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**BEFORE THE ANIMAL PLANT HEALTH INSPECTION SERVICE  
OF THE UNITED STATES DEPARTMENT OF AGRICULTURE**

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**IMPORTATION OF FRESH LEMONS FROM NORTHWEST ARGENTINA  
INTO THE CONTINENTAL UNITED STATES  
Docket No. APHIS – 2014-0092**

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**COMMENTS OF SUNKIST GROWERS**

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August 10, 2016

# Sunkist



*A cooperative of family farms since 1893™*

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The following comments are submitted by Sunkist Growers (Sunkist) in response to the *Federal Register* notice of May 10, 2016 (81 *Fed. Reg.* 28758, Docket No. APHIS – 2014-0092) regarding the rule proposed by the Animal Plant Health Inspection Service (APHIS) of the US Department of Agriculture (USDA) to authorize US access for lemons from Northwest Argentina.

Sunkist is a 123-year old non-profit, non-stock citrus cooperative that operates for the benefit of its 3,000 farmer-owners who produce a majority of Arizona and California citrus fruits. Sunkist was formed to market the produce of its grower-owners, develop and maintain reliable domestic and export markets that yield the best return for its fruit, and supply consumers with premium quality fresh citrus fruit and processed citrus products on a consistent basis. Sunkist's principal products are fresh lemons, oranges, grapefruit, tangerines, citrus juice and other processed citrus products. The average size of a Sunkist farmer-owner is 40 acres. Sunkist exports approximately 30% of its fresh citrus production, with the remainder being distributed throughout the United States. Sunkist's products are marketed under the SUNKIST® trademark.

**I. SUMMARY**

Because phytosanitary challenges have impaired the US fresh citrus industry's ability to deliver high quality, safe citrus fruit to consumers in both the domestic and international marketplace, and addressing those challenges has required large government and industry resources, the US industry is necessarily attentive to any import proposal that will increase the risk of additional pests or diseases entering the United States. USDA's proposed rule raises deepest concerns in this regard for the US industry. The rule has relied on arbitrary, inconsistent, and erroneous data to assess both the phytosanitary and economic impacts of opening the market to Argentine lemons. Its rulemaking process has been advanced prematurely, apparently to accommodate certain bilateral political considerations unrelated to the mandates of the Administrative Procedures Act, the Plant Protection Act, the Regulatory Flexibility Act, and Executive Order 12866 governing this process.

The arbitrary, erroneous, and incomplete data underlying USDA's economic analysis, Pest Risk Assessment, and Risk Management Document have seriously misstated the adverse consequences of according access. A number of public reports have surfaced in recent months confirming ongoing, significant citrus-disease risks in the Argentine industry, making clear that Argentina's poor record on these issues has not been resolved. On the issue of economic impact, as confirmed by the US industry's exhaustive economic-impact study, the proposed rule will have a negative economic effect on the US economy in the range of \$180-\$260 million and only a *de minimis* benefit to US consumers.

As a cooperative of grower-owners, Sunkist strenuously opposes this proposal until USDA has sent technical inspectors to examine all citrus production and packing areas in Argentina with sufficient care, has updated its deficient Pest Risk Assessment and Risk Management Document based on those visits, has completed the economic assessments mandated by Section 6(a)(3)(c) of Executive Order 12866, and has allowed the US industry adequate time to review and submit public comments on the revised Pest Risk Assessment, Risk Management Document, and requisite Section 6(a)(3)(c) economic assessment. Any determination to advance the rule prior to taking these steps will put the US lemon industry at serious risk, run contrary to required rulemaking procedures, and weaken phytosanitary protections for American agriculture.

