

106TH CONGRESS
1ST SESSION

S. 1790

To provide for the issuance of a promotion, research, and information order applicable to certain handlers of Hass avocados.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 1999

Mrs. FEINSTEIN (for herself and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To provide for the issuance of a promotion, research, and information order applicable to certain handlers of Hass avocados.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Hass Avocado Promotion, Research, and Information
6 Act of 1999”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and declaration of policy.

- Sec. 3. Definitions.
- Sec. 4. Issuance of orders.
- Sec. 5. Required terms in orders.
- Sec. 6. Referenda.
- Sec. 7. Petition and review.
- Sec. 8. Enforcement.
- Sec. 9. Investigations and power to subpoena.
- Sec. 10. Confidentiality.
- Sec. 11. Authority for Secretary to suspend or terminate order.
- Sec. 12. Construction.
- Sec. 13. Regulations.
- Sec. 14. Authorization of appropriations.

1 **SEC. 2. FINDINGS AND DECLARATION OF POLICY.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Hass avocados are an integral food source
4 in the United States that are a valuable and healthy
5 part of the human diet and are enjoyed by millions
6 of persons every year for a multitude of everyday
7 and special occasions.

8 (2) Hass avocados are a significant tree fruit
9 crop grown by many individual producers, but vir-
10 tually all domestically produced Hass avocados for
11 the commercial market are grown in the State of
12 California.

13 (3) Hass avocados move in interstate and for-
14 eign commerce, and Hass avocados that do not move
15 in interstate or foreign channels of commerce but
16 only in intrastate commerce directly affect interstate
17 commerce in Hass avocados.

18 (4) In recent years, large quantities of Hass av-
19 ocados have been imported into the United States
20 from other countries.

1 (5) The maintenance and expansion of markets
2 in existence on the date of enactment of this Act,
3 and the development of new or improved markets or
4 uses for Hass avocados are needed to preserve and
5 strengthen the economic viability of the domestic
6 Hass avocado industry for the benefit of producers
7 and other persons associated with the producing,
8 marketing, processing, and consuming of Hass avo-
9 cados.

10 (6) An effective and coordinated program of
11 promotion, research, and consumer information re-
12 garding Hass avocados is necessary for the mainte-
13 nance, expansion, and development of markets for
14 Hass avocados.

15 (b) PURPOSE.—It is the purpose of this Act to au-
16 thorize the establishment, through the exercise of the pow-
17 ers provided in this Act, of an orderly procedure for the
18 development and financing (through an adequate assess-
19 ment on Hass avocados sold by producers and importers
20 in the United States) of an effective and coordinated pro-
21 gram of promotion, research, and consumer information,
22 including funds for marketing and market research activi-
23 ties, that is designed to—

24 (1) strengthen the position of the Hass avocado
25 industry in the domestic marketplace; and

1 (2) maintain, develop, and expand markets and
2 uses for Hass avocados.

3 (c) LIMITATION.—Nothing in this Act may be con-
4 strued to provide for the control of production or otherwise
5 limit the right of any person to produce, handle, or import
6 Hass avocados.

7 **SEC. 3. DEFINITIONS.**

8 As used in this Act:

9 (1) BOARD.—The terms “Avocado Board” and
10 “Board” mean the Hass Avocado Board established
11 under section 5.

12 (2) CONSUMER INFORMATION.—The term “con-
13 sumer information” means any action or program
14 that provides information to consumers and other
15 persons on the use, nutritional attributes, and other
16 information that will assist consumers and other
17 persons in making evaluations and decisions regard-
18 ing the purchase, preparation, and use of Hass avo-
19 cados.

20 (3) CUSTOMS.—The term “Customs” means
21 the United States Customs Service.

22 (4) DEPARTMENT.—The term “Department”
23 means the United States Department of Agriculture.

24 (5) HASS AVOCADO.—

1 (A) IN GENERAL.—The term “Hass avo-
2 cado” includes—

3 (i) the fruit of any Hass variety avo-
4 cado tree; and

5 (ii) any other type of avocado fruit
6 that the Board determines is so similar to
7 the Hass variety avocado as to be indistin-
8 guishable to consumers.

9 (B) FORM OF FRUIT.—Except as provided
10 in subparagraph (C), the term includes avocado
11 fruit described in subparagraph (A) whether in
12 fresh, frozen, or any other processed form.

13 (C) EXCEPTIONS.—In any case in which a
14 handler further processes avocados described in
15 subparagraph (A), or products of such avoca-
16 dos, for sale to a retailer, the Board may deter-
17 mine that such further processed products do
18 not constitute a substantial value of the product
19 and that, based on its determination, the prod-
20 uct shall not be treated as a product of Hass
21 avocados subject to assessment under the order.
22 In addition, the Board may exempt certain fro-
23 zen avocado products from assessment under
24 the order.

25 (6) HANDLER.—

1 (A) QUALIFIED HANDLER.—The term
2 “qualified handler” means a person operating
3 in the Hass avocados marketing system that
4 sells domestic or imported Hass avocados for
5 United States domestic consumption, and who
6 is responsible for remitting assessments to the
7 Board. The term includes an importer or pro-
8 ducer who sells directly to consumers Hass avo-
9 cados that the importer or producer has im-
10 ported into the United States or produced, re-
11 spectively.

12 (B) EXEMPT HANDLER.—The term “ex-
13 empt handler” means a person who would oth-
14 erwise be considered a qualified handler, except
15 that all avocados purchased by the person have
16 already been subject to the assessment for the
17 Board.

18 (7) IMPORTER.—The term “importer” means
19 any person who imports Hass avocados into the
20 United States.

21 (8) INDUSTRY INFORMATION.—The term “in-
22 dustry information” means information and pro-
23 grams that are designed to increase efficiency in
24 processing, enhance the development of new markets
25 and marketing strategies, increase marketing effi-

1 ciency, and activities to enhance the image of Hass
2 avocados and the Hass avocado industry domesti-
3 cally and internationally.

4 (9) ORDER.—The term “order” means the
5 Hass avocado promotion, research, and information
6 order issued under this Act.

