majority vote of Directors constituting a quorum.

Article 10. Board of Directors

Section A. Number and Election

There shall be eight (8) Directors, and each Director shall have an Alternate who shall serve in such Director's place in the event of resignation, removal or death.

The Directors and Alternates shall be elected or designated as follows:

1. Four (4) Directors and their Alternates shall be elected by Members to represent importers. Two (2) Directors and their Alternates shall be elected in even-numbered years; and two (2) Directors and their Alternates shall be elected in odd-numbered years. Election shall occur in accordance with the provisions of Section D of this Article.
2. Two (2) Directors and their Alternates shall be designated by APEAM, in accordance with its procedures, to represent Mexican packers and exporters of Hass avocados. One (1) Director and one (1) Alternate shall be designated in even-numbered years; and one (1) Director and one (1) Alternate shall be designated in odd-numbered years.
3. Two (2) Directors and their Alternates shall be designated by APEAM in accordance with its procedures to represent Mexican producers of fresh Hass avocados eligible to be exported to the United States. One (1) Director and one (1) Alternate shall be designated in even-numbered years; and one (1) Director and one (1) Alternate shall be designated in odd-numbered years.

Section B. Term of Office

Directors and their Alternates shall be elected or designated for terms of two (2) years. Terms shall begin at the Annual Meeting at which the Directors and their Alternates are elected or designated. A Director or Alternate may serve for more than one term.

Section C. Resignation, Removal or Death of a Director.

A Director or an Alternate may resign by giving oral or written notice to the Chairman or the Board Secretary, and such resignation shall take effect upon receipt thereof. A Director or an Alternate may be removed for good cause, including but not limited to, repeated failure to attend meetings, misconduct, or deficient payment of assessments. Any vote to remove a Director or Alternate shall require support of three-quarters of the Board. If a Director resigns, is removed or dies, the Alternate shall serve the remainder of the term of office.

The Chairman shall appoint a new Alternate if a Director or Alternate who was elected to represent importers resigns, is removed or dies; APEAM shall designate a new Alternate if a Director or Alternate who was designated to represent packers and exporters or producers resigns, is removed or dies.

Section D. Election of Directors to Represent Importers

1. Not later than June 1 of each Fiscal Year, the Board Secretary shall notify all Members regarding the seats of those Directors and Alternates representing importers whose terms will expire at the end of that Fiscal Year, and shall seek nominations to fill those positions. A Member may nominate any person who is Member or who represents a Member to serve as a Director or Alternate if: (a) such nominee, or the company the nominee represents, has paid assessments on imports of Hass avocados during that Fiscal Year; and (b) such nominee, or the company the nominee represents, has been identified to MHAIA by the Hass Avocado Board as a substantial and regular importer of Hass avocados from Mexico. A Director or Alternate whose term is expiring may be nominated to serve on the Board again.
2. Nominations may be sent to the Board Secretary by certified U.S. mail or by electronic means, and shall be received not later than July 10.
3. Not later than July 20, the Board Secretary shall transmit to all Members a ballot with the list of nominees for the open Director and Alternate seats on the Board. The ballot shall indicate the Certified Public Accountant (“CPA”) designated by the Board to assist in the election process.
4. Not later than August 15, Members shall vote by sending their completed ballots to the CPA, who will tabulate the vote and certify the results of the election to the Board.
5. A Member may cast one vote for each open Director seat.
6. All nomination and ballots shall include a certification that the Member imports avocados from Mexico for sale or marketing in the United States, is subject to and has promptly paid all assessments required under the Order, and is listed by the United States Customs Service as the importer of record of Hass avocados.
7. The nominees receiving greatest number of votes shall be elected to serve as Directors until the open seats are filled; the nominees receiving next greatest number of votes shall be elected Alternates, until each Director has an Alternate.
8. The results shall be presented and certified to the out-going Board at the Annual Meeting by the CPA, and the duly-elected Directors shall be seated. In the case of ties, the positions of Director and Alternate shall be decided by majority vote of the outgoing Board.
9. The Board shall arrange that the CPA retain all ballots for a period of five (5) years after an election.