## II. ARGENTINA'S POOR PHYTOSANITARY RECORD

Argentina's poor phytosanitary record in the citrus sector is well-established and has served as a scientifically legitimate basis for import restrictions since 1993. In 1994, a group of APHIS officials found that citrus black spot and sweet orange scab were present in the Argentine lemon sector, preventing further consideration of lemon importation at that time. Although USDA conducted a quantitative assessment in 1997 followed by a proposed rule in 1998 to allow access,<sup>1</sup> a federal court thereafter rejected USDA's rule in 2001 for failing to define a "negligible risk" level for fruit flies, sweet orange scab, citrus black spot, and citrus canker.<sup>2</sup> Since then, access for Argentine lemons has remained suspended due to that country's continuous phytosanitary risks and the historical tendency of its national plant protection organization, SENASA, to conceal pest and disease outbreaks.

Nothing has changed in Argentina to make these phytosanitary concerns less of a risk today. Even as USDA's proposed rule has been released for comment, reports of ongoing Argentine citrus-disease issues continue to emerge in Argentina's key European Union export market, and Argentine officials have openly acknowledged that the Asian Citrus Psyllid (ACP) (the vector for *Huanglongbing* disease (HLB)) is present in the country.<sup>3</sup> Given Argentina's long, sustained record of disease risks in the sector, any determination by the US Government that access is now scientifically justified should be supported not by outdated data and erroneous assumptions, as is now the case, but by the latest possible data and solid evidentiary proof derived from further site visits.

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<sup>1</sup> Animal and Plant Health Inspection Service, *Importation of Grapefruit, Lemons, and Oranges from Argentina*, 63 Fed. Reg. 155, proposed August 12, 1998.

<sup>2</sup> See *Harland Land Co. vs. USDA*, 186 F.Supp. 2d 1076, p. 1080.

<sup>3</sup> "Argentina: HLB Vector Found In Misiones," *Fresh Fruit Portal*, June 16, 2016, available at <http://www.freshfruitportal.com/news/2016/06/16/argentina-hlb-vector-found-in-misiones/>.

### **III. INADEQUACIES OF USDA’S PEST RISK ASSESSMENT AND RISK MANAGEMENT DOCUMENT**

Sunkist associates itself with the substantive and procedural concerns identified in the public comments of the US Citrus Science Council regarding the Pest Risk Assessment (PRA) and Risk Management Document (RMD) that support the proposed rule. It reaffirms and supplements those concerns by highlighting the following deficiencies in USDA’s approach.

#### **A. Use of Outdated Data and Failure to Provide a Complete Record**

Although APHIS has asserted that the information in its August 2015 revision of the PRA is current, that assertion is based on a document it prepared in 2007. The PRA makes no reference to any site visit other than its 2007 visit, stating only that USDA’s team at that time “reviewed production systems, research related to citrus pests to verify elements of the initial version (August 6, 2007) of the PRA, and reviewed phytosanitary measures proposed by SENASA as part of its request to reinstate exports to the United States (SENASA, 2007a).”<sup>4</sup> APHIS has conveyed off the record that it also conducted “a site visit to Argentina in June 2015 to observe production areas, production and packing practices, and traceback abilities,”<sup>5</sup> yet its August 2015 PRA makes no reference to that site visit. Since USDA appears to have only relied on its 2007 data in the PRA, and has itself acknowledged the need for an additional fact-finding trip in the fall of 2016, the need for further fact-finding to update and substantiate this rule is incontrovertible.

It bears noting that the US Citrus Science Council submitted to APHIS two months ago a Freedom of Information Act (FOIA) request seeking information on the agenda and stated purpose of the June 2015 trip, the locations visited, the documented production activities occurring at the time of the visit, the discretion APHIS had to choose particular locations, and related notes or findings of a technical nature that could help inform the industry as to the substance and conclusions of the trip. APHIS has so far declined to share the requested information, raising concerns as to why APHIS is reluctant to make full and fair disclosures to its own industry stakeholders.

Sunkist believes this proposed rule should be withdrawn at least until APHIS conducts comprehensive additional site visits to verify the outdated information on which its PRA relies, and thereafter allows, public comment on those findings. Until the outdated data and omissions in the record are corrected, the public is being deprived of a reasonable opportunity to assess and comment on the rule’s impact.