7 (10) PERSON.—The term “person” means any
8 individual, group of individuals, firm, partnership,
9 corporation, joint stock company, association, coop-
10 erative, or other legal entity.

11 (11) PRODUCER.—The term “producer” means
12 any person who—

13 (A) is engaged in the domestic production
14 of Hass avocados for commercial use; and

15 (B) owns, or shares the ownership and risk
16 of loss, of such Hass avocados.

17 (12) PROMOTION.—The term “promotion”
18 means any action to advance the image, desirability,
19 or marketability of Hass avocados, including paid
20 advertising, sales promotion, and publicity, in order
21 to improve the competitive position and stimulate
22 sales of Hass avocados in the marketplace.

23 (13) RESEARCH.—The term “research” means
24 any type of test, study, or analysis relating to mar-
25 ket research, market development, and marketing ef-

1 forts, or relating to the use, quality, or nutritional
2 value of Hass avocados, other related food science
3 research, or research designed to advance the image,
4 desirability, and marketability of Hass avocados.

5 (14) SECRETARY.—The term “Secretary”
6 means the Secretary of Agriculture.

7 (15) STATE.—The term “State” means each of
8 the several States of the United States, the District
9 of Columbia, the Commonwealth of Puerto Rico, the
10 Commonwealth of the Northern Mariana Islands,
11 the United States Virgin Islands, Guam, American
12 Samoa, the Republic of the Marshall Islands, and
13 the Federated States of Micronesia.

14 (16) UNITED STATES.—The term “United
15 States” means the United States collectively.

16 **SEC. 4. ISSUANCE OF ORDERS.**

17 (a) IN GENERAL.—

18 (1) ISSUANCE.—To effectuate the policy of this
19 Act specified in section 2(b), the Secretary, subject
20 to the procedures provided in subsection (b), shall
21 issue orders under this Act applicable to producers,
22 importers, and qualified handlers of Hass avocados.

23 (2) SCOPE.—Any order shall be national in
24 scope.

1 (3) ONE ORDER.—Not more than one order
2 shall be in effect at any one time.

3 (b) PROCEDURES.—

4 (1) PROPOSAL FOR AN ORDER.—An existing or-
5 ganization of avocado producers established pursu-
6 ant to a State statute, or any other person who will
7 be affected by this Act, may request the issuance of,
8 and submit a proposal for an order.

9 (2) PUBLICATION OF PROPOSAL.—The Sec-
10 retary shall publish a proposed order and give notice
11 and opportunity for public comment on the proposed
12 order not later than 60 days after receipt by the
13 Secretary of a proposal for an order from an exist-
14 ing organization of avocado producers established
15 pursuant to a State statute, as provided in para-
16 graph (1).

17 (3) ISSUANCE OF ORDER.—

18 (A) IN GENERAL.—After notice and oppor-
19 tunity for public comment are provided in ac-
20 cordance with paragraph (2), the Secretary
21 shall issue the order, taking into consideration
22 the comments received and including in the
23 order such provisions as are necessary to ensure
24 that the order is in conformity with this Act.

1 (B) EFFECTIVE DATE.—The order shall be
2 issued and become effective only after an af-
3 firmative vote in a referendum as provided in
4 section 6, but not later than 180 days after
5 publication of the proposed order.

6 (c) AMENDMENTS.—The Secretary, from time to
7 time, may amend an order. The provisions of this Act ap-
8 plicable to an order shall be applicable to any amendment
9 to an order.

10 **SEC. 5. REQUIRED TERMS IN ORDERS.**

11 (a) IN GENERAL.—An order shall contain the terms
12 and provisions specified in this section.

13 (b) HASS AVOCADO BOARD.—

14 (1) ESTABLISHMENT AND MEMBERSHIP.—

15 (A) ESTABLISHMENT.—The order shall
16 provide for the establishment of a Hass Avocado Board, consisting of 11 members, to ad-
17 minister the order.
18

19 (B) MEMBERSHIP.—

20 (i) APPOINTMENT.—The order shall
21 provide that members of the Board shall
22 be appointed by the Secretary from nomi-
23 nations submitted as provided in this sub-
24 section.

1 (ii) COMPOSITION.—The Board shall
2 consist of participating domestic producers
3 and importers.

4 (2) DISTRIBUTION OF APPOINTMENTS.—

5 (A) IN GENERAL.—The order shall provide
6 that the membership of the Board shall consist
7 of—

8 (i) 7 members who are domestic pro-
9 ducers of Hass avocados and are subject to
10 assessments under the order;

11 (ii) 2 members representing importers
12 that are qualified handlers of Hass avoca-
13 dos; and

14 (iii) 2 members who are domestic pro-
15 ducers of Hass avocados and are subject to
16 assessments under the order or are import-
17 ers that are qualified handlers, to reflect
18 the proportion of domestic production and
19 imports supplying the United States mar-
20 ket, which shall be based on the Sec-
21 retary's determination of the average vol-
22 ume of domestic production proportionate
23 to the average volume of imports in the
24 United States market over the previous
25 three years.

1 (B) ADJUSTMENT IN BOARD REPRESENTA-
2 TION.—Three years after the assessment of
3 funds commences pursuant to an order, and at
4 the end of each three-year period thereafter, the
5 Avocado Board shall adjust the proportion of
6 producer representatives to importer represent-
7 atives on the Board under subparagraph
8 (A)(iii) on the basis of the amount of assess-
9 ments collected from producers and importers
10 over the immediately preceding three-year pe-
11 riod. Any adjustment under this subparagraph
12 shall be subject to the review and approval of
13 the Secretary.

14 (C) DEFINITION.—In this paragraph, the
15 term “importer that is a qualified handler”
16 means an entity whose principal activity is the
17 importation, sale, and marketing of Hass avoca-
18 dos in the United States (either directly or as
19 an agent, broker, or consignee of any person or
20 nation that produces or handles Hass avocados
21 outside the United States for sale in the United
22 States), and who is subject to assessments as a
23 qualified handler under the order.

