



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[Doc. No. AMS-LP-21-0028]

RIN 0581-AE07

Natural Grass Sod Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the establishment of an industry-funded promotion, research, and information program for natural grass sod products. The proposed Natural Grass Sod Promotion, Research, and Information Order (Order) was submitted to the U.S. Department of Agriculture (USDA) by Turfgrass Producers International (TPI), a group of natural grass sod producers. The proposed Order also announces the Agricultural Marketing Service's (AMS) intent to request approval from the Office of Management and Budget (OMB) of new information collection requirements to implement the program.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] to be assured of consideration. Pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA), comments of the information collection burden that would result from this proposal must be received on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this document by using the electronic process available at <https://www.regulations.gov>.

Written comments may also be submitted to Jeana Harbison, Director; Research and

Promotion Division; Livestock and Poultry Program, AMS, USDA; Room 2625-S, STOP 0251, 1400 Independence Avenue, SW; Washington, DC 20250-0251. All comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments received will be posted without change, including any personal information provided, at <https://www.regulations.gov> and will be included in the record and made available to the public.

Pursuant to the PRA, comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, should be sent to the address above. In addition, comments concerning the information collection should be sent to the Desk Office for Agriculture; Office of Information and Regulatory Affairs; Office of Management and Budget; New Executive Office Building; 725 17th Street, NW, Room 725; Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jeana Harbison; Director; Research and Promotion Division; Telephone: (202) 527-3398 or Email:

Jeana.M.Harbison@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (the Act) (7 U.S.C. 7411-7425).

Executive Order 12866, 13563, and 14094

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits,

reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 updates and modernizes E.O. 12866 and directs agencies to conduct proactive outreach to engage interested and affected parties through a variety of means, such as through field offices, and alternative platforms and media. This rulemaking has been designated as not a “significant regulatory action” under section 3(f) of Executive Order 12866.

Accordingly, the Office of Management and Budget (OMB) has not reviewed this action.

Executive Order 12988

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act (7 U.S.C. 7418), a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and may request a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within 2 years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary’s final ruling.

Executive Order 13175

This proposed rule has been reviewed under E.O. 13175 – Consultation and Coordination with Indian Tribal Governments, which requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on: (1) policies that have Tribal implication, including regulation, legislative comments, or proposed legislation; and (2) other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

AMS has assessed the impact of this proposed rule on Indian Tribes and determined that this rulemaking would not have Tribal implications that require consultation under E.O. 13175. AMS hosts a quarterly teleconference with Tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the proposed regulation will be shared during an upcoming quarterly call, and Tribal leaders will be informed about the proposed regulation and the opportunity to submit comments. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the regulations.

Background

The proposed Order is an industry effort to establish a national program with a Board composed of natural grass sod producers and one public member to promote and strengthen consumer demand for natural grass. Initially, producers would pay one-tenth (1/10th) of one penny (\$0.01) per square foot, or the equivalent thereof, of natural grass sod products. No natural grass sod producer would be exempt from paying the assessment unless producing a certified organic product under the National Organic Program. A referendum to determine whether producers favor the Order would take

place before the Order would go into effect. This proposed rule also announces AMS's intent to request approval by the OMB of new information collection requirements to implement the program.

Authority in 1996 Act

The proposed Order is authorized by the Act (7 U.S.C. 7411-7425), which authorizes USDA to establish agricultural commodity research and promotion orders that may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. Consistent with section 512 of the Act (7 U.S.C. 7411), the proposed Order would maintain and expand existing markets and develop new markets and uses for natural grass. Section 515 of the Act (7 U.S.C. 7413), provides for establishment of a Board composed of producers and one public member. As defined in section 513 of the Act (7 U.S.C. 7412), agricultural commodities include "products processed or manufactured from products specified in the preceding subparagraphs, as determined appropriate by the Secretary." 7 U.S.C. 7412(1)(F). The Act also includes provisions that authorize the Secretary to tailor programs to the specific characteristics of different commodities, including section 514 of the Act (7 U.S.C. 7413) that provides USDA discretion in determining to whom the Order should apply among the following: (1) producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if imports are subject to assessments). 7 U.S.C. 4713(a)(1). Natural grass falls within the Act's definition of an agricultural commodity, and natural grass sod producers fall within the categories of "first handlers". Section 516 of the Act (7 U.S.C. 7415), states that an Order may include different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; and

provision for credits for generic and branded activities. In addition, section 518 of the Act (7 U.S.C. 7417) provides for a referendum to ascertain approval of an order to be conducted either prior to it going into effect or within 3 years after assessments first begin under the order. The Act also provides three different methods for determining approval of an order in a referendum.

Industry Overview

The 2017 survey by USDA-National Agricultural Statistics Service (NASS) places the value of the U.S. natural grass sod industry at over \$1.1 billion, produced on 1,465 farms totaling 339,451 acres. These farms exist nationwide with documented active natural grass sod farms in no fewer than 49 States. The widespread distribution of natural grass sod farms is due in part to the diversity of natural grass species, allowing them to adapt to different climates. Grass species such as Bentgrass, Fine fescue, Tall fescue, and Kentucky bluegrass thrive in USDA plant hardiness zones 1a through 6a, while Bermudagrass, Buffalograss, Centipedegrass, Seashore Paspalum, St. Augustinegrass, and Zoysiagrass perform well in zones 7a through 10a. There are also various species of native grasses and other adapted grasses that are gaining popularity in various regions. All these products are produced by natural grass sod farmers throughout the United States and are included in the definition of natural grass products as indicated in this Order.