#### **B. Failure to Respond to Previous US Industry Comments**

Although the US citrus industry provided extensive comments to APHIS on its PRA released to the public in 2014,<sup>6</sup> it does not appear that APHIS has addressed those comments, or in any way incorporated them into its proposed rule or supporting PRA and RMD. APHIS’s

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<sup>4</sup> Rev:14 August 3, 2015.

<sup>5</sup> Letter from USDA Undersecretary Ed Avalos to the U.S. Citrus Science Council, July 18, 2016.

<sup>6</sup> See Comments from the U.S. Citrus Science Council on the *Risk Assessment and Risk Management Document for the Importation of Fresh Lemon (Citrus Limon(L.) Burm f.) Fruit from Northwest Argentina into the Continental United States*, June 11, 2014.

inattention to industry concerns, coupled with its continuing unwillingness to update its data and share all relevant trip reports with the industry, only further reinforce industry concerns about the manner in which this rule has moved forward.

### **C. SENASA's Inadequate Protocols for the EU Market**

Under USDA's proposed rule, SENASA is central to ensuring that the Systems Approach (SA) being imposed by APHIS achieves its stated aims. To the extent that SENASA fails to perform its functions properly, the SA by definition is deficient.

SENASA's lemon protocols for the EU market, which are the basis for the SA being proposed by APHIS, have faced repeated problems in recent years. USDA's PRA is simply wrong in stating that "SENASA has been successfully overseeing the production of lemons to the EU for numerous years with no notable compliance issues."<sup>7</sup> The EU has repeatedly intercepted Argentine lemon imports for compliance reasons in the last several months alone.<sup>8</sup>

Insofar as SENASA's protocols are not functioning today with the necessary rigor or phytosanitary security, USDA's heavy reliance on SENASA to safeguard the US lemon industry from pests and disease is unfounded and should be corrected.

### **D. Missing Information and Unsubstantiated Conclusions Regarding Citrus Variegated Chlorosis**

The PRA asserts that the citrus-associated insect vectors for Citrus Variegated Chlorosis (CVC) do not occur in the United States, but are present in Argentina.<sup>9</sup> The PRA fails to confirm, however, whether those vectors are present in the Argentine citrus production areas that will be allowed access under the proposed rule. The PRA merely states that while the disease itself is present in Northeast Argentina,

"based on survey results provided to APHIS from SENASA, CVC is not known to occur in Northwest Argentina (SENASA, 2011). Numerous vectors of CVC are present throughout Argentina, and there are currently no measures in place known to APHIS that explicitly prevent the spread of CVC into Northwest Argentina."<sup>10</sup>

The survey from which that assertion derives is five years old and unreliable. APHIS has been unable to confirm that in the intervening time, CVC has not spread to Northwest Argentina. Before the proposed rule moves forward, APHIS should put forward for public comment its current evidence proving that CVC is not present in Argentina's producing region.

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<sup>7</sup> *Risk Assessment for the Importation of Fresh Lemon (citrus limon (L.) Burm. F.) from Northwest Argentina into the Continental United States*, Rev:14 August 3, 2015.

<sup>8</sup> "U.S. Lemon Market Access, CBS controls on the agenda for San Miguel," FreshFruitPortal.com April 15, 2016.

<sup>9</sup> *Risk Assessment for the Importation of Fresh Lemon (citrus limon (L.) Burm. F.) from Northwest Argentina into the Continental United States*, Rev:14 August 3, 2015, Table 2, Page 17.

<sup>10</sup> *Risk Assessment for the Importation of Fresh Lemon (citrus limon (L.) Burm. F.) from Northwest Argentina into the Continental United States*, Rev:14 August 3, 2015, Page 44.

The PRA also asserts that issues surrounding CVC should not be a constraint on imports because APHIS does not believe the disease can be transmitted via lemons. APHIS fails to address, however, the potential vectors that could transmit CVC if they were allowed to hitchhike on exports of Argentine lemons. This is a substantial issue, as these imported lemons, and possibly the infected vectors, will be traveling to all 50 states and, as now being proposed, will not be subject to cold treatment or other fumigation requirements. Substantial host materials (citrus, olives) for CVC are grown in some of those states and are potentially vulnerable if mitigation measures are not established for the vectors. The proposed rule should clearly explain the intended mitigation measures and give serious consideration to cold treatment as the primary defense.