24 (3) NOMINATION PROCESS.—The order shall
25 provide that—

1 (A) 2 nominees shall be submitted for each
2 appointment to the Board;

3 (B) nominations for each appointment of a
4 producer or an importer shall be made by do-
5 mestic producers or importers, respectively—

6 (i) in the case of producers, through
7 an election process which utilizes existing
8 organizations of avocado producers estab-
9 lished pursuant to a State statute, with ap-
10 proval by the Secretary; and

11 (ii) in the case of importers, nomina-
12 tions are submitted by importers under
13 such procedures as the Secretary deter-
14 mines appropriate; and

15 (C) in any case in which producers that
16 are qualified handlers or importers that are
17 qualified handlers fail to nominate individuals
18 for an appointment to the Board, the Secretary
19 may appoint an individual to fill the vacancy on
20 a basis provided in the order or other regula-
21 tions of the Secretary.

22 (4) ALTERNATES.—The order shall provide for
23 the selection of alternate members of the Board by
24 the Secretary in accordance with procedures speci-
25 fied in the order.

1 (5) TERMS.—The order shall provide that—

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

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

13 (6) REPLACEMENT.—The order shall provide
14 that if a member or alternate of the Board who was
15 appointed as a domestic producer or importer that
16 is a qualified handler ceases to belong to the group
17 for which such member was appointed, such member
18 or alternate shall be disqualified from serving on the
19 Board.

20 (7) COMPENSATION.—The order shall provide
21 that members of the Board shall serve without com-
22 pensation, but shall be reimbursed for the reasonable
23 expenses of the members incurred in performing du-
24 ties as members of the Board.

1 (c) GENERAL RESPONSIBILITIES OF THE AVOCADO
2 BOARD.—The order shall define the general responsibil-
3 ities of the Avocado Board, which shall include the respon-
4 sibility to—

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

7 (2) recommend to the Secretary rules and regu-
8 lations to effectuate the terms and provisions of the
9 order;

10 (3) employ such persons as the Board deter-
11 mines are necessary, and set the compensation and
12 define the duties of the persons;

13 (4)(A) develop budgets for the implementation
14 of the order and submit the budgets to the Secretary
15 for approval under subsection (d); and

16 (B) propose and develop (or receive and evalu-
17 ate), approve, and submit to the Secretary for ap-
18 proval under subsection (d) plans or projects for
19 Hass avocado promotion, industry information, con-
20 sumer information, or related research;

21 (5)(A) implement plans and projects for Hass
22 avocado promotion, industry information, consumer
23 information, or related research, as provided in sub-
24 section (d); or

1 (B) contract or enter into agreements with ap-
2 propriate persons to implement the plans and
3 projects, as provided in subsection (e), and pay the
4 costs of the implementation, or contracts and agree-
5 ment, with funds received under the order;

6 (6) evaluate on-going and completed plans and
7 projects for Hass avocados and avocado products
8 promotion, industry information, consumer informa-
9 tion, or related research;

10 (7) receive, investigate, and report to the Sec-
11 retary complaints of violations of the order;

12 (8) recommend to the Secretary amendments to
13 the order;

14 (9) invest, pending disbursement under a plan
15 or project, funds collected through assessments au-
16 thorized under this Act only in—

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

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

21 (C) any interest-bearing account or certifi-
22 cate of deposit of a bank that is a member of
23 the Federal Reserve System; or

24 (D) obligations fully guaranteed as to prin-
25 cipal and interest by the United States, except

1 that income from any such invested funds may
2 be used only for a purpose for which the in-
3 vested funds may be used;

4 (10) borrow funds necessary for the startup ex-
5 penses of the order; and

6 (11) provide the Secretary such information as
7 the Secretary may require.

8 (d) BUDGETS; PLANS AND PROJECTS.—

9 (1) SUBMISSION OF BUDGETS.—The order shall
10 require the Board to submit to the Secretary for ap-
11 proval budgets, on a fiscal year basis, of the antici-
12 pated expenses and disbursements of the Board in
13 the implementation of the order, including the pro-
14 jected costs of Hass avocado promotion, industry in-
15 formation, consumer information, and related re-
16 search plans and projects.

17 (2) PLANS AND PROJECTS.—

18 (A) PROMOTION AND CONSUMER INFORMA-
19 TION.—The order shall provide—

20 (i) for the establishment, implementa-
21 tion, administration, and evaluation of ap-
22 propriate plans and projects for adver-
23 tising, sales promotion, other promotion,
24 and consumer information with respect to
25 Hass avocados, and for the disbursement

1 of necessary funds for the purposes de-
2 scribed in this clause; and

3 (ii) that any plan or project referred
4 to in clause (i) shall be directed toward in-
5 creasing the general demand for Hass avo-
6 cados.

7 (B) INDUSTRY INFORMATION.—The order
8 shall provide for the establishment, implementa-
9 tion, administration, and evaluation of appro-
10 priate plans and projects that will lead to the
11 development of new markets, new marketing
12 strategies, or increased efficiency of the Hass
13 avocado industry, and activities to enhance the
14 image of the Hass avocado industry, and for
15 the disbursement of necessary funds for the
16 purposes described in this subparagraph.

17 (C) RESEARCH.—The order shall provide
18 for—

19 (i) the establishment, implementation,
20 administration, and evaluation of plans
21 and projects for market development re-
22 search, research with respect to the sale,
23 distribution, marketing, use, quality, or
24 nutritional value of Hass avocados, and
25 other research with respect to Hass avo-

1 cado marketing, promotion, or consumer
2 information;

3 (ii) the dissemination of the informa-
4 tion acquired through the plans and
5 projects; and

6 (iii) the disbursement of such funds as
7 are necessary to carry out this subpara-
8 graph.

9 (D) SUBMISSION TO THE SECRETARY.—

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

16 (3) APPROVAL BY SECRETARY.—A budget,
17 plan, or project for Hass avocados promotion, indus-
18 try information, consumer information, or related re-
19 search may not be implemented prior to approval of
20 the budget, plan, or project by the Secretary.