The \$1.1 billion of natural grass sod produced in 2017 by U.S. natural grass sod farms enters the market where it contributes significantly to the industries that focus on sustainable growth through public and private initiatives supporting environmentally responsible investments, as well as those industries that support it. These sectors include the home lawn care, sports field, golf course, roadside, and other markets that are essential components of local economies nationwide. Seed industries, primarily in the

Midwest and Pacific Northwest, supply seed for sod farms growing cool-season grasses including ryegrass, fescues, bluegrasses, and native or adapted mixtures. This industry produces over 600 million pounds of natural grass seed in Oregon alone, much of which is distributed to U.S. natural grass sod farms to produce sod that is then sold to other segments of the green industry. In addition to contributing to rural agricultural economies, natural grass sod also contributes significantly to urban economies. In states that track sod sales data, landscape contractors in urban and suburban areas purchase between 39.2 percent and 68.2 percent of total sales, followed by sales to athletic complexes and golf courses that make up between 18.2 percent and 44.5 percent of total sales.¹ The supply chain that moves much of this natural grass sod further contributes to local economies through home improvement centers, lawn and landscaping services, equipment and materials purchases, and more. It is estimated that the U.S. lawn care industry alone was worth up to \$93 billion in 2018, employed more than 1 million people, and represented 513,305 businesses.²

Need for a Program

The need for a national research and promotion program is evidenced by trends that discourage consumers from using natural grass products. Natural grass sod producers in many areas of the United States are experiencing social and market trends that are increasingly impacting consumer perception and the value of natural grass.

These trends can ignore the value of natural grass lawns and athletic fields in urban and suburban environments and have resulted in consumers reducing the amount of grass they

¹ Waltz, Clint, *2018 Sod Producers Report, Annual Survey Examines Inventory and Price*. UAC WINTER MAGAZINE, Winter 2018, at 44. See also Miller, Grady, *2018 Sod Producers Report for North Carolina*, TURFFILES.NCSU.EDU, <https://www.turffiles.ncsu.edu/2018/04/2018-sod-producers-report-for-north-carolina/> (last visited Jun. 9, 2021); Richards, Steve. *2018 SC Sod Producers Survey Results (2018, Clemson University)*.

² National Association of Landscape Professionals (NALP), *Landscape Industry Statistics*, LANDSCAPEPROFESSIONALS.ORG, <https://www.landscapeprofessionals.org/LP/About/Industry-Statistics/LP/Media/landscape-industry-statistics.aspx> (last visited Jun. 9, 2021).

manage and/or replacing it with other products. The most common alternative for athletic fields in schools, municipal parks, and open grounds is often plastic, artificial turf. However, in home lawns or public spaces, these alternative products also include patios, decks, mulch, concrete or brick pavers, and rubberized playgrounds. Data from the 2020 Synthetic Turf Council Market Report for North America, which is the primary competitor for natural grass in public spaces, school grounds, and parks, indicates that the synthetic turf industry has grown 15 percent since 2017 with a current value of \$2.7 billion. It also states that it will continue to grow at a rate of 5.7 percent through 2022, with sports fields representing 63 percent of the market and rapid growth in landscape applications³. The landscape and sports field markets represent the two largest customer segments for natural grass sod producers for those who report data on customers.

As proposed by the industry, a natural sod checkoff would help educate consumers and other stakeholders about the value that plants, including natural grass, impart on urban and suburban areas. Plants, including natural grass, are often viewed as requiring large amounts of inputs from water, fertilizer, and chemicals with few valuable outputs. As a result, when balancing natural grass systems on inputs alone with no recognition or assessment of outputs, the resulting analysis often results in an inaccurate determination that natural grasses are resource intensive. However, when accounting for new technologies such as drought-tolerant varieties, reduced mowing, and improvements in irrigation, as well as the many ecosystem services (carbon sequestration, oxygen production, groundwater recharge, filtering of pollutants, stormwater and runoff reduction) that are provided by lawns, parks, and roadsides, a more accurate

³ 2020 *Synthetic Turf Market Report for North America*, Synthetic Turf Council <https://www.syntheticurfCouncil.org/news/512350/Synthetic-Turf-Council-STC-Releases-2020-Synthetic-Turf-Market-Report-for-North-America.htm> (last visited June 2, 2021).

characterization is that managed landscapes, including natural grass sod, provide many benefits in urban and suburban areas.

The aforementioned perception of natural grass is embedded in language used by numerous governing bodies that produce building codes and standards for private and public spaces. These codes provide incentives for builders to reduce or remove natural grass from residential, business, and public spaces with the intent of reducing inputs. However, many such requirements do not factor in the many benefits that plants, including natural grasses, provide to these areas or recognize that simply eliminating them from the system is not a sustainable approach for urban and suburban construction.

Artificial turf is the primary competitor to natural grass for athletic fields on school grounds, public parks, and collegiate or professional sports venues. The growth of the artificial turf market is increasingly reducing the market for natural grass sports fields.

TPI is the proponent group that submitted the proposed Order to USDA on June 18, 2021, requesting the establishment of a natural grass sod research and promotion program. Since at least 2013, U.S. natural grass sod producers have been considering the implementation of a natural grass sod research and promotion program. Although State and local sod associations have explored the option of establishing voluntary research and promotion programs in previous years, they were deemed impractical and unsustainable without the administration and enforcement provided by USDA's AMS through the authority provided in the Act. In 2017, TPI, a trade association representing natural grass sod farmers, equipment manufacturers, seed producers, and other industry participants with members located in almost every U.S. State and over 30 countries, decided to formally investigate USDA's research and promotion programs. From 2017 to 2019, TPI spoke with representatives at trade associations with aligned interests, USDA's AMS, a public policy consultant, and legal counsel to determine if a research and promotion

program for the U.S. natural grass sod industry was feasible. After much deliberation and interest from U.S. natural grass sod producers, the industry, led by TPI, decided that the time was right for the natural grass sod industry to pursue a national research and promotion program.