#### **E. Absence of a Verifiable Standard for Citrus Black Spot Mitigation**

The PRA effectively acknowledges its own limitations on the issue of packinghouse procedures to guard against the transmission of Citrus Black Spot (CBS) disease. APHIS simply concedes that there is “high uncertainty” surrounding the suitability of citrus fruit for transmission of *Phyllosticta citricarpa* (the causal agent of CBS) and leaves open the possibility that APHIS could “require further mitigations during the management phase, which they would explain therein.” The PRA nowhere explains the circumstances that would compel APHIS to “require further mitigations” for CBS in Argentina’s packinghouses or the mitigation steps it would be ready to institute under various scenarios. Without clarifying these gaps, it is unreasonable for APHIS to expect the US industry to consider the PRA adequate to address the CBS threat.

#### **F. Absence of Discussion Regarding Asian Citrus Psyllid and Huanglongbing Disease**

SENASA has recently confirmed that both ACP and HLB are now present in Argentina, an admission that warrants substantial further scrutiny by APHIS before the rule progresses. USDA, its state counterparts, and individual growers are now investing over \$100 million annually to combat the impact of both ACP and HLB in the United States. HLB alone has already had a \$7.8 billion adverse impact on the citrus industry. Those impacts and expenditures could significantly mount with large additional volumes of citrus imports from Argentina. Given SENASA’s historical non-transparency on phytosanitary issues, APHIS should not be giving Argentina the benefit of the doubt on the scope of its HLB outbreak or the locations of its ACP vector. The full implications of this issue should be examined, the PRA updated, and those revisions provided for comment by the industry before moving the rule forward.

#### **G. Absence of a Verifiable Metric for Green vs Yellow Lemons**

APHIS has indicated that “lemons from northwest Argentina would have to be harvested green and within a certain time period, or treated for Medfly in accordance with an approved treatment schedule.”<sup>11</sup> It fails to clarify who would be responsible for determining whether the harvested lemons are “green” or “yellow,” and by what standard that determination is to be made. Given Argentina’s record of failed detections, the absence of clarity on this issue puts the US industry at risk.

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<sup>11</sup> Proposed Rule “Importation of Lemons From Northwest Argentina,” Federal Register, Vol. 81, No. 90, p. 28758, May 10, 2016.

## **H. Improper Disregard of Cold Treatment as the First Defense**

The proposed SA presumes that Argentina will execute each step of the process with diligence and discipline, which is difficult to understand given Argentina's poor track record. To shield the industry from repeated systemic breaches of the sort the EU is encountering, APHIS will have to commit enormous resources to help verify the efficacy of Argentina's approach. Substantial US resources will need to be present in Argentina to ensure compliance with the work plan and to interdict potential issues prior to lemons being loaded at port facilities. The rule does not discuss what US resources will be deployed or how they will be funded.

In view of the risks involved and the potential resource constraints that USDA may face going forward, a cold-treatment protocol similar to the one now used in Japan would be the most cost-effective, prudent means of ensuring phytosanitary security for the US industry. Under a mandated cold-treatment protocol, APHIS could limit its in-country oversight and resources, while best safeguarding the US industry.

Until the foregoing substantive and procedural science-based concerns are addressed and rectified, APHIS should suspend all further movement on this rule.

## **IV. INADEQUACIES OF USDA'S ECONOMIC ANALYSIS**

The proposed rule's economic analysis is as deficient as its phytosanitary assessment and proposed approach. The arbitrary and erroneous assumptions and methodology underlying its Initial Regulatory Flexibility Analysis (IRFA) have grossly understated the negative economic consequences of allowing Argentinean lemons into the US market, overstated the benefits to consumers, and failed to satisfy the requisite assessment regarding small businesses.

