

**(C) Exceptions**

In any case in which a handler further processes avocados described in subparagraph (A), or products of such avocados, for sale to a retailer, the Board, with the approval of the Secretary, may determine that such further processed products do not constitute a substantial value of the product and that, based on its determination, the product shall not be treated as a product of Hass avocados subject to assessment under the order. In addition, the Board, with the approval of the Secretary, may exempt certain frozen avocado products from assessment under the order.

**(7) Handler****(A) First handler**

The term “first handler” means a person operating in the Hass avocados marketing system that sells domestic or imported Hass avocados for United States domestic consumption, and who is responsible for remitting assessments to the Board. The term includes an importer or producer who sells directly to consumers Hass avocados that the importer or producer has imported into the United States or produced, respectively.

**(B) Exempt handler**

The term “exempt handler” means a person who would otherwise be considered a first handler, except that all avocados purchased by the person have already been subject to the assessment under section 7804(h) of this title.

**(8) Importer**

The term “importer” means any person who imports Hass avocados into the United States.

**(9) Industry information**

The term “industry information” means information and programs that are designed to increase efficiency in processing, enhance the development of new markets and marketing strategies, increase marketing efficiency, and activities to enhance the image of Hass avocados and the Hass avocado industry domestically.

**(10) Order**

The term “order” means the Hass avocado promotion, research, and information order issued under this chapter.

**(11) Person**

The term “person” means any individual, group of individuals, firm, partnership, corporation, joint stock company, association, cooperative, or other legal entity.

**(12) Producer**

The term “producer” means any person who—

- (A) is engaged in the domestic production of Hass avocados for commercial use; and
- (B) owns, or shares the ownership and risk of loss, of such Hass avocados.

**(13) Promotion**

The term “promotion” means any action to advance the image, desirability, or market-

ability of Hass avocados, including paid advertising, sales promotion, and publicity, in order to improve the competitive position and stimulate sales of Hass avocados in the domestic marketplace.

**(14) Research**

The term “research” means any type of test, study, or analysis relating to market research, market development, and marketing efforts, or relating to the use, quality, or nutritional value of Hass avocados, other related food science research, or research designed to advance the image, desirability, and marketability of Hass avocados.

**(15) Secretary**

The term “Secretary” means the Secretary of Agriculture.

**(16) State**

The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, and the Federated States of Micronesia.

**(17) United States**

The term “United States” means the United States collectively.

(Pub. L. 106-387, §1(a) [title XII, §1203], Oct. 28, 2000, 114 Stat. 1549, 1549A-79.)

## TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 of Title 6.

**§ 7803. Issuance of orders****(a) In general****(1) Issuance**

To effectuate the policy of this chapter specified in section 7801(b) of this title, the Secretary, subject to the procedures provided in subsection (b), shall issue orders under this chapter applicable to producers, importers, and first handlers of Hass avocados.

**(2) Scope**

Any order shall be national in scope.

**(3) One order**

Not more than one order shall be in effect at any one time.

**(b) Procedures****(1) Proposal for an order**

An existing organization of avocado producers established pursuant to a State statute, or

any other person who will be affected by this chapter, may request the issuance of, and submit a proposal for an order.

**(2) Publication of proposal**

The Secretary shall publish a proposed order and give notice and opportunity for public comment on the proposed order not later than 60 days after receipt by the Secretary of a proposal for an order from an existing organization of avocado producers established pursuant to a State statute, as provided in paragraph (1).

**(3) Issuance of order**

**(A) In general**

After notice and opportunity for public comment are provided in accordance with paragraph (2), the Secretary shall issue the order, taking into consideration the comments received and including in the order such provisions as are necessary to ensure that the order is in conformity with this chapter.

**(B) Effective date**

The order shall be issued and become effective only after an affirmative vote in a referendum as provided in section 7805 of this title, but not later than 180 days after publication of the proposed order.

**(c) Amendments**

The Secretary, from time to time, may amend an order. The provisions of this chapter applicable to an order shall be applicable to any amendment to an order.

(Pub. L. 106-387, §1(a) [title XII, §1204], Oct. 28, 2000, 114 Stat. 1549, 1549A-81.)

**§ 7804. Required terms in orders**

**(a) In general**

An order shall contain the terms and provisions specified in this section.

**(b) Hass Avocado Board**

**(1) Establishment and membership**

**(A) Establishment**

The order shall provide for the establishment of a Hass Avocado Board, consisting of 12 members, to administer the order.

**(B) Membership**

**(i) Appointment**

The order shall provide that members of the Board shall be appointed by the Secretary from nominations submitted as provided in this subsection.

**(ii) Composition**

The Board shall consist of participating domestic producers and importers.

**(C) Special definition of importer**

In this subsection, the term “importer” means a person who is involved in, as a substantial activity, the importation, sale, and marketing of Hass avocados in the United States (either directly or as an agent, broker, or consignee of any person or nation that produces or handles Hass avocados out-

side the United States for sale in the United States), and who is subject to assessments under the order.

**(2) Distribution of appointments**

**(A) In general**

The order shall provide that the membership of the Board shall consist of the following:

(i) Seven members who are domestic producers of Hass avocados and are subject to assessments under the order.

(ii) Two members who represent importers of Hass avocados and are subject to assessments under the order.

(iii) Three members who are domestic producers of Hass avocados and are subject to assessments under the order, or are importers of Hass avocados and are subject to assessments under the order, to reflect the proportion of domestic production and imports supplying the United States market, which shall be based on the Secretary’s determination of the average volume of domestic production of Hass avocados proportionate to the average volume of imports of Hass avocados in the United States over the previous 3 years.

**(B) Adjustment in Board representation**

Three years after the assessment of Hass avocados commences pursuant to an order, and at the end of each 3-year period thereafter, the Avocado Board shall adjust the proportion of producer representatives to importer representatives on the Board under subparagraph (A)(iii) on the basis of the amount of assessments collected from producers and importers over the immediately preceding 3-year period. Any adjustment under this subparagraph shall be subject to the review and approval of the Secretary.

**(3) Nomination process**

The order shall provide that—

(A) two nominees shall be submitted for each appointment to the Board;

(B) nominations for each appointment of a producer or an importer shall be made by domestic producers or importers, respectively—

(i) in the case of producers, through an election process which utilizes existing organizations of avocado producers established pursuant to a State statute, with approval by the Secretary; and

(ii) in the case of importers, nominations are submitted by importers under such procedures as the Secretary determines appropriate; and

(C) in any case in which producers or importers fail to nominate individuals for an appointment to the Board, the Secretary may appoint an individual to fill the vacancy on a basis provided in the order or other regulations of the Secretary.

**(4) Alternates**

The order shall provide for the selection of alternate members of the Board by the Secretary in accordance with procedures specified in the order.