21 (e) CONTRACTS AND AGREEMENTS.—

22 (1) PROMOTION, CONSUMER INFORMATION, IN-
23 DUSTRY INFORMATION AND RELATED RESEARCH
24 PLANS AND PROJECTS.—

1 (A) IN GENERAL.—To ensure the efficient
2 use of funds, the order shall provide that the
3 Board, with the approval of the Secretary, shall
4 enter into a contract or an agreement with an
5 avocado organization established by State stat-
6 ute in a State with the majority of Hass avo-
7 cado production in the United States, for the
8 implementation of a plan or project for pro-
9 motion, industry information, consumer infor-
10 mation, or related research with respect to
11 Hass avocados, and for the payment of the cost
12 of the contract or agreement with funds re-
13 ceived by the Board under the order.

14 (B) REQUIREMENTS.—The order shall pro-
15 vide that any contract or agreement entered
16 into under this paragraph shall provide that—

17 (i) the contracting or agreeing party
18 shall develop and submit to the Board a
19 plan or project, together with a budget
20 that includes the estimated costs to be in-
21 curred for the plan or project;

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

1 (iii) the contracting party or agreeing
2 party shall—

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

5 (II) account for funds received
6 and expended;

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

9 (IV) make such other reports as
10 the Board or the Secretary shall re-
11 quire.

12 (2) OTHER CONTRACTS AND AGREEMENTS.—

13 The order shall provide that the Board, with the ap-
14 proval of the Secretary, may enter into a contract or
15 agreement for administrative services. Any contract
16 or agreement entered into under this paragraph
17 shall include provisions comparable to the provisions
18 described in paragraph (1)(B).

19 (f) BOOKS AND RECORDS OF BOARD.—

20 (1) IN GENERAL.—The order shall require the
21 Board to—

22 (A) maintain such books and records
23 (which shall be available to the Secretary for in-
24 spection and audit) as the Secretary may re-
25 quire;

1 (B) prepare and submit to the Secretary,
2 from time to time, such reports as the Sec-
3 retary may require; and

4 (C) account for the receipt and disburse-
5 ment of all the funds entrusted to the Board.

6 (2) AUDITS.—The Board shall cause the books
7 and records of the Board to be audited by an inde-
8 pendent auditor at the end of each fiscal year. A re-
9 port of each audit shall be submitted to the Sec-
10 retary.

11 (g) CONTROL OF ADMINISTRATIVE COSTS.—The
12 order shall provide that the Board shall, as soon as prac-
13 ticable after the order becomes effective and after con-
14 sultation with the Secretary and other appropriate per-
15 sons, implement a system of cost controls based on nor-
16 mally accepted business practices that will ensure that the
17 annual budgets of the Board include only amounts for ad-
18 ministrative expenses that cover the minimum administra-
19 tive activities and personnel needed to properly administer
20 and enforce the order, and conduct, supervise, and evalu-
21 ate plans and projects under the order. The Board shall
22 use, to the extent possible, the resources, staffs, and facili-
23 ties of existing organizations, as provided in subsection
24 (e)(1)(A).

25 (h) ASSESSMENTS.—

1 (1) AUTHORITY.—

2 (A) IN GENERAL.—The order shall provide
3 that each qualified handler shall remit to the
4 Board, in the manner provided in the order, an
5 assessment collected from the producer, except
6 to the extent that the sale is excluded from as-
7 sessments under paragraph (6). In the case of
8 imports, the assessment shall be levied upon im-
9 ports and remitted to the Board by Customs.

10 (B) PUBLISHED LISTS.—To facilitate the
11 payment of assessments under this paragraph,
12 the Board shall publish lists of qualified han-
13 dlers required to remit assessments under the
14 order and exempt handlers.

15 (C) MAKING DETERMINATIONS.—

16 (i) QUALIFIED HANDLER STATUS.—
17 The order shall contain provisions regard-
18 ing the determination of the status of a
19 person as a qualified handler or exempt
20 handler that include the rules and require-
21 ments specified in section 3(j).

22 (ii) PRODUCER-HANDLERS.—For pur-
23 poses of paragraph (3), a producer-handler
24 shall be considered the qualified handler of
25 Hass avocados produced by such producer-

1 handler. The qualified handler shall be the
2 first person who packs the avocados for
3 sale at wholesale or retail.

4 (iii) IMPORTERS.—The assessment on
5 imported Hass avocados shall be paid by
6 the importer at the time of entry into the
7 United States and shall be remitted to the
8 Board. Importation occurs when Hass avo-
9 cados originating outside the United States
10 are released from custody of the United
11 States Customs Service and introduced
12 into the stream of commerce within the
13 United States. Importers include persons
14 who hold title to foreign-produced Hass avo-
15 cados immediately upon release by the
16 Customs Service, as well as any persons
17 who act on behalf of others, as agents or
18 brokers, to secure the release of Hass avo-
19 cados from Customs and the introduction
20 of the released Hass avocados into the cur-
21 rent of commerce.

22 (2) ASSESSMENT RATES.—With respect to as-
23 sessment rates, the order shall contain the following
24 terms:

1 (A) INITIAL RATE.—The rate of assess-
2 ment on Hass avocados shall be \$.025 per
3 pound.

4 (B) CHANGES IN THE RATE.—

5 (i) IN GENERAL.—Once the order is
6 in effect, the uniform assessment rate may
7 be increased or decreased not more than
8 once annually, but in no event shall the
9 rate of assessment be in excess of \$.05 per
10 pound.

11 (ii) REQUIREMENTS.—Any change in
12 the rate of assessment under this
13 subparagraph—

14 (I) may be made only if adopted
15 by the Board by an affirmative vote of
16 at least seven members of the Board
17 and approved by the Secretary as nec-
18 essary to achieve the objectives of this
19 Act (after public notice and oppor-
20 tunity for comment in accordance
21 with section 553 of title 5, United
22 States Code, and without regard to
23 sections 556 and 557 of such title);

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

4 (III) shall not be subject to a
5 vote in a referendum conducted under
6 section 6.

7 (3) COLLECTION BY QUALIFIED HANDLERS.—
8 Except as provided in paragraph (1)(C)(iii), the
9 qualified handler of Hass avocados shall—

10 (A) be responsible for the collection from
11 the producer of assessments under this sub-
12 section; and

13 (B) maintain a separate record of the
14 Hass avocados of each producer whose Hass avo-
15 cados are so handled, including the Hass avo-
16 cados owned by the handlers.