### **A. USDA's Numerous Flawed Assumptions Regarding Import Penetration**

USDA has significantly underestimated the volume of lemons that Argentina will ship to the United States pursuant to this rule. Argentina produces more than double the total volume of lemons grown in the United States -- 89 million cartons versus 39 million cartons.<sup>12</sup> USDA's analysis assumes Argentina will ship only 18,000 mt (992,079 cartons) to the United States, which is less than Argentina's own industry has said it will ship in just the first year after the rule takes effect.<sup>13</sup> As José Carbonell of the Argentine Citrus Federation confirmed, the Argentine industry aims "to start off with prudent volumes, perhaps between 20,000 and 30,000 tonnes [1.1 – 1.7 million cartons] so as not to generate any adverse reaction from our Californian counterparts."<sup>14</sup>

USDA has estimated that Argentina will ship only 18,000 mt (992,079 cartons) to the United States based on "Argentina's historical level of lemon exports."<sup>15</sup> This figure is predicated

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<sup>12</sup> *Economic Impacts of Importing Fresh Argentine Lemons in to the United States*, Dr. Albert Kagan and Dr. Ignacio Molina, December 2014 (hereinafter "Economic Impact Study").

<sup>13</sup> IRFA, p. i.

<sup>14</sup> Maura Maxwell, "Argentina Celebrates US Lemon Deal," *America Fruit*, May 9, 2016, available at <http://www.fruitnet.com/americafruit/article/168661/argentina-celebrates-us-lemon-deal>.

<sup>15</sup> IRFA, p. 8.

on various flawed assumptions as to why historical levels are a reliable predictor of that country's future exports to the US market.

USDA's analysis primarily emphasizes that 87% of Argentina's lemon exports go to Europe and Russia. Its reliance on that figure ignores both the economic slowdowns in Europe and Russia and Russia's restrictive import policies, which collectively have caused lemon demand in those markets to drop by large margins. Argentina is also facing increased competition in those markets from Turkey and South Africa, and is therefore looking for new lemon export markets for its enormous production volume. Moreover, the fresh lemon industry in Argentina is growing. Demand for lemon juice and oil products has slowed globally, causing Argentina to focus more resources on its fresh lemon exports. Argentina is also facing increased pressure to expand exports in all its industries. Because Argentina defaulted on bond payments in 2014, it critically needs increased export revenues and has acknowledged that fresh lemons are a prime target for export expansion. The Government has said it stands ready to export 250,000-300,000 mt of lemons (13.8 – 16.5 million cartons), up from 190,000 mt last year.<sup>16</sup> The United States is one of the most attractive and profitable markets in the world, making it virtually certain that Argentine exporters will do everything possible to send maximum possible volumes to the US market.

USDA may have also been wrongly swayed by Argentina's assertion that the phytosanitary rules under the proposed rule will somehow limit its export quantity because the rule requires all lemons to be shipped green to the US market. The proposed rule contains no such requirement, but Argentina in any case already typically picks and ships its lemons green, not yellow. Because the rule's proposed inspection requirements are more relaxed for green lemons than yellow lemons, the rule will only induce Argentina to ship large volumes of green lemons to the US market. Following US entry, those large volumes will simply be sent to ripening facilities prior to being brought to market.

As USDA knows, the US industry has undertaken its own economic impact assessment using proper, but conservative, modeling assumptions. The industry's study proves that if Argentina sends just 1.6 million cartons of its lemon production (*i.e.*, approx. 30,000 mt, or 2% of its production) to the United States, as the Argentine industry has publicly confirmed it intends to do, the resulting negative economic impact on the US economy will exceed \$180 million.<sup>17</sup> This includes all forms of economic effects -- direct, indirect, and induced -- associated with those lemon imports (but does not include the negative effects on other US citrus products).<sup>18</sup> USDA's analysis has not only understated the direct effects of Argentine imports, it has completely ignored all indirect and induced costs.