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Section E. Accreditation of Directors to Represent Packer/Exporters or Producers.

1. The Directors representing Packers and Exporters, and Alternates, designated in accordance with Article 10.A.2, above, shall be accredited by APEAM to the outgoing Board at the Annual Meeting, and such Directors shall be seated upon such accreditation.
2. Directors representing Producers, and Alternates, designated in accordance with Article 10.A.3, above, shall be accredited by APEAM to the outgoing Board at the Annual Meeting, and such Directors and Alternates shall be seated upon such accreditation.

Section F. Officers of the Board

There shall be a Chairman, a Vice-Chairman, a Board Secretary, and a Treasurer who shall be elected by vote of the Board from among the Directors; and such other officers as the Board may deem advisable. Only Directors may be Officers. The Officers shall serve as the Executive Committee of the Association. The position of Chairman shall alternate every two years between a Director elected by the Importer Members and a Director designated by APEAM to represent either the Packers and Exporters, or the Producers.

The Board shall elect Officers by secret ballot at the Annual Meeting, and by majority vote of Directors voting and constituting a quorum. Each Officer shall hold office until the second annual meeting of the Association next succeeding his/her election, and until a successor shall have been elected; or until resignation, removal or death.

Section F. Chairman's Duties.

The Chairman shall: (a) preside at all Board and Association meetings; (b) call special Board and Association meetings when deemed necessary; (c) have general supervision of Board and Association affairs and perform all acts and duties ordinarily incident to and required of an executive and presiding officer; and (d) serve as an ex-officio member of all committees.

Section G. Vice-Chairman's Duties.

The Vice-Chairman shall act in the place of the Chairman in the Chairman's absence, disqualification, or at the Chairman's direction.

Section H. Board Secretary's Duties.

The Board Secretary shall: (a) maintain the registry of Members on behalf of the Board; (b) give all notice of meetings and other matters, as required under these Bylaws; (c) record the minutes of all Board, Association and Executive Committee meetings; (d) attest to all papers, documents, and other instruments on behalf of the Board and Association; (e) maintain the records of the Board and Association. The Secretary may delegate some or all of such duties to the Association's staff.

The Board Secretary shall act in the place of the Chairman and Vice-Chairman if both are absent.

Section I. Treasurer's Duties.

The Treasurer shall: (a) maintain custody of all funds and property belonging to or under control of the Board and Association; (b) keep regular books of account in a manner directed by the Board; (c) deposit all funds of the Association, or under its control, in an approved bank or banks designated by the Board; (d) ensure that the Association adheres to the Agricultural Marketing Service's policies on investment, security, and collateralization of public monies; (e) submit to the Board and the Secretary each month a financial report which shall include: (1) a balance sheet, (2) an income statement, and (3) an expense budget showing expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget; (f) act as purchasing agent for the Association; and (g) serve as custodian of all insurance policies and fidelity bonds covering Directors, employees or agents of the Association.

The Treasurer may delegate some or all of such duties to the Association's staff.

Article 11. Procedure and Transaction of Business

The Board shall conduct its deliberations and transact its business in accordance with these Bylaws, and the provisions of the Order. "Roberts Rules of Order" shall govern any matter of procedure not covered by these Bylaws. Only persons who are Directors, Alternates, Members, or employees of the Association, or representatives of the USDA Secretary, may participate in the proceedings, or speak at official meetings of, the Association, unless authorized and recognized by the Chairman.

Article 12. Committees

The Board may, by resolution, establish one or more committees. Each committee shall have such functions and may exercise such powers as the Board may lawfully delegate, and to the

extent provided in the establishing resolution. The chairman of any such committee may call a meeting upon at least three (3) days prior notice, and at the time and place such committee chairman determines. Notice may be given by electronic means. Each such committee shall keep minutes of its meetings, and report these minutes to the Board when required.