17 (4) TIMING OF SUBMITTING ASSESSMENTS.—
18 The order shall provide that each person required to
19 remit assessments under this subsection shall remit
20 to the Board the assessment due from each sale of
21 Hass avocados that is subject to an assessment with-
22 in such time period after the sale (not to exceed 60
23 days after the end of the month in which the sale
24 took place) as is specified in the order.

1 (5) CLAIMING AN EXEMPTION FROM ASSESS-
2 MENTS.—To claim an exemption under section 3(6)
3 as an exempt handler for a particular fiscal year, a
4 person shall submit an application to the Board—

5 (A) stating the basis for such exemption;

6 and

7 (B) certifying such person will not pur-
8 chase Hass avocados in the United States on
9 which an assessment has not been paid for the
10 current fiscal year.

11 (6) EXCLUSION.—An order shall exclude from
12 assessments under the order any sale of Hass avoca-
13 dos for export from the United States.

14 (7) USE OF ASSESSMENT FUNDS.—The order
15 shall provide that assessment funds shall be used for
16 payment of costs incurred in implementing and ad-
17 ministering the order, with provision for a reason-
18 able reserve, and to cover the administrative costs
19 incurred by the Secretary in implementing and ad-
20 ministering this Act, including any expenses in-
21 curred by the Secretary in conducting referenda
22 under this Act, subject to subsection (i).

23 (8) ASSESSMENT FUNDS FOR STATE ASSOCIA-
24 TION.—The order shall provide that a State associa-
25 tion shall receive an amount equal to the product ob-

1 tained by multiplying the aggregate amount of as-
2 sessments attributable to the pounds of Hass avoca-
3 dos produced in such State by 85 percent. A State
4 association shall use such funds and any proceeds
5 from the investment of such funds for financing—

6 (A) promotion, research, consumer infor-
7 mation, and industry information plans and
8 projects; and

9 (B) administrative expenses incurred in
10 connection with such plans and projects.

11 (i) REIMBURSEMENT OF SECRETARY EXPENSES.—

12 The order shall provide for reimbursing the Secretary—

13 (1) for expenses not to exceed \$75,000 incurred
14 by the Secretary in connection with any referendum
15 conducted under section 6; and

16 (2) for administrative costs incurred by the Sec-
17 retary for supervisory work of up to 2 employee
18 years after an order or amendment to any order has
19 been issued and made effective.

20 (j) PROHIBITION ON BRAND ADVERTISING AND CER-
21 TAIN CLAIMS.—

22 (1) PROHIBITIONS.—Except as provided in
23 paragraph (2), a program or project conducted
24 under this Act shall not—

1 (A) make any reference to private brand
2 names;

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

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

8 (2) EXCEPTIONS.—Paragraph (1) does not pre-
9 clude the Board from offering its programs and
10 projects for use by commercial parties, under such
11 terms and conditions as the Board may prescribe as
12 approved by the Secretary. For the purposes of this
13 subsection, a reference to State of origin does not
14 constitute a reference to a private brand name.

15 (k) PROHIBITION ON USE OF FUNDS TO INFLUENCE
16 GOVERNMENTAL ACTION.—

17 (1) IN GENERAL.—Except as otherwise pro-
18 vided in paragraph (2), the order shall prohibit any
19 funds collected by the Board under the order from
20 being used in any manner for the purpose of influ-
21 encing legislation or government action or policy.

22 (2) EXCEPTION.—Paragraph (1) shall not
23 apply to the development or recommendation of
24 amendments to the order.

25 (l) BOOKS AND RECORDS; REPORTS.—

1 (1) IN GENERAL.—The order shall provide that
2 each qualified handler, producer, and importer sub-
3 ject to the order shall maintain, and make available
4 for inspection, such books and records as are re-
5 quired by the order and file reports at the time, in
6 the manner, and having the content required by the
7 order, to the end that such information is made
8 available to the Secretary and the Board as is ap-
9 propriate for the administration or enforcement of
10 this Act, the order, or any regulation issued under
11 this Act.

12 (2) CONFIDENTIALITY REQUIREMENT.—

13 (A) IN GENERAL.—Information obtained
14 from books, records, or reports under para-
15 graph (1) shall be kept confidential by all offi-
16 cers and employees of the Department of Agri-
17 culture and by the staff and agents of the
18 Board.

19 (B) SUITS AND HEARINGS.—Information
20 described in subparagraph (A) may be disclosed
21 to the public only—

22 (i) in a suit or administrative hearing
23 brought at the request of the Secretary, or
24 to which the Secretary or any officer of the

1 United States is a party, involving the
2 order; and

3 (ii) to the extent the Secretary con-
4 siders the information relevant to the suit
5 or hearing.

6 (C) GENERAL STATEMENTS AND PUBLICA-
7 TIONS.—Nothing in this paragraph may be con-
8 strued to prohibit—

9 (i) the issuance of general statements,
10 based on the reports, of the number of per-
11 sons subject to the order or statistical data
12 collected from the reports, if the state-
13 ments do not identify the information fur-
14 nished by any person; or

15 (ii) the publication, by direction of the
16 Secretary, of the name of any person who
17 violates the order, together with a state-
18 ment of the particular provisions of the
19 order violated by the person.

20 (3) LISTS OF IMPORTERS.—

21 (A) REVIEW.—The order shall provide that
22 the staff of the Board shall periodically review
23 lists of importers of Hass avocados to deter-
24 mine whether persons on the lists are subject to
25 the order.

1 (B) CUSTOMS SERVICE.—On the request of
2 the Secretary or the Board, the Commissioner
3 of the United States Customs Service shall pro-
4 vide to the Secretary or the Board lists of im-
5 porters of Hass avocados.

6 (m) CONSULTATIONS WITH INDUSTRY EXPERTS.—

7 (1) IN GENERAL.—The order shall provide that
8 the Board may seek advice from and consult with
9 experts from the production, import, wholesale, and
10 retail segments of the Hass avocado industry to as-
11 sist in the development of promotion, industry infor-
12 mation, consumer information, and related research
13 plans and projects.