Using the industry's same modeling approach, if Argentina ships just 2.7% of its lemon production to the United States, another conservative estimate based on the trends described above, that volume will have a negative impact on the US economy in excess of \$260 million.<sup>19</sup>

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<sup>16</sup> *U.S. lemon market access, CBS controls on the agenda for San Miguel*, Fresh Fruit Portal, April 15, 2016, available at <http://www.freshfruitportal.com/news/2016/04/15/u-s-lemon-market-access-cbs-controls-on-the-agenda-for-san-miguel/>.

<sup>17</sup> *Economic Impact Study*, p. ii.

<sup>18</sup> *Economic Impact Study*, p. ii.

<sup>19</sup> *Economic Impact Study*, p. ii.

These industry estimates relate only to the US lemon industry, not to other US citrus fruits. As discussed elsewhere, the phytosanitary risks to lemons could spread to other citrus fruits, causing exponentially more harm to the citrus sector.

## **B. USDA's Overstated Consumer Welfare Gains**

Even using USDA's incorrect modeling, USDA's proposed rule yields only minor benefits for US consumers of between \$2.2 million and \$3.1 million.<sup>20</sup> Had the proper assumptions been used, they would show consumers receiving no benefits under the rule, but US producers sustaining harm of enormous magnitude.

One of USDA's many significant mistaken premises is that lemon prices in the US market are relatively elastic, which largely drives its conclusion that the proposed rule will have little effect on US lemon growers and a net positive effect on the US economy. Contrary to USDA's assumption, lemon prices are highly inelastic, meaning any increase in the supply of lemons will not increase consumption or reduce prices at retail. Argentine imports will simply supplant purchases of US lemons without decreasing prices or increasing demand. Even Argentine growers concur that lemon prices are more inelastic than other citrus fruits. In an article earlier this year, one Argentine grower commented that "[w]hile exports have fallen a bit, lemons don't have many substitutes so demand is more inelastic so the same thing doesn't happen with lemons as with other citrus fruits."<sup>21</sup>

The price elasticity assumptions used by APHIS are also contradicted by its own published data, and the data of US industry experts and Argentine industry reports. USDA's National Agricultural Statistics Service found that the price elasticity of lemons is only -0.3,<sup>22</sup> thereby confirming that lemons are much less responsive to price reductions than other major citrus varieties, including oranges and grapefruit. USDA's analysis for the proposed lemon rule disregards that lemon-specific figure and arbitrarily uses instead a general number based on the demand characteristics of all fresh fruit (-0.5) without explaining why this general number is appropriate for lemons.

USDA also appears to have assumed that all Argentine imports of lemons will be directly consumed by consumers. Only 30% of fresh lemons are sold directly to consumers, with the remaining 70% going to the food service and other bulk buyers for use in meals or drinks. These institutional and bulk buyers generally do not pass on cost savings to consumers.

By using an obviously incorrect number for price elasticity, and wrongly assuming that all lemons are sold directly to consumers, USDA's analysis has produced an arbitrary estimate of US economic impact that cannot be defended under Federal rulemaking requirements.

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<sup>20</sup> IRFA, p. 8.

<sup>21</sup> *U.S. lemon market access, CBS controls on the agenda for San Miguel*, Fresh Fruit Portal, April 15, 2016, available at <http://www.freshfruitportal.com/news/2016/04/15/u-s-lemon-market-access-cbs-controls-on-the-agenda-for-san-miguel/>.

<sup>22</sup> USDA Economic Research Service, *Commodities and Food Elasticities*, available at <http://www.ers.usda.gov/data-products/commodity-and-food-elasticities/demand-elasticities-from-literature.aspx> (last accessed August 4, 2016).

### **C. USDA's Incorrect Assumption on the Seasonality of the Lemon Industry**

USDA analysis also wrongly assumes that Argentine imports will be counter-seasonal to US production and will primarily compete with other imports. California and Arizona lemon farmers are not seasonal producers. They produce lemons year-round, with peak shipping occurring from April through July, which is when Argentine lemons will arrive.