Article 13. Budgets, Programs, Plans, and Projects

- Section A. At the beginning of each Fiscal Year, the Board shall submit for approval to the USDA Secretary an annual budget projecting the Association's anticipated expenses and disbursements. Such budget shall include the projected costs of Hass avocado promotion, research and information programs, plans, and projects, and shall include an estimate of the administrative costs associated therewith.
- Section B. The first budget may be submitted within a month of the initial meeting. The first budget shall cover such period as may remain before the beginning of the next Fiscal Year. Thereafter, the Board shall submit a budget not less than sixty (60) days in advance of the next Fiscal Year.
- Section C. The Board shall receive and evaluate, or on its own initiative develop, programs, plans and projects for Hass avocado promotion, information, and research. The Board shall submit to the Secretary for approval any program, plan, or project it authorizes. These may include, but are not limited to, programs, plans or projects intended to increase demand for Mexican Hass avocados in the United States; to strengthen the position of the Mexican Hass avocado industry in the domestic marketplace; to maintain, develop, and expand markets for Mexican Hass avocados in the United States; to lead to the development of new marketing strategies; to advance the image and desirability of, increase the efficiency of, or encourage further development of the Mexican Hass avocado industry; to do research on the sale, distribution, marketing, use, quality, or nutritional value of Hass avocados; or to do research with respect to Hass avocado marketing, promotion, industry information, or consumer information, including the creation of new products.
- Section D. The Board shall submit to the USDA Secretary for approval any contract that it intends to enter into for the development or carrying out of research, promotion, or information programs that will be paid for by assessment funds received from the Hass Avocado Board.
- Section E. The Board shall submit for approval by the USDA Secretary every budget, program, plan, or project for Hass avocado promotion, industry information, consumer information, or related research.

- Section F. The Board, from time to time, may seek advice and consult with experts on the production, import, wholesale, and retail segments of Hass avocados to assist in the development of promotion, industry information, consumer information, and related research programs, plans, and projects. For these purposes, the Board may appoint special committees that include persons other than Board members. A committee so appointed shall consult directly with the Board.
- Section G. Programs may be conducted throughout the year or only to reflect the period when imported Mexican Hass avocados are in the U.S. marketplace.
- Section H. The Board shall consult both with Members and with the Hass Avocado Board on programs, plans, and projects for generic promotions.

Article 14. Contracts

- Section A. The Board may enter into contracts for the implementation of programs, plans, or projects for promotion, industry information, consumer information, or related research with respect to Mexican Hass avocados, and may pay the costs of such contracts with funds received by Association after such programs, plans, or projects have been approved by the USDA Secretary.
- Section B. Any such contract shall require that the contractor develop and submit to the Board a description of the program, plan or project, together with a budget of the estimated costs. Such contract shall become effective only after approval by the USDA Secretary. In any such contract, the contractor shall also be required to:
1. keep accurate records of all transactions;
 2. account for funds received and expended;
 3. make periodic reports to the Board of activities conducted; and
 4. make such other reports as the Board or the USDA Secretary may require.
- Section C. All contracts shall provide that the USDA Secretary may audit the records of the contractor during the term of the contract and for a period of three (3) years after conclusion of the contract to verify compliance with the Act and the Order.
- Section D. All contracts shall provide that contractors and subcontractors are subject to the provisions of 7 C.F.R. 1219.42.
- Section E. The Board may enter into contracts for administrative services, including contracts for employment, as may be required to conduct its business. To the extent appropriate, such contracts shall conform to the provisions described in Article 16.B of these Bylaws.

Article 15. Control of Administrative Costs

- Section A. As soon as practicable after establishment of the Board, and after consultation with the USDA Secretary and other appropriate persons, the Board shall implement a system of cost controls based on generally accepted business practices.
- Section B. Reimbursements to the USDA Secretary that are required under 7 C.F.R. § 1219.53(b) shall be excluded from the limitation on spending.
- Section C. To the extent possible, the Board shall use the resources, staffs, and facilities of existing avocado organizations such as APEAM.