In 2019, after visiting with the trade associations with aligned interests and USDA's AMS, the industry decided to host a webinar to get feedback from natural grass sod producers regarding their interest in developing a national grass sod research and promotion program. On May 19th, 2020, U.S. sod producers participated in a 2-hour online seminar to learn more about USDA's research and promotion programs. After this webinar, attendees were polled to determine their interest in developing a national research and promotion program for the natural grass sod industry and 64 percent stated they were very interested, 20 percent stated they were interested, 13 percent stated they were interested in learning more, and only 3 percent stated they were not interested.⁴ Attendees in this webinar were also polled to determine their interest in serving on the sod research and promotion drafting committee, of which 14 sod producers were selected.

This drafting committee has finalized the proposed Order contained herein for submission to USDA. The proposed Order contains all of the relevant information on research and promotion programs, including the proposed assessment rate that was determined through an analysis of U.S. natural grass sod production farm and acreage data from the 2017 USDA-NASS Census of Agriculture along with internal data from TPI. A wide range of farm sizes, annual acres harvested, and assessment rates were assembled for analysis to determine an assessment rate that would 1) be amenable to sod

⁴ Industry Analysis and Justification for Natural Grass Sod Promotion, Research, and Information Order, Turfgrass Producers International <https://www.ams.usda.gov/sites/default/files/media/SodIndustryAnalysisandJustificationDraft.pdf> (last visited June 28, 2021).

producers; 2) not be overly burdensome; and 3) result in enough funds to have an impact on the market. At the end of these discussions, the entire formation committee of 14 members of different farm sizes, regions, and products all agreed that the proposed assessment rate met each of those conditions.

Specific Provisions

The proposed Order is authorized under the 1996 Act which authorizes USDA to establish agricultural commodity research and promotion orders and is consistent with existing orders for other commodities. The proposed order is also a part of an industry effort to establish a national program with a Board composed of natural grass sod producers and one public member to promote and strengthen consumer demand for natural grass. Many parties including USDA's AMS, a public policy consultant, and private legal counsel were all consulted and determined that a research and promotion program for the U.S. natural grass sod industry was feasible. In addition to this determination, the industry hosted a 2-hour webinar where feedback was given from natural grass sod producers regarding their interest in developing a national grass sod research and promotion program. More than a majority (64 percent) of the attendees stated that they were very interested in establishing a research and promotion program for U.S. natural grass sod while only 3 percent stated they were not interested. Fourteen sod producers who attended the webinar created the sod research and promotion drafting committee, which drafted the proposed Order that contains all the relevant information on research and promotion programs.

Because the regulatory text proposed herein contains the complete proposed Order, this section will highlight key proposed provisions.

Definitions

Pursuant to section 513 of the Act (7 U.S.C. 7412), § 1240.20 of the proposed Order defines certain terms that would be used throughout the Order. Several of the terms are common to all research and promotion programs authorized under the Act while other terms are specific to the proposed natural grass sod Order.

Proposed § 1240.20 would define the term “Act” to mean the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7412), and any amendments thereto.

This proposed Order would require natural grass sod producers to pay assessments toward the Natural Grass Sod Research and Promotion program. Therefore, “natural grass sod producer” is defined as any person who produces natural grass sod products in the United States.

The proposed Order defines “Natural Grass” as a plant species in the Poaceae family, or living plants in other taxa serving a similar purpose, as often found in sites such as lawns, sports fields, golf courses, parks, cemeteries, roadsides, and others.

The term “natural grass sod product” refers to natural grass produced for retail, wholesale, or commercial sale, including monostands or blends or mixtures of Bentgrass, Bermudagrass, Buffalograss, Centipedegrass, Fine fescue, Kentucky bluegrass, Ryegrass, Seashore Paspalum, St. Augustinegrass, Tall fescue, Zoysiagrass, Bahiagrass, other native or adapted plants harvested and sold as sod, and products containing natural grass with artificial elements that are sold as sod. For purposes of this Order, natural grass sod product excludes all artificial and synthetic turf or grass products, natural grass seed, sprigs, and plugs.

Establishment of the Board

Pursuant to section 515 of the Act (7 U.S.C 7413), §§ 1240.30 through 1240.39 of the proposed Order detail the establishment and membership of the proposed Natural

Grass Sod Board, nominations, appointments, the term of office, removal and vacancies, procedures, compensation and reimbursement, powers and duties, and prohibited activities.

Section 1240.30(b) specifies the Board would be composed of 11 members.

Three members would represent North/Cool-Season Region, four would represent the South/Warm-Season Region, three would represent the Transition Zone/California Region, and one would be a public member. See table 1 below for a detailed list of States in each region. The total number of Board members could not be increased. The division of representation would be intended to reflect the relative percentage square footage of assessments paid by natural grass sod producers into the research and promotion program. See table 1 for a summary of geographical distribution of farms, acres, and receipts. At least once every 5 years but no more frequently than once every 3 years, the Board would review the geographical distribution of the square footage of natural grass sod products sold within the United States. Any changes in Board composition implemented by the Secretary would be made through rulemaking. All Board members would be appointed by the Secretary from nominations as set forth in the proposed § 1240.31.