If Argentine lemons are accorded access, they will collide not only with US production, but a US market already struggling to absorb imports from Mexico, Chile, Uruguay, and Spain. Since lemon demand is inelastic, the price decline resulting from the increased supply will not lead to proportionate increases in consumer demand. It will lead, instead, to lower prices and an insufficient consumer response, forcing reductions in US production with commensurate losses in US jobs.

USDA's proposed rule is being offered at a time when markets around the world for US lemons are in jeopardy. The export markets for US-grown lemons are contracting (Japan), experiencing economic slow growth (China, South Korea, Canada), or stagnant (Australia and South East Asia), which simply means that the adverse impact of this rule on the US economy of \$180-\$260 million will not be offset by increased US lemon exports.

### **D. Failure to Consider the Economic Risks to the Entire Citrus Industry**

While the proposed rule's economic analysis focuses on lemons, the phytosanitary risks associated with Argentine lemons pose a material risk to all US citrus varieties. USDA's economic analysis wrongly neglects to consider the impact of pest or disease introduction on the citrus industry as a whole. As USDA is well aware, individual growers and the federal and state governments are spending over \$100 million a year to try to limit the spread of HLB. The potential additional costs of further controlling the spread of pest and disease as a result of large additional import volumes of citrus should have been factored into USDA's cost-benefit analysis and, as with the other factors above, requires USDA to undertake an entirely new analysis of economic impact.

### **E. Failure to Designate the Rule as a Significant Regulatory Action**

Executive Order 12866 mandates that any rule having "an annual effect on the economy of \$100 million or more or adversely affect[ing] in a material way the economy [or] a sector of the economy" constitutes a "significant regulatory action" subject to the additional assessments specified in Section 6(a)(3)(c) of that Executive Order. Section 6(a)(3)(c) requires detailed, independent assessments of the benefits and costs anticipated from the regulatory action and the costs and benefits of potentially effective and reasonably feasible alternatives. Although this proposed rule more than satisfies the definition of a significant regulatory action, APHIS has declined to undertake the required Section 6(a)(3)(c) analyses. Sunkist urgently asks either that APHIS correct this error or that the Office of Management and Budget independently determine that the proposed rule requires the assessments called for under Section 6(a)(3)(c) of Executive Order 12866.

## F. Failure to Analyze Properly the Rules Effect on Small Businesses

The Regulatory Flexibility Act requires that an initial regulatory flexibility analysis contain “a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.”<sup>23</sup> The vast majority of US lemon farmers are independently owned and operated, which falls squarely within the definition of “small business concern” for purposes of that Act.<sup>24</sup>

USDA has failed to undertake even a rudimentary analysis of the number of small entities affected by the rule. It has simply asserted that the proposed rule will not have a significant economic impact on small entities, but readily acknowledges that its “understanding of possible economic effects of the rule on small entities may be incomplete.”<sup>25</sup>

Given the effects of the proposed rule on small businesses, USDA is required under the Regulatory Flexibility Act to consider “significant alternatives to the proposed rule.”<sup>26</sup> Having failed to do so, it must satisfy this requirement before the rule advances.

## V. CONCLUSION

USDA has disregarded its own data, invoked flawed assumptions, failed to make materially relevant information available to its own stakeholders, and abbreviated essential federal processes in order to meet an arbitrary deadline. Sunkist joins with the industry in opposing any further action on this proposal until all required steps called for in these comments -- including new site visits, an updated PRA and RMD, all requisite impact analyses, and a new public comment period -- are concluded. Sunkist shares the view of the US citrus industry that these steps are vitally needed and called for by law to safeguard the US industry and integrity of US rulemaking procedures.

**Attachment:** Albert Kagan and Ignacio Molina, *Economic Impacts of Importing Fresh Argentine Lemons into the United States*, January 2015.

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<sup>23</sup> 5 U.S.C. § 603(b).

<sup>24</sup> *See Argentina and the U.S. Lemon Market*, Edmond Missiaen, economist, July 22, 2016, p. 6.

<sup>25</sup> IRFA, p. 17.

<sup>26</sup> 5 U.S.C. § 603(c).