14 (2) SPECIAL COMMITTEES.—

15 (A) IN GENERAL.—For the purposes de-
16 scribed in paragraph (1), the order shall au-
17 thorize the appointment of special committees
18 composed of persons other than Board mem-
19 bers.

20 (B) CONSULTATION.—A committee ap-
21 pointed under subparagraph (A)—

22 (i) may not provide advice or rec-
23 ommendations to a representative of an
24 agency, or an officer, of the Federal Gov-
25 ernment; and

1 (ii) shall consult directly with the
2 Board.

3 (n) OTHER TERMS OF THE ORDER.—The order shall
4 contain such other terms and provisions, consistent with
5 this Act, as are necessary to carry out this Act (including
6 provision for the assessment of interest and a charge for
7 each late payment of assessments under subsection (h)).

8 **SEC. 6. REFERENDA.**

9 (a) REQUIREMENTS FOR INITIAL REFERENDUM.—

10 (1) REFERENDUM REQUIRED.—During the 60-
11 day period immediately preceding the proposed effec-
12 tive date of an order issued under section 4(b)(3),
13 the Secretary shall conduct a referendum among
14 qualified producers and importers required to pay
15 assessments under the order, as provided in section
16 5(h)(1).

17 (2) APPROVAL OF ORDER NEEDED.—The order
18 shall become effective only if the Secretary deter-
19 mines that the order has been approved by a simple
20 majority of all votes cast in the referendum.

21 (b) VOTES PERMITTED.—

22 (1) IN GENERAL.—Each qualified producer and
23 importer eligible to vote in a referendum conducted
24 under this section shall be entitled to cast 1 vote if

1 they satisfy the eligibility requirements as defined in
2 paragraph (2).

3 (2) ELIGIBILITY.—For purposes of paragraph
4 (1), producers and importers, as these terms are de-
5 fined in section 3, shall be considered to be eligible
6 to vote if they have been producers or importers
7 with sales of Hass avocados during a period of at
8 least 1 year prior to the referendum.

9 (c) MANNER OF CONDUCTING REFERENDA.—

10 (1) IN GENERAL.—Referenda conducted pursu-
11 ant to this Act shall be conducted in a manner de-
12 termined by the Secretary.

13 (2) ADVANCE REGISTRATION.—A qualified pro-
14 ducer or importer of Hass avocados who chooses to
15 vote in any referendum conducted under this Act
16 shall register with the Secretary prior to the voting
17 period, after receiving notice from the Secretary con-
18 cerning the referendum under paragraph (4).

19 (3) VOTING.—A qualified producer or importer
20 of Hass avocados who chooses to vote in any ref-
21 erendum conducted under this Act shall vote in ac-
22 cordance with procedures established by the Sec-
23 retary. The ballots and other information or reports
24 that reveal or tend to reveal the vote of any qualified
25 handler shall be strictly confidential.

1 (4) NOTICE.—The Secretary shall notify all
2 qualified producers and importers at least 30 days
3 prior to the referendum conducted under this Act.
4 The notice shall explain the procedure established
5 under this subsection.

6 (d) SUSPENSION OR TERMINATION REFERENDA.—If
7 an order is approved in a referendum conducted under
8 subsection (a), effective beginning on the date that is 3
9 years after the date of the approval, the Secretary—

10 (1) at the discretion of the Secretary, may con-
11 duct at any time a referendum of qualified producers
12 and importers required to pay assessments under
13 the order, as provided in section 5(h)(1), subject to
14 the voting requirements of subsection (b), to ascer-
15 tain whether qualified producers and importers favor
16 suspension or termination of the order; and

17 (2) if requested by the Board or by a represent-
18 ative group comprising 30 percent or more of all
19 qualified producers and importers required to pay
20 assessments under the order, as provided in section
21 5(h)(1), subject to the voting requirements of sub-
22 sections (c) and (d), to ascertain whether producers
23 and importers favor suspension or termination of the
24 order.

1 (e) SUSPENSION OR TERMINATION.—If, as a result
2 of a referendum conducted under subsection (d), the Sec-
3 retary determines that suspension or termination of the
4 order is favored by a simple majority of all votes cast in
5 the referendum, the Secretary shall—

6 (1) not later than 180 days after the ref-
7 erendum, suspend or terminate, as appropriate, col-
8 lection of assessments under the order; and

9 (2) suspend or terminate, as appropriate, activi-
10 ties under the order as soon as practicable and in
11 an orderly manner.

12 **SEC. 7. PETITION AND REVIEW.**

13 (a) PETITION AND HEARING.—

14 (1) PETITION.—A person subject to an order
15 may file with the Secretary a petition—

16 (A) stating that the order, any provision of
17 the order, or any obligation imposed in connec-
18 tion with the order is not in accordance with
19 law; and

20 (B) requesting a modification of the order
21 or an exemption from the order.

22 (2) HEARING.—The petitioner shall be given
23 the opportunity for a hearing on a petition filed
24 under paragraph (1), in accordance with regulations
25 issued by the Secretary. Any such hearing shall be

1 conducted in accordance with section 9(b)(2) and be
2 held within the United States judicial district in
3 which the residence or principal place of business of
4 the person is located.

5 (3) RULING.—After a hearing under paragraph
6 (2), the Secretary shall make a ruling on the peti-
7 tion, which shall be final if in accordance with law.

8 (4) LIMITATION.—Any petition filed under this
9 subsection challenging an order, any provision of the
10 order, or any obligation imposed in connection with
11 the order, shall be filed within 2 years after the ef-
12 fective date of the order, provision, or obligation
13 subject to challenge in the petition.

14 (b) REVIEW.—

15 (1) COMMENCEMENT OF ACTION.—The district
16 courts of the United States in any district in which
17 a person who is a petitioner under subsection (a) re-
18 sides or conducts business shall have jurisdiction to
19 review the ruling of the Secretary on the petition of
20 the person, if a complaint requesting the review is
21 filed no later than 20 days after the date of the
22 entry of the ruling by the Secretary.