Table 1: Farms, Acres and Sales by Proposed Regions⁵

Region	Number of Members	States	Farms	Acres	Sales
North/Cool Season	3	AK, CO, CT, DE, ID, IL, IN, IA, ME, MA, MI, MN, MT, NE, NH, NJ, NY, ND, OH, OR, PA, RI, SD, UT, VT, WA, WV	508	75,151	\$282,742,266

⁵ See 2017 Census of Agriculture, USDA National Agricultural Statistics Service <https://www.nass.usda.gov/Publications/AgCensus/2017/index.php> (last visited Nov. 16, 2020).

South/Warm Season	4	AL, AZ, FL, GA, HI, LA, MS, NV, NM, SC, TX, US Territories	609	177,179	\$563,044,248
Transition Zone/ California	3	AR, CA, DC, KS, KY, MD, MO, NC, OK, TN, VA, WV	343	84,068	\$292,805,000

Any natural grass sod producer who does not have outstanding assessments may seek nomination for any vacant position in the region they produce and sell natural grass sod products. Nominees that produce and sell in multiple regions may seek nomination in one region of their choice. To seek nomination to the Board, the interested natural grass sod producer would provide the Board a short background statement outlining their qualifications. Any public member interested in seeking nomination would provide the Board a short background statement outlining their qualifications.

Section 1240.32 of the proposed Order would specify the nominee's agreement to serve. Natural grass sod producers and public members nominated to serve on the Board would be required to submit to the Secretary a written agreement to serve on the Board if appointed by the Secretary, disclose any relationship with any natural grass promotion entity or organization that has been or is being considered for a contractual relationship with the Board, and withdraw from participation in deliberations, decision-making, and voting on matters that concern the relationship of an entity or organization considered for a contractual relationship.

Section 1240.33 of the proposed Order would specify the appointments by the Secretary and terms of office, respectively.

Except for the initial Board, the Board members would serve 3 years or until the Secretary selects his or her successor. The initial Board member terms would be staggered at 1, 2, and 3 years. Each region initial would have one member who serves 2-

year terms and two members who serve 3-year terms. Additionally, the South/Warm-Season Region would have one member who serves a 2-year term. The public member initial term would be a 3-year term. The Secretary would determine which of the initial members shall serve a term of 1, 2, or 3 years. Members who serve on the initial Board would be eligible to serve a second term of 3 years.

Sections 1240.34 and 1240.35 of the proposed Order would specify reasons for removal and how vacancies would be filled. The Secretary would be able to remove a Board member if he or she determines there is failure or refusal by the Board member to perform his or her duties properly or if the Board member engages in an act of dishonesty or willful misconduct. Refusing to follow the Act's and Order's purpose would also be a reason for removal. If a member is removed from office or resigns, the position would automatically become vacant. If a member becomes disqualified for ceasing to produce natural grass or ceases to do business in the region he or she represents, this position would be vacated within 6 months from the date of disqualifying event.

Section 1240.36 of the proposed Order would specify procedures of the Board. A majority of voting Board members present at a meeting would constitute a quorum. Each voting member of the Board would be entitled to one vote on most matters put to the Board and the motion would carry if supported by a simple majority of the total votes. Recommendations to change the assessment rate, adopt a budget, or call for a referendum would require affirmation by two-thirds (2/3) of the Board members. When, in the opinion of the chairperson of the Board, such action is considered necessary, the members could vote by internet service, videoconference, teleconference, or any other means of communication. Actions taken under these procedures would be valid only if all members were notified of the meeting and all members were provided the opportunity to vote. Proxy voting would not be permitted. All votes would be recorded in Board

minutes. The procedures for conducting Board meetings would be established by the Board and approved by the Secretary.

Section 1240.37 of the proposed Order would specify that all members of the Board would serve without compensation; however, reimbursement for reasonable travel expenses incurred when performing Board duties would be provided as approved by the Board.

Section 1240.38 of the proposed Order would specify the powers and duties of the Board. These powers and duties would include, among other things, to administer the Order and collect assessments; to develop bylaws and recommend rulemaking necessary to administer the Order; to select a chairperson and other Board officers; to form other committees and subcommittees as necessary; to hire staff or contractors as appropriate to carry out the Board's duties; to develop and carry out generic promotion, research, and information activities related to natural grass products; to develop and administer programs, plans, and projects to benefit the natural grass industry; to submit a budget to USDA for approval prior to the start of the fiscal year; to borrow funds necessary to cover startup costs of the Order; to maintain such records and books available to the Secretary for inspection and audit upon request; to have its books audited by an outside certified public accountant at the end of each fiscal period and at other times as requested by the Secretary; to notify natural grass sod producers and the Secretary of all Board meetings through press releases or other means; to act as intermediary between the Secretary and any natural grass sod producer; to furnish to the Secretary any information or records he or she may request; to receive, investigate and report to the Secretary complaints of violations of the Order; to recommend to the Secretary changes to the Order as the Board considers appropriate; to strengthen and provide maximum benefits to the natural grass sod industry; to invest Board funds appropriately; to pay the cost of

activities with assessments collected under and earnings from invested assessments and other funds; to recommend changes to assessments as appropriate; to appoint and convene committees to assist in the development of research, promotion, advertising, and information programs for natural grass; to periodically prepare and make public reports of program activities and, at least once each fiscal period, to make public an accounting of funds received and expended; and to allocate a percentage of the assessments collected on the sale of natural grass sod products in a State or a region to one or more programs proposed by a Qualified Organization, under contract, to receive funding.

