

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7804, 7805 of this title.

§ 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 outside 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 there-

after, 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.

(5) Terms

The order shall provide that—

(A) each term of appointment to the Board shall be for 3 years, except that, of the initial appointments, four of the appointments shall be for 2-year terms, four of the appointments shall be for 3-year terms, and four of the appointments shall be for 4-year terms; and

(B) no member of the Board may serve more than 2 consecutive terms of 3 years, except that any member serving an initial term of 4 years may serve an additional term of 3 years.

(6) Replacement

(A) Disqualification from Board service

The order shall provide that if a member or alternate of the Board who was appointed as a domestic producer or importer ceases to belong to the group for which such member was appointed, such member or alternate shall be disqualified from serving on the Board.

(B) Manner of filling vacancy

A vacancy arising as a result of disqualification or any other reason before the expiration of the term of office of an incumbent member or alternate of the Board shall be filled in a manner provided in the order.

(7) Compensation

The order shall provide that members and alternates of the Board shall serve without

compensation, but shall be reimbursed for the reasonable expenses incurred in performing duties as members or alternates of the Board.

(c) General responsibilities of the Avocado Board

The order shall define the general responsibilities of the Avocado Board, which shall include the responsibility to—

(1) administer the order in accordance with the terms and provisions of the order;

(2) meet, organize, and select from among the members of the Board a chairperson, other officers, and committees and subcommittees, as the Board determines to be appropriate;

(3) recommend to the Secretary rules and regulations to effectuate the terms and provisions of the order;

(4) employ such persons as the Board determines are necessary, and set the compensation and define the duties of the persons;

(5)(A) develop budgets for the implementation of the order and submit the budgets to the Secretary for approval under subsection (d) of this section; and

(B) propose and develop (or receive and evaluate), approve, and submit to the Secretary for approval under subsection (d) of this section plans or projects for Hass avocado promotion, industry information, consumer information, or related research;

(6)(A) implement plans and projects for Hass avocado promotion, industry information, consumer information, or related research, as provided in subsection (d) of this section; or

(B) contract or enter into agreements with appropriate persons to implement the plans and projects, as provided in subsection (e) of this section, and pay the costs of the implementation, or contracts and agreement, with funds received under the order;

(7) evaluate on-going and completed plans and projects for Hass avocado promotion, industry information, consumer information, or related research and comply with the independent evaluation provisions of the Commodity Promotion, Research, and Information Act of 1996 (subtitle B of title V of Public Law 104-127 [7 U.S.C. 7411 et seq.]);

(8) receive, investigate, and report to the Secretary complaints of violations of the order;

(9) recommend to the Secretary amendments to the order;

(10) invest, pending disbursement under a plan or project, funds collected through assessments authorized under this chapter only in—

(A) obligations of the United States or any agency of the United States;

(B) general obligations of any State or any political subdivision of a State;

(C) any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(D) obligations fully guaranteed as to principal and interest by the United States, except that income from any such invested funds may be used only for a purpose for which the invested funds may be used;

(11) borrow funds necessary for the startup expenses of the order; and

(12) provide the Secretary such information as the Secretary may require.

(d) Budgets; plans and projects

(1) Submission of budgets

The order shall require the Board to submit to the Secretary for approval budgets, on a fiscal year basis, of the anticipated expenses and disbursements of the Board in the implementation of the order, including the projected costs of Hass avocado promotion, industry information, consumer information, and related research plans and projects.

(2) Plans and projects

(A) Promotion and consumer information

The order shall provide—

(i) for the establishment, implementation, administration, and evaluation of appropriate plans and projects for advertising, sales promotion, other promotion, and consumer information with respect to Hass avocados, and for the disbursement of necessary funds for the purposes described in this clause; and

(ii) that any plan or project referred to in clause (i) shall be directed toward increasing the general demand for Hass avocados in the domestic marketplace.

(B) Industry information

The order shall provide for the establishment, implementation, administration, and evaluation of appropriate plans and projects that will lead to the development of new markets, maintain and expand existing markets, lead to the development of new marketing strategies, or increase the efficiency of the Hass avocado industry, and activities to enhance the image of the Hass avocado industry, and for the disbursement of necessary funds for the purposes described in this subparagraph.

(C) Research

The order shall provide for—

(i) the establishment, implementation, administration, and evaluation of plans and projects for market development research, research with respect to the sale, distribution, marketing, use, quality, or nutritional value of Hass avocados, and other research with respect to Hass avocado marketing, promotion, industry information or consumer information;

(ii) the dissemination of the information acquired through the plans and projects; and

(iii) the disbursement of such funds as are necessary to carry out this subparagraph.

(D) Submission to Secretary

The order shall provide that the Board shall submit to the Secretary for approval a proposed plan or project for Hass avocados promotion, industry information, consumer information, or related research, as described in subparagraphs (A), (B), and (C).

(3) Approval by Secretary

A budget, plan, or project for Hass avocados promotion, industry information, consumer

information, or related research may not be implemented prior to approval of the budget, plan, or project by the Secretary. Not later than 45 days after receipt of such a budget, plan, or project, the Secretary shall notify the Board whether the Secretary approves or disapproves the budget, plan, or project. If the Secretary fails to provide such notice before the end of the 45-day period, the budget, plan, or project shall be deemed to be approved and may be implemented by the Board.

(e) Contracts and agreements

(1) Promotion, consumer information, industry information and related research plans and projects

(A) In general

To ensure the efficient use of funds, the order shall provide that the Board, with the approval of the Secretary, shall enter into a contract or an agreement with an avocado organization established by State statute in a State with the majority of Hass avocado production in the United States, for the implementation of a plan or project for promotion, industry information, consumer information, or related research with respect to Hass avocados, and for the payment of the cost of the contract or agreement with funds received by the Board under the order.

(B) Requirements

The order shall provide that any contract or agreement entered into under this paragraph shall provide that—

(i) the contracting or agreeing party shall develop and submit to the Board a plan or project, together with a budget that includes the estimated costs to be incurred for the plan or project;

(ii) the plan or project shall become effective on the approval of the Secretary; and

(iii) the contracting party or agreeing party shall—

(I) keep accurate records of all transactions of the party;

(II) account for funds received and expended;

(III) make periodic reports to the Board of activities conducted; and

(IV) make such other reports as the Board or the Secretary shall require.

(2) Other contracts and agreements

The order shall provide that the Board, with the approval of the Secretary, may enter into a contract or agreement for administrative services. Any contract or agreement entered into under this paragraph shall include provisions comparable to the provisions described in paragraph (1)(B).

(f) Books and records of Board

(1) In general

The order shall require the Board to—

(A) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may require;

(B) prepare and submit to the Secretary, from time to time, such reports as the Secretary may require; and

(C) account for the receipt and disbursement of all the funds entrusted to the Board, including all assessment funds disbursed by the Board to a State organization of avocado producers established pursuant to State law.

(2) Audits

The Board shall cause the books and records of the Board to be audited by an independent auditor at the end of each fiscal year. A report of each audit shall be submitted to the Secretary.

(g) Control of administrative costs

(1) System of cost controls

The order shall provide that the Board shall, as soon as practicable after the order becomes effective and after consultation with the Secretary and other appropriate persons, implement a system of cost controls based on normally accepted business practices that—

(A) will ensure that the costs incurred by the Board in administering the order in any fiscal year shall not exceed 10 percent of the projected level of assessments to be collected by the Board for that fiscal year; and

(B) cover the minimum administrative activities and personnel needed to properly administer and enforce the order, and conduct, supervise, and evaluate plans and projects under the order.

(2) Use of existing personnel and facilities

The Board shall use, to the extent possible, the resources, staffs, and facilities of existing organizations, as provided in subsection (e)(1)(A) of this section.

(h) Assessments

(1) Authority

(A) In general

The order shall provide that each first handler shall remit to the Board, in the manner provided in the order, an assessment collected from the producer, except to the extent that the sale is excluded from assessments under paragraph (6). In the case of imports, the assessment shall be levied upon imports and remitted to the Board by Customs.

(B) Published lists

To facilitate the payment of assessments under this paragraph, the Board shall publish lists of first handlers required to remit assessments under the order and exempt handlers.

(C) Making determinations

(i) First handler status

The order shall contain provisions regarding the determination of the status of a person as a first handler or exempt handler.

(ii) Producer-handlers

For purposes of paragraph (3), a producer-handler shall be considered the first handler of those Hass avocados that are produced by that producer-handler and packed by that producer-handler for sale at wholesale or retail.

(iii) Importers

The assessment on imported Hass avocados shall be paid by the importer to Customs at the time of entry into the United States and shall be remitted by Customs to the Board. Importation occurs when Hass avocados originating outside the United States are released from custody of Customs and introduced into the stream of commerce within the United States. Importers include persons who hold title to foreign-produced Hass avocados immediately upon release by Customs, as well as any persons who act on behalf of others, as agents, brokers, or consignees, to secure the release of Hass avocados from Customs and the introduction of the released Hass avocados into the current of commerce.

(2) Assessment rates

With respect to assessment rates, the order shall contain the following terms:

(A) Initial rate

The rate of assessment on Hass avocados shall be \$.025 per pound on fresh avocados or the equivalent rate for processed avocados on which an assessment has not been paid.

(B) Changes in the rate**(i) In general**

Once the order is in effect, the uniform assessment rate may be increased or decreased not more than once annually, but in no event shall the rate of assessment be in excess of \$.05 per pound.

(ii) Requirements

Any change in the rate of assessment under this subparagraph—

(I) may be made only if adopted by the Board by an affirmative vote of at least seven members of the Board and approved by the Secretary as necessary to achieve the objectives of this chapter (after public notice and opportunity for comment in accordance with section 553 of title 5 and without regard to sections 556 and 557 of such title);

(II) shall be announced by the Board not less than 30 days prior to going into effect; and

(III) shall not be subject to a vote in a referendum conducted under section 7805 of this title.

(3) Collection by first handlers

Except as provided in paragraph (1)(C)(iii), the first handler of Hass avocados shall be responsible for the collection of assessments from the producer under this subsection. As part of the collection of assessments, the first handler shall maintain a separate record of the Hass avocados of each producer whose Hass avocados are so handled, including the Hass avocados produced by the first handler.

(4) Timing of submitting assessments

The order shall provide that each person required to remit assessments under this subsection shall remit to the Board the assessment due from each sale of Hass avocados that

is subject to an assessment within such time period after the sale (not to exceed 60 days after the end of the month in which the sale took place) as is specified in the order.

(5) Claiming an exemption from collecting assessments

To claim an exemption under section 7802(6) of this title as an exempt handler for a particular fiscal year, a person shall submit an application to the Board—

(A) stating the basis for such exemption; and

(B) certifying such person will not purchase Hass avocados in the United States on which an assessment has not been paid for the current fiscal year.

(6) Exclusion

An order shall exclude from assessments under the order any sale of Hass avocados for export from the United States.

(7) Use of assessment funds

The order shall provide that assessment funds shall be used for payment of costs incurred in implementing and administering the order, with provision for a reasonable reserve, and to cover the administrative costs incurred by the Secretary in implementing and administering this chapter, including any expenses incurred by the Secretary in conducting referenda under this chapter, subject to subsection (i) of this section.

(8) Assessment funds for State association

The order shall provide that a State organization of avocado producers established pursuant to State law shall receive an amount equal to the product obtained by multiplying the aggregate amount of assessments attributable to the pounds of Hass avocados produced in such State by 85 percent. The State organization shall use such funds and any proceeds from the investment of such funds for financing domestic promotion, research, consumer information, and industry information plans and projects, except that no such funds shall be used for the administrative expenses of such State organization.

(9) Assessment funds for importers associations**(A) In general**

The order shall provide that any importers association shall receive a credit described in subparagraph (B) if such association is—

(i) established pursuant to State law that requires detailed State regulation comparable to that applicable to the State organization of United States avocado producers, as determined by the Secretary; or

(ii) certified by the Secretary as meeting the requirements applicable to the Board as to budgets, plans, projects, audits, conflicts of interest, and reimbursements for administrative costs incurred by the Secretary.

(B) Credit

An importers association described in subparagraph (A) shall receive 85 percent of the assessments paid on Hass avocados imported by the members of such association.

(C) Use of funds**(i) In general**

Importers associations described in subparagraph (A) shall use the funds described in subparagraph (B) and proceeds from the investment of such funds for financing promotion, research, consumer information, and industry information plans and projects in the United States.

(ii) Administrative expenses

No funds described in subparagraph (C) shall be used for the administrative expenses of such importers association.

(i) Reimbursement of Secretary expenses

The order shall provide for reimbursing the Secretary—

(1) for expenses not to exceed \$25,000 incurred by the Secretary in connection with any referendum conducted under section 7805 of this title;

(2) for administrative costs incurred by the Secretary for supervisory work of up to two employee years annually after an order or amendment to any order has been issued and made effective; and

(3) for costs incurred by the Secretary in implementation of the order issued under section 7803 of this title, for enforcement of the chapter and the order, for subsequent referenda conducted under section 7805 of this title, and in defending the Board in litigation arising out of action taken by the Board.

(j) Prohibition on brand advertising and certain claims**(1) Prohibitions**

Except as provided in paragraph (2), a program or project conducted under this chapter shall not—

(A) make any reference to private brand names;

(B) make false, misleading, or disparaging claims on behalf of Hass avocados; or

(C) make false, misleading, or disparaging statements with respect to the attributes or use of any competing products.

(2) Exceptions

Paragraph (1) does not preclude the Board from offering its programs and projects for use by commercial parties, under such terms and conditions as the Board may prescribe as approved by the Secretary. For the purposes of this subsection, a reference to State of origin does not constitute a reference to a private brand name with regard to any funds credited to, or disbursed by the Board to, a State organization of avocado producers established pursuant to State law. Furthermore, for the purposes of this section, a reference to either State of origin or country of origin does not constitute a reference to a private brand name with regard to any funds credited to, or disbursed by the Board to, any importers association established or certified in accordance with subsection (h)(9)(A) of this section.

(k) Prohibition on use of funds to influence governmental action**(1) In general**

Except as otherwise provided in paragraph (2), the order shall prohibit any funds col-

lected by the Board under the order from being used in any manner for the purpose of influencing legislation or government action or policy.

(2) Exception

Paragraph (1) shall not apply to the development or recommendation of amendments to the order.

(l) Prohibition of conflict of interest

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in, any action that would be a conflict of interest.

(m) Books and records; reports**(1) In general**

The order shall provide that each first handler, producer, and importer subject to the order shall maintain, and make available for inspection, such books and records as are required by the order and file reports at the time, in the manner, and having the content required by the order, to the end that such information is made available to the Secretary and the Board as is appropriate for the administration or enforcement of this chapter, the order, or any regulation issued under this chapter.

(2) Confidentiality requirement**(A) In general**

Information obtained from books, records, or reports under paragraph (1) shall be kept confidential by all officers and employees of the Department of Agriculture and by the staff and agents of the Board.

(B) Suits and hearings

Information described in subparagraph (A) may be disclosed to the public only—

(i) in a suit or administrative hearing brought at the request of the Secretary, or to which the Secretary or any officer of the United States is a party, involving the order; and

(ii) to the extent the Secretary considers the information relevant to the suit or hearing.

(C) General statements and publications

Nothing in this paragraph may be construed to prohibit—

(i) the issuance of general statements, based on the reports, of the number of persons subject to the order or statistical data collected from the reports, if the statements do not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of any person who violates the order, together with a statement of the particular provisions of the order violated by the person.

(3) Lists of importers**(A) Review**

The order shall provide that the staff of the Board shall periodically review lists of importers of Hass avocados to determine whether persons on the lists are subject to the order.

(B) Customs service

On the request of the Secretary or the Board, the Commissioner of the United States Customs Service shall provide to the Secretary or the Board lists of importers of Hass avocados.

(n) Consultations with industry experts**(1) In general**

The order shall provide that the Board may seek advice from and consult with experts from the production, import, wholesale, and retail segments of the Hass avocado industry to assist in the development of promotion, industry information, consumer information, and related research plans and projects.

(2) Special committees**(A) In general**

For the purposes described in paragraph (1), the order shall authorize the appointment of special committees composed of persons other than Board members.

(B) Consultation

A committee appointed under subparagraph (A) shall consult directly with the Board.

(o) Other terms of the order

The order shall contain such other terms and provisions, consistent with this chapter, as are necessary to carry out this chapter (including provision for the assessment of interest and a charge for each late payment of assessments under subsection (h) of this section).

(Pub. L. 106-387, §1(a) [title XII, §1205], Oct. 28, 2000, 114 Stat. 1549, 1549A-82.)

REFERENCES IN TEXT

The Commodity Promotion, Research, and Information Act of 1996, referred to in subsec. (c)(7), is subtitle B of title V of Pub. L. 104-127, Apr. 4, 1996, 110 Stat. 1032, which is classified generally to subchapter II (§7411 et seq.) of chapter 101 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7802, 7805, 7809 of this title.

§ 7805. Referenda**(a) Requirements for initial referendum****(1) Referendum required**

During the 60-day period immediately preceding the proposed effective date of an order issued under section 7803(b)(3) of this title, the Secretary shall conduct a referendum among producers and importers required to pay assessments under the order, as provided in section 7804(h)(1) of this title.

(2) Approval of order needed

The order shall become effective only if the Secretary determines that the order has been approved by a simple majority of all votes cast in the referendum.

(b) Votes permitted**(1) In general**

Each producer and importer eligible to vote in a referendum conducted under this section

shall be entitled to cast one vote if they satisfy the eligibility requirements as defined in paragraph (2).

(2) Eligibility

For purposes of paragraph (1), producers and importers, as these terms are defined in section 7802 of this title, shall be considered to be eligible to vote if they have been producers or importers with sales of Hass avocados during a period of at least 1 year prior to the referendum.

(c) Manner of conducting referenda**(1) In general**

Referenda conducted pursuant to this chapter shall be conducted in a manner determined by the Secretary.

(2) Advance registration

A producer or importer of Hass avocados who chooses to vote in any referendum conducted under this chapter shall register with the Secretary prior to the voting period, after receiving notice from the Secretary concerning the referendum under paragraph (4).

(3) Voting

A producer or importer of Hass avocados who chooses to vote in any referendum conducted under this chapter shall vote in accordance with procedures established by the Secretary. The ballots and other information or reports that reveal or tend to reveal the identity or vote of voters shall be strictly confidential.

(4) Notice

The Secretary shall notify all producers and importers at least 30 days prior to the referendum conducted under this chapter. The notice shall explain the procedure established under this subsection.

(d) Subsequent referenda

If an order is approved in a referendum conducted under subsection (a) of this section, effective beginning on the date that is 3 years after the date of the approval, the Secretary—

(1) at the discretion of the Secretary, may conduct at any time a referendum of producers and importers required to pay assessments under the order, as provided in section 7804(h)(1) of this title, subject to the voting requirements of subsections (b) and (c) of this section, to ascertain whether eligible producers and importers favor suspension, termination, or continuance of the order; or

(2) shall conduct a referendum of eligible producers and importers if requested by the Board or by a representative group comprising 30 percent or more of all producers and importers required to pay assessments under the order, as provided in section 7804(h)(1) of this title, subject to the voting requirements of subsections (b) and (c) of this section, to ascertain whether producers and importers favor suspension, termination, or continuance of the order.

(e) Suspension or termination

If, as a result of a referendum conducted under subsection (d) of this section, the Secretary de-