23 (2) PROCESS.—Service of process in pro-
24 ceedings under this subsection shall be conducted in

1 accordance with the Federal Rules of Civil Proce-
2 dure.

3 (3) REMAND.—If the court in a proceeding
4 under this subsection determines that the ruling of
5 the Secretary on the petition of the person is not in
6 accordance with law, the court shall remand the
7 matter to the Secretary with directions—

8 (A) to make such ruling as the court shall
9 determine to be in accordance with law; or

10 (B) to take such further action as, in the
11 opinion the court, the law requires.

12 (c) ENFORCEMENT.—The pendency of proceedings
13 instituted under this section shall not impede, hinder, or
14 delay the Attorney General or the Secretary from obtain-
15 ing relief under section 8.

16 **SEC. 8. ENFORCEMENT.**

17 (a) JURISDICTION.—A district court of the United
18 States shall have jurisdiction to enforce, and to prevent
19 and restrain any person from violating, this Act or an
20 order or regulation issued by the Secretary under this Act.

21 (b) REFERRAL TO ATTORNEY GENERAL.—A civil ac-
22 tion brought under subsection (a) shall be referred to the
23 Attorney General for appropriate action, except that the
24 Secretary is not required to refer to the Attorney General
25 a violation of this Act, or an order or regulation issued

1 under this Act, if the Secretary believes that the adminis-
2 tration and enforcement of this Act would be adequately
3 served by administrative action under subsection (c) or
4 suitable written notice or warning to the person who com-
5 mitted or is committing the violation.

6 (c) CIVIL PENALTIES AND ORDERS.—

7 (1) CIVIL PENALTIES.—

8 (A) IN GENERAL.—A person who violates a
9 provision of this Act, or an order or regulation
10 issued by the Secretary under this Act, or who
11 fails or refuses to pay, collect, or remit any as-
12 sessment or fee required of the person under an
13 order or regulation issued under this Act, may
14 be assessed by the Secretary—

15 (i) a civil penalty of not less than
16 \$500 nor more than \$5,000 for each viola-
17 tion; and

18 (ii) in the case of a willful failure to
19 remit an assessment as required by an
20 order or regulation, an additional penalty
21 equal to the amount of the assessment.

22 (B) SEPARATE OFFENSES.—Each violation
23 shall be a separate offense.

24 (2) CEASE AND DESIST ORDERS.—In addition
25 to or in lieu of a civil penalty under paragraph (1),

1 the Secretary may issue an order requiring a person
2 to cease and desist from continuing a violation of
3 this Act, or an order or regulation issued under this
4 Act.

5 (3) NOTICE AND HEARING.—No penalty shall
6 be assessed, or cease and desist order issued, by the
7 Secretary under this subsection unless the Secretary
8 gives the person against whom the penalty is as-
9 sessed or the order is issued notice and opportunity
10 for a hearing before the Secretary with respect to
11 the violation. Any such hearing shall be conducted in
12 accordance with section 9(b)(2) and shall be held
13 within the United States judicial district in which
14 the residence or principal place of business of the
15 person is located.

16 (4) FINALITY.—The penalty assessed or cease
17 and desist order issued under this subsection shall
18 be final and conclusive unless the person against
19 whom the penalty is assessed or the order is issued
20 files an appeal with the appropriate district court of
21 the United States in accordance with subsection (d).

22 (d) REVIEW BY DISTRICT COURT.—

23 (1) COMMENCEMENT OF ACTION.—

24 (A) IN GENERAL.—Any person against
25 whom a violation is found and a civil penalty is

1 assessed or a cease and desist order is issued
2 under subsection (c) may obtain review of the
3 penalty or order by, within the 30-day period
4 beginning on the date the penalty is assessed
5 or the order is issued—

6 (i) filing a notice of appeal in the dis-
7 trict court of the United States for the dis-
8 trict in which the person resides or con-
9 ducts business, or in the United States
10 District Court for the District of Colum-
11 bia; and

12 (ii) sending a copy of the notice by
13 certified mail to the Secretary.

14 (B) COPY OF RECORD.—The Secretary
15 shall promptly file in the court a certified copy
16 of the record on which the Secretary found that
17 the person had committed a violation.

18 (2) STANDARD OF REVIEW.—A finding of the
19 Secretary shall be set aside under this subsection
20 only if the finding is found to be unsupported by
21 substantial evidence.

22 (e) FAILURE TO OBEY AN ORDER.—

23 (1) IN GENERAL.—A person who fails to obey
24 a cease and desist order issued under subsection (c)
25 after the order has become final and unappealable,

1 or after the appropriate United States district court
2 had entered a final judgment in favor of the Sec-
3 retary of not more than \$5,000 for each offense,
4 after opportunity for a hearing and for judicial re-
5 view under the procedures specified in subsections
6 (c) and (d).

7 (2) SEPARATE VIOLATIONS.—Each day during
8 which the person fails to obey an order described in
9 paragraph (1) shall be considered as a separate vio-
10 lation of the order.

11 (f) FAILURE TO PAY A PENALTY.—

12 (1) IN GENERAL.—If a person fails to pay a
13 civil penalty assessed under subsection (c) or (e)
14 after the penalty has become final and unappealable,
15 or after the appropriate United States district court
16 has entered final judgment in favor of the Secretary,
17 the Secretary shall refer the matter to the Attorney
18 General for recovery of the amount assessed in any
19 United States district court in which the person re-
20 sides or conducts business.

21 (2) SCOPE OF REVIEW.—In an action by the
22 Attorney General under paragraph (1), the validity
23 and appropriateness of a civil penalty shall not be
24 subject to review.

1 (g) ADDITIONAL REMEDIES.—The remedies provided
2 in this Act shall be in addition to, and not exclusive of,
3 other remedies that may be available.

4 **SEC. 9. INVESTIGATIONS AND POWER TO SUBPOENA.**

5 (a) INVESTIGATIONS.—The Secretary may conduct
6 such investigations as the Secretary considers necessary
7 for the effective administration of this Act, or to determine
8 whether any person has engaged or is engaging in any
9 act that constitutes a violation of this Act or any order
10 or regulation issued under this Act.