Section 1240.39 of the proposed Order would specify prohibited activities that are common to all promotion programs authorized under the Act. The Board members and employees would not engage in any actions that would be a conflict of interest; use funds collected by the Board to lobby (influencing any legislation or governmental action or policy by local, State, national, and foreign governments, or subdivisions thereof, other than recommending to the Secretary amendments to the Order); or engage in any advertising, including promotion, research, or information activities authorized to be carried out under the Order that may be false, misleading, or disparaging to another agricultural commodity.

Expenses and Assessments

Pursuant to sections 516 (7 U.S.C. 7415) and 517 (7 U.S.C. 7416) of the Act, §§ 1240.45 through 1240.47 of the proposed Order would detail requirements regarding the Board's budget and expenses, financial statements, and assessments. At least 60 calendar days before the start of the fiscal period, and as necessary during the year, the Board would submit a budget to the Secretary detailing its projected expenses. The budget would include a list of objectives and strategies, a summary of anticipated revenue, and expenses for each program along with a breakdown of staff and administrative expenses.

Except for the initial budget, the Board's budgets would include comparative data for at least one preceding fiscal period. Each budget would provide for adequate funds to cover the Board's anticipated expenses. Any amendment or addition to an approved budget would have to be approved by Secretary, including shifting of funds from one program, plan, or project to another. The Board would reimburse the Secretary for all expenses incurred in the implementation, administration, enforcement, supervision of the Order, including all referendum costs in connection with the Order.

During the first year of the Board's operation, the Board could borrow money for the payment of startup expenses limited to the first year of operation. The Board could accept voluntary contributions to carry out activities so long as the contributions are identified in the Board's annual operating budget and are free from any encumbrance by the donor. The Board would retain control over use of any funds. The Board could also receive funds from Federal or State grants with approval of the Secretary for specific authorized projects.

Beginning 3 years after establishment of the Board, the Board would be limited to spending no more than 15 percent of its available funds for administration, maintenance, and functioning of the Board. Reimbursements to USDA would not be considered administrative costs. As an example, if the Board received \$2 million in assessments during a fiscal period, and had available \$500,000 in reserve funds, the Board's available funds would be \$2,500,000. In this scenario, the Board would be limited to spending no more than \$375,000 ($0.15 \times \2.5 million) on administrative costs. The 15 percent spending limit is consistent with section 515 of the Act (7 U.S.C. 7413). The Board could establish an operating monetary reserve and carry over excess funds from one fiscal period to the next, provided the funds did not exceed two fiscal year budgets. For

example, if the Board's budgeted expenses for a fiscal period were \$2 million, it could carry over no more than \$4 million in reserve.

Section 1240.46 of the proposed Order would specify the financial statement requirements. The Board would be required to submit to USDA financial statements on a quarterly basis, or at any other time requested by the Secretary. Financial statements would include, at a minimum, a balance sheet, an income statement, investments, and an expense budget.

Section 1240.47 of the proposed Order would specify the assessments. The Board's programs and expenses would be funded by assessments on natural grass sod products and other funds available to the Board. Under the proposed Order, natural grass sod producers would pay one-tenth ($1/10^{\text{th}}$) of one penny (\$0.01) per square foot, or the equivalent thereof, of all-natural grass sod products that the natural grass sod producer sells in the United States. For example, a farm that harvested 10,000 square feet of sod would pay \$10 in assessments ($10,000 \times .001$). This assessment rate was determined through an analysis of U.S. natural grass sod production farm and acreage data from the 2017 USDA-NASS Census of Agriculture along with internal data from TPI. A wide range of farm sizes, annual acres harvested, and assessment rates were assembled for analysis to determine an assessment rate that would 1) be amenable to sod producers; 2) not be overly burdensome; and 3) result in enough funds to have an impact on the market. At the end of these discussions, the entire formation committee of 14 members of different farm sizes, regions, and products all agreed that the proposed assessment rate met each of those conditions.

Twenty-four months after the Order would become effective and periodically thereafter, the Board would review the assessment rate and, if approved by a vote of at least two-thirds ($2/3$) of the Board, submit a recommendation for a change in the

assessment rate to the Secretary. The assessment rate would not exceed one-eighth (1/8th) of one penny (\$0.01) per square foot of natural grass sod products sold without approval by a majority of natural grass sod producers in a referendum.

In terms of assessment collection, the natural grass sod producer would remit assessments for natural grass product sold to the Board every quarter with a remittance form.

Based on 2017 USDA NASS production acreage, TPI estimates assessments would be valued at approximately \$14.9 million annually. Assessments would be collected from approximately 1,459 natural grass sod producers.

In addition, individuals producing certified organic natural grass sod, according to 7 CFR part 205, would be exempt from paying assessments. Producers would apply to the Board annually for a certificate of exemption using a form provided by the Board.

Pursuant to section 517(f) of the Act (7 U.S.C. 7416) and section 1240.45(j) of this Order, the Board would be permitted to invest assessments collected under the Order in the following: (1) obligations of the United States or any agency of the United States; (2) general obligations of any State or any political subdivision of a State; (3) interest-bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve; and (4) obligations fully guaranteed as to principal interest by the United States.

The program would be funded by the industry through assessments paid by natural grass sod producers, as defined in the Proposed Order. Based on the proposed assessment rate and an analysis of industry statistics provided by USDA and maintained by TPI, publicly available farm statistics as well as TPI, the program is estimated to collect \$14,900,000 annually in assessments and will conduct research, marketing, and promotion programs that will benefit the entire industry. The benefits of such programs

are expected to outweigh the costs of the program. Evaluations of similar research and promotion programs by independent economists, required to be conducted every 5 years, have shown positive financial benefits with benefit-cost ratios in the range of \$2.14 to \$17.40 for every dollar invested in the programs.⁶ After reviewing and considering all relevant information, AMS has determined that the assessments collected from the natural grass sod producers will be relatively small in comparison to their revenue.

Under voluntary programs, the current universe of assessment payers does not always include all the industry participants who would likely benefit from generic research and promotion activities. Therefore, a mandatory research and promotion program would be best positioned to have the greatest industry impact with the broadest level of industry support by eliminating free riders. A free rider is an entity who benefits from a service without having to pay for it. The research and promotion program would be able to combine assessment funds from natural grass sod producers and have a broad impact on the industry by developing new markets, strengthening existing markets, conducting important consumer and scientific research, and promoting industry initiatives and activities.

Promotion, Research, and Information

Pursuant to section 516 of the Act (7 U.S.C. 7415), §§ 1240.50 through 1240.52 of the Order would describe the promotion, research, and information projects authorized by the Order. The Board would develop and submit to the Secretary for approval programs, plans, or projects that would provide promotion, research, and information. These activities would also provide information to consumers and industry groups. The Board could only implement a program or project upon approval by the Secretary. The

⁶ See US Gov't Accountability Office, GAO-18-54, AGRICULTURAL PROMOTION PROGRAMS USDA Could Build on Existing Efforts to Further Strengthen Its Oversight (2017), <https://www.gao.gov/assets/690/688519.pdf>.

Board would evaluate each program to ensure it contributes to an effective promotion program and complies with the Act and Order.

At least once every 5 years, the Board would fund an independent evaluation to determine the effectiveness of the Order and programs pursuant to the Act. The findings of the evaluation would be made available to the Secretary and the general public.

Finally, the proposed Order would specify that any patents, copyrights, trademarks, inventions, product formulations and publications developed with funds received by the Board would be the property of the U.S. Government, as represented by the Board. These, along with any rents, royalties, and the like from their use would be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and could be licensed with approval of the Secretary.

Report, Books, and Records

Pursuant to section 515 of the Act (7 U.S.C. 7413), §§ 1240.60 through 1240.62 of the proposed Order specify the reporting and recordkeeping requirements under the proposed Order as well as requirements regarding confidentiality of information. Each natural grass sod producer would be required to submit an assessment remittance form and assessments to the Board on a quarterly basis. The information required in the form would include, but not be limited to, the name and contact information of the natural grass sod producer, the quantity of natural grass sod products sold, and the natural grass sod producer's identification numbers, as applicable. Records would be made available to the Board or USDA during normal business hours and retained for at least 3 years past the fiscal year.

In addition to books and records, the proposed Order would also require that all information obtained from persons subject to the Order as a result of proposed recordkeeping and reporting requirements would be kept confidential by all officers,

employees, and agents of the Board and USDA. Pursuant to the Act, such information could only be disclosed if the Secretary considered it relevant, and the information were revealed in a judicial proceeding or administrative hearing brought at the direction or at the request of the Secretary or to which the Secretary or any officer of USDA was a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to the proposed Order, if the statements did not identify the information furnished by any person, or the publication, by direction of the Secretary, of the name of any person violating the Order and a statement of the particular provisions of the Order violated.

Initial Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of this rulemaking on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis (RFA).

The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000.

The affected industry falls under the North American Industry Classification System (NAICS) code: 111421—Sod Farming

Need for a Program

The TPI, who represents natural grass sod farmers, equipment manufacturers, seed producers, and other industry participants, is the proponent group that submitted the proposed Order to USDA on June 16, 2021, requesting the establishment of a natural grass sod promotion, research, and information program. In 2017, TPI began to explore

the creation of a promotion and research program. TPI worked with natural grass sod producers and other industry organizations to gauge interest in the development of such a program. In 2020 a drafting committee was formed to develop a draft Order. The drafting committee comprised fourteen natural grass sod producers representing a wide variety of natural grass sod farms. The producers represented a range of farm size, years in business, and familiarity with other research and promotion programs. The drafting committee proposed Order was part of the submission by TPI to USDA for consideration of a program. The proposed Order submitted by TPI intends to educate the public on the value of natural grass products, market and promote the benefits of natural grass on a national scale, provide U.S. sod farmers with marketing tools, and provide information to organizations for use in the development of model codes and standards for building codes.

The synthetic turf industry has grown 15 percent since 2017 with a current value of \$2.7 billion and continues to grow at a rate of 5.7 percent through 2022, with sports fields representing 63 percent of the market and rapid growth in landscape applications⁷. The rise in synthetic turf numbers comes from social and market trends that have driven consumer perception of natural grass lawns and athletic fields in urban and suburban environments. These trends have caused consumers to misunderstand the value of natural grass lawns and athletic fields in urban and suburban environments. This has caused consumers to reduce the amount of grass they manage and/or replace it with other products like plastic, artificial turf, patios, decks, mulch, concrete, brick pavers, and rubberized playgrounds. These misconceptions have had a significant impact on natural grass sod producers in many areas of the United States.

⁷ 2020 *Synthetic Turf Market Report for North America*, Synthetic Turf Council <https://www.syntheticurfCouncil.org/news/512350/Synthetic-Turf-Council-STC-Releases-2020-Synthetic-Turf-Market-Report-for-North-America.htm> (last visited June 2, 2021).

Objectives of the Action

As noted in the preamble above, the program would conduct research, marketing, and promotion activities that will benefit the entire industry. Primary goals of the program include educating consumers and stakeholders of the benefits of natural grass and providing producers with marketing tools they can use to grow their business. The purpose of the program would be to strengthen the position of natural grass sod in the marketplace, maintain and expand markets for natural grass sod, and develop new uses for natural grass sod.

Legal Basis for the Rule

The Proposed Order is authorized by the 1996 Act, which provides USDA the authorization to establish research and promotion programs for agricultural commodities. Under the Act, “agricultural commodities” are defined to include agricultural products as well as “products processed or manufactured from products specified in the preceding subparagraphs, as determined appropriate by the Secretary.” The Act also includes provisions that authorize the Secretary to tailor programs to the specific characteristics of each different commodity, including section 7413 that provides USDA discretion in determining to whom the Order should apply among the following: “(A) the producers of an agricultural commodity; (B) the first handlers of the agricultural commodity and other persons in the marketing chain as appropriate; and (C) the importers of the agricultural commodity, if imports of the agricultural commodity are subject to assessment...”.

Natural grass sod products fall within the Act’s definition of an agricultural commodity and natural grass sod producers, as defined in the proposed Order, fall within the categories of “first handlers” and “other persons in the marketing chain.” The proposed Order, which will establish a program of promotion, research, and information to promote consumer demand for natural grass sod products and strengthen the position

of the natural grass sod industry in the marketplace, is consistent with the Congressional intent of the Act to maintain and expand existing markets as well as develop new markets and uses for agricultural commodities. As such, USDA is authorized to establish the Natural Grass Sod Promotion, Research, and Information program by approving the proposed Order.

As part of the approval process set forth in the Act, the industry must formulate an Order and submit it to USDA for review and final approval. Implementation of the Order, like all rulemaking, is subject to public notice and comment, and is subject to ongoing referenda where participants are given the opportunity to vote to determine whether the program shall continue to operate. If approved by the USDA and through the ongoing referenda, the Order becomes a regulation codified in the U.S. Code of Federal Regulations and carries the force of law.

There are no known Federal rules that duplicate, overlap, or conflict with the Proposed Order.

Alternatives to the Rule

USDA considered the alternative of no action; that is, the status quo. This alternative, however, would leave the industry without the tools of a research and promotion program to strengthen the position in the marketplace, maintain and expand markets, and develop new uses.

Although there has been sporadic success attempting to fund efforts as described above at the local level with pooled resources of producers and/or associations, voluntary research and promotion efforts at the national level have historically been marginally successful due to the lack of funds available to undertake larger programs. There are several entities that fund natural grass research and promotion efforts at state and regional levels, but none of which have the capacity to fund these efforts on a large scale. For

instance, many State sod associations fund research and promotion at levels under \$10,000 annually. TPI funds research and promotion through its foundation, The Lawn Institute, at up to \$50,000 to \$100,000 annually. However, these types of funds are raised through voluntary contributions and fundraising efforts such as auctions, raffles, activities, etc., and, while they have successfully been able to impact natural grass research and promotion on a small scale, none of these efforts can achieve what is proposed through a natural grass sod checkoff. A natural grass sod checkoff would not only be able to raise significant funds for these efforts, but the checkoff could also respond to changing needs in research and promotion. Through the collection of an assessment on natural grass sod products on a national scale, the research and promotion program will be able to leverage pooled assessment funds and have a more consistent and wide-scale industry impact.

The natural grass sod production industry has been discussing a research and promotion program since at least 2013. TPI and other interested stakeholders have held numerous meetings and conducted outreach across the industry to gauge interest in a research and promotion program for natural grass sod products. As noted above, a majority of the natural grass sod producers who actively participated in the May 19, 2020, webinar supported the development of such a program for consideration. This resulted in the creation of the sod research and promotion drafting committee, which drafted the proposed order that is under consideration in this proposed rule.

After careful analysis and discussions, the natural grass sod industry determined that a research and promotion program would be best positioned to have the greatest industry impact with the broadest level of industry support.

Impact on Small Businesses

The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000. According to the 2017 USDA NASS data, 1,034 firms – approximately 70 percent of producers – would be classified as small agricultural producers based on value of sales per farm. Table 2 compares the average value of sales per farm to the average assessment per farm for each category. Because the assessment is calculated on a production basis, the proportionate burden is the same across the industry, regardless of firm size. On a farm basis, small natural grass sod producers would pay between \$174 and \$7,111 in assessments annually per firm, while large natural grass sod producers would pay between \$13,297 and \$63,420.

Table 2⁸. Number of Farms, Acres, Value of Sales, and Average Proposed Assessment per Farm

NAICS Code 111421			(2017 dollars)	
	Farms	Acres	Avg Value of Sales per Farm	Avg Annual Assessment per Farm
Total Industry	1,459	339,551	\$787,467	\$10,138
Small Firms (<\$750,000)	1,034	74,938	\$233,459	\$2,886
Large Firms (>\$750,000)	425	264,614	\$11,526,586	\$33,134

The proposed assessment rate of 1/10th of one penny per square foot was decided upon by the industry in part because it was determined that rate would not create any undue burdens to sod farms of any size, including small businesses. Data from the National Quarterly Sod Report; 2020 Summer Quarter⁹ indicate a range of natural grass

⁸ 2017 USDA NASS Census

https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/st99_1_039_0039.pdf.

⁹ USDA Agricultural Marketing Service, Livestock, Poultry, and Grain Market News https://www.ams.usda.gov/mnreports/ams_2930.pdf.

sod prices across the United States from \$0.16 to \$0.50 per square foot results in additional costs of between 0.62 percent and 0.2 percent. Furthermore, when evaluating the prices based on weighted averages instead of ranges, the additional costs incurred are between 0.42 percent and 0.24 percent.

This level of assessment should have minimal impact on sod farms of any size, large or small, and was part of the consideration for the drafting committee in supporting the proposed rate. For instance, a sod farm that is considered a small business may harvest as little as 10 acres annually. At the proposed assessment rate and pricing data from the National Sod Report, the annual contribution of that farm to the research and promotion program would be \$435 per year, while generating sales revenue between \$69,696 and \$217,800.

Required Reporting and Recordkeeping

The required reporting and recordkeeping to remit assessments do not require specialized skills or training. The transactional documentation will be added to documents already generated and maintained by natural grass sod producers. Reporting requirements are expected to be the same for both large and small entities.

It is estimated it will take approximately 2 hours annually, or 30 minutes every quarter, to complete and submit the remittance form to the Board. This is estimated to cost each natural grass sod producer \$102 per year. For the purpose of estimating the cost of reporting and recordkeeping, this proposed rule uses \$51 per hour. To arrive at this amount, AMS took the mean hourly earnings of farmers, ranchers, and other agricultural managers (\$36.93) from the U.S. Department of Labor, Bureau of Labor Statistics, May 2020 National Occupational Employment and Wages Estimates¹⁰. The

¹⁰ Occupational Employment and Wages, May 2020; 11-9013 Farmers, Ranchers, and Other Agricultural Managers <https://www.bls.gov/oes/current/oes119013.htm>.

average mean hourly wage rate of \$36.93 plus an additional 38.1 percent to account for benefits and compensation¹¹, for a total hourly wage of \$51, was used to calculate annual cost. Costs of benefits and compensation guidance was obtained from the Bureau of Labor Statistics News Release issued December 14, 2018.¹²

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, USDA would keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA would also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Although AMS has performed this initial RFA analysis regarding the impact of the proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis, we invite comments concerning potential effects.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), AMS announces its intention to request approval for a new information collection for the proposed natural grass sod program.

Title: Natural Grass Sod Research, Promotion, and Information Order.

OMB Number: 0581–NEW.

Expiration Date of Approval: 3 years from approval date.

¹¹ News Release Bureau of Labor Statics, Employer Costs for Employee Compensation – June 17, 2021, <https://www.bls.gov/news.release/pdf/ecec.pdf>.

¹² Economic News Release: Employer Costs for Employee Compensation Summary for December 2020 <https://www.bls.gov/news.release/ecec.nr0.htm>.

Type of Request: New information collection for research and promotion program.

Abstract: The information collection requirements are essential to carry out the intent of the Act. The information collection pertains to a proposal submitted by TPI for the development of a national research and promotion program for natural grass sod. The program would be administered by a Board of producer members selected by the Secretary. Natural grass sod producers would be assessed under the program for natural grass products. The program would provide an exemption from assessment for any organic natural grass products under the approved National Organic Program (7 CFR part 205). The purpose of the proposed program is to help build the market for natural grass.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the proposed Order, and their use is necessary to fulfill the intent of the Act.

The information collection requirements under the program address Board nominations, collection of assessments, and the organic exemption. For Board nominations, natural grass sod producers and the public member must complete the “Nomination for Appointment” form to obtain names of nominees for appointment as members of the Board. Each individual must also complete a “Nominee’s Agreement to Serve” form to allow the individual to disclose any relationship that could be of conflict while serving on the Board. Together with the AD-755 form, which details background information, this form would ensure the individual is qualified to serve on the Board. Assessments would be collected using the “Quarterly Report and Remittance of Amount Due” form. In conjunction, the “Organic Exemption Request” form would deduct any natural grass sod under the National Organic Program.

For the purpose of estimating the cost of reporting and recordkeeping, this proposed rule uses \$51 per hour. To arrive at this amount, AMS used the mean hourly earnings of farmers, ranchers, and other agricultural managers (\$36.93) from the U.S. Department of Labor, Bureau of Labor Statistics, May 2020 National Occupational Employment and Wages Estimates¹³. The mean hourly earnings rate of \$36.93 plus an additional 38.1 percent to account for benefits and compensation¹⁴, for total hourly earnings of \$51, was used to calculate annual cost. Costs of benefits and compensation guidance was obtained from the Bureau of Labor Statistics News Release issued December 14, 2018.¹⁵

Information collection requirements that are included in this proposal are:

(1) *LP-7 Application for Self-Certification of Nominating Organizations (OMB Form No. 0581-NEW)*.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response for each nominating organization.

Respondents: Natural grass sod producers and State or regional sod associations (15 State or regional sod associations).

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: (Estimate recertification every 5 years) 0.2.

Estimated Total Annual Burden on Respondents: (25 organizations and producers X 0.2 responses X 0.5 hour per response) 2.50 hours.

Total Cost: (2.50 hours x \$51) \$127.50.

¹³ Occupational Employment and Wages, May 2020; 11-9013 Farmers, Ranchers, and Other Agricultural Managers <https://www.bls.gov/oes/current/oes119013.htm>.

¹⁴ News Release Bureau of Labor Statics, Employer Costs for Employee Compensation – June 17, 2021, <https://www.bls.gov/news.release/pdf/ecec.pdf>.

¹⁵