Article 16. Reserves, Administrative Expenses and Contributions

- Section A. The Board may incur such expenses and establish such reserves for operating contingencies as the USDA Secretary determines reasonable and appropriate for the Association's maintenance and functioning. Such expenses shall be paid from funds received by the Board, including assessments, contributions from any person not subject to assessments under the Act and Order, and other funds available to the Board.
- Section B. The Board shall annually determine the minimum level of annual administrative expenses necessary to efficiently and effectively carry out the programs authorized by these Bylaws. The Board shall include set out annual administrative expenses as a separate item in its annual report. The Board shall faithfully exercise its fiduciary responsibilities and ensure that all monies are spent in accordance with Act and the Order.
- Section C. The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. The contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

Article 17. Directors' Expenses

Directors shall not be compensated for their services to the Association. Unless otherwise determined by the Board, Directors shall pay their own expenses to attend Association or Board meetings, or to participate in other activities on behalf of the Association. No expense shall be reimbursed except in accordance with the rules and requirements of 7 C.F.R. § 1219.41.

Article 18. Prohibited Activities

Directors and Alternates may not engage in any activity that is prohibited under 7 C.F.R. § 1219.42.

Article 19. Chief Executive Officer, Advisors and Employees

The Board may hire and compensate a Chief Executive Officer (CEO) to manage the daily business of the Association. The CEO shall be subject to the direction and authority of the Board. The Board may, as it determines necessary and in consultation with the CEO, designate additional officers, advisors and employees of the Association.

Article 20. Bonds

Officers, employees and agents who handle funds for the Association shall be placed under fidelity bonds issued by a reputable bonding company in an amount to be fixed by the Board. The Association shall pay the premiums on such bonds.

Article 21. Personal Liability and Indemnifications

Section A. No Director, Alternate, officer or employee of the Association, acting on behalf of the Association, shall be held personally responsible, either individually or jointly with others, by the Association for errors in judgment, mistakes, or other acts, either of commission or omission; provided, that such person acted in good faith, within scope of authority, and in a manner that he or she reasonably believed to be in the best interests of the Association; and not dishonestly, negligently or in willful misconduct. However, no person shall be entitled to indemnification under this Article either (1) in connection with a proceeding brought by or in the right of the Association in which such person was adjudged liable to the Association or (2) in connection with any other proceeding charging improper personal benefit to such person, whether or not involving action in his or her official capacity, in which he or she is ultimately adjudged liable on the basis that he or she improperly received personal benefit.

Section B. Except as provided in Section A, above, the Association shall indemnify any Director, Alternate, officer or employee of the Association who is or was a party or is threatened to be made a party to any proceeding by reason of the fact that such person is or was a Director, Alternate, officer or employee of the Association, against expenses (including attorneys' fees), liability, judgments, fines, and amounts paid in settlement actually and reasonably incurred by such

person in connection with such proceeding if such person (1) conducted himself in good faith, (2) reasonably believed, in the case of conduct in his or her official capacity with the Association, that his or her conduct was in the best interests of the Association, and, in all other cases, that his or her conduct was at least not opposed to the best interests of the Association, and (3) with respect to any criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

Section C. To the extent that a Director, Alternate, officer or employee of the Association has been wholly successful on the merits in defense of any proceeding to which he or she was a party, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with such proceeding.

Article 22. Amendments

The Board may amend these Bylaws at any meeting of the Board by an affirmative vote of a majority of all Directors. The Board Secretary shall notify all Directors, not less than fifteen (15) days in advance of such meeting, and shall include in such notice the text of the proposed amendment.

Article 23. Effective Date

These Bylaws and any amendments thereto shall become effective immediately upon adoption of the Board and approval by the USDA Secretary.

Article 24. Severability

If any provision of these Bylaws shall be held to be invalid, illegal, unenforceable or in conflict with the provisions of the Association's Certificate of Incorporation, then such provision shall nonetheless be enforced to the maximum extent possible consistent with such holding and the remaining provisions of these Bylaws (including without limitation, all portions of any section of these Bylaws containing any such provision held to be invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation, that are not themselves invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation) shall remain in full force and effect.

Article 25. Miscellaneous

Where an action is required on a day that is a Saturday, Sunday or national holiday, the action shall be required by the next business day.

Where an action is required by a certain date, the action shall be required not later than 6 p.m. Eastern Time on that date.

If any notice may be provided by electronic means, that notice shall be provided by email and shall be deemed received when sent to the appropriate and correct email address.