11 (b) SUBPOENAS, OATHS, AND AFFIRMATIONS.—

12 (1) INVESTIGATIONS.—For the purpose of con-
13 ducting an investigation under subsection (a), the
14 Secretary may administer oaths and affirmations,
15 subpoena witnesses, compel the attendance of wit-
16 nesses, take evidence, and require the production of
17 any records that are relevant to the inquiry. The
18 production of the records may be required from any
19 place in the United States.

20 (2) ADMINISTRATIVE HEARINGS.—For the pur-
21 pose of an administrative hearing held under section
22 7(a)(2) or 8(c)(3), the presiding officer may admin-
23 ister oaths and affirmations, subpoena witnesses,
24 compel the attendance of witnesses, take evidence,
25 and require the production of any records that are

1 relevant to the inquiry. The attendance of witnesses
2 and the production of the records may be required
3 from any place in the United States.

4 (c) AID OF COURTS.—

5 (1) IN GENERAL.—In the case of contumacy by,
6 or refusal to obey a subpoena issued under sub-
7 section (b) to, any person, the Secretary may invoke
8 the aid of any court of the United States within the
9 jurisdiction of which the investigation or proceeding
10 is conducted, or where the person resides or con-
11 ducts business, in order to enforce a subpoena issued
12 under subsection (b).

13 (2) ORDER.—The court may issue an order re-
14 quiring the person referred to in a paragraph (1) to
15 comply with a subpoena referred to in paragraph
16 (1).

17 (3) FAILURE TO OBEY.—Any failure to obey
18 the order of the court may be punished by the court
19 as a contempt of court.

20 (4) PROCESS.—Process in any proceeding
21 under this subsection may be served in the United
22 States judicial district in which the person being
23 proceeded against resides or conducts business, or
24 wherever the person may be found.

1 **SEC. 10. CONFIDENTIALITY.**

2 (a) PROHIBITION.—No information regarding names
3 of voters or how a person voted in a referendum conducted
4 under this Act shall be made public.

5 (b) PENALTY.—Any person who knowingly violates
6 subsection (a) or the confidentiality terms of an order, as
7 described in section 5(k)(2), shall be subject to a fine of
8 not less than \$1,000 nor more than \$10,000 or to impris-
9 onment for not more than 1 year, or both. If the person
10 is an officer or employee of the Department of Agriculture
11 or the Board, the person shall be removed from office.

12 (c) ADDITIONAL PROHIBITION.—No information ob-
13 tained under this Act may be made available to any agency
14 or officer of the Federal Government for any purpose
15 other than the implementation of this Act or an investiga-
16 tory or enforcement action necessary for the implementa-
17 tion of this Act.

18 (d) WITHHOLDING INFORMATION FROM CONGRESS
19 PROHIBITED.—Nothing in this Act shall be construed to
20 authorize the withholding of information from Congress.

21 **SEC. 11. AUTHORITY FOR SECRETARY TO SUSPEND OR**
22 **TERMINATE ORDER.**

23 (a) GROUNDS FOR SUSPENSION OR TERMINATION.—
24 If the Secretary finds that an order, or any provision of
25 the order, obstructs or does not tend to effectuate the pol-
26 icy of this Act specified in section 2(b), the Secretary shall

1 terminate or suspend the operation of the order or provi-
2 sion under such terms as the Secretary determines are ap-
3 propriate.

4 (b) EFFECT OF LACK OF APPROVAL OF ORDER.—
5 If, as a result of a referendum, the Secretary determines
6 that the order is not approved, the Secretary shall, within
7 180 days after making the determination, suspend, or ter-
8 minate, as appropriate, collection of assessments under
9 the order, and suspend or terminate, as appropriate, ac-
10 tivities under the order in an orderly manner as soon as
11 possible.

12 **SEC. 12. CONSTRUCTION.**

13 (a) TERMINATION OR SUSPENSION NOT AN
14 ORDER.—The termination or suspension of an order, or
15 a provision of an order, shall not be considered an order
16 under the meaning of this Act.

17 (b) PRODUCER RIGHTS.—This Act—

18 (1) may not be construed to provide for control
19 of production or otherwise limit the right of indi-
20 vidual Hass avocado growers to produce Hass avoca-
21 dos; and

22 (2) shall be construed to treat all persons pro-
23 ducing Hass avocados fairly and to implement any
24 order in an equitable manner.

1 (c) RELATIONSHIP BETWEEN SECRETARY AND
2 BOARD.—In carrying out the Secretary’s responsibilities
3 to oversee the collection and disbursement of assessment
4 funds and the operation of the program within the provi-
5 sions of this Act, no official or employee of the Depart-
6 ment shall attempt to make decisions as to the best use
7 of assessment funds or shape the program to the personal
8 preference of the official or employee. The Secretary’s re-
9 sponsibility is to ensure that the program operates in a
10 manner consistent with this Act and other applicable law.
11 The Board shall retain sole authority to structure the
12 projects and activities within the limits established by this
13 Act and the order issued pursuant to this Act, and the
14 Secretary shall not substitute its judgment to modify or
15 alter such projects and activities. The Secretary shall
16 eliminate any unnecessary regulatory costs or require-
17 ments to the industry in carrying out the Secretary’s over-
18 sight and regulatory responsibilities and shall promote the
19 most efficient use of producer and importer assessments.

20 (d) OTHER PROGRAMS.—Nothing in this Act may be
21 construed to preempt or supersede any other program re-
22 lating to Hass avocado promotion and consumer informa-
23 tion organized and operated under the laws of the United
24 States or of a State.

1 **SEC. 13. REGULATIONS.**

2 The Secretary may issue such regulations as are nec-
3 essary to carry out this Act and the powers vested in the
4 Secretary by this Act, including regulations relating to the
5 assessment of late payment charges and interest.

6 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

7 (a) IN GENERAL.—There are authorized to be appro-
8 priated for each fiscal year such sums as are necessary
9 to carry out this Act.

10 (b) ADMINISTRATIVE EXPENSES.—Funds appro-
11 priated under subsection (a) may not be used for the pay-
12 ment of the expenses or expenditures of the Board in ad-
13 ministering a provision of an order.

○