

## 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.

**§ 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) of this section, 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 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 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.

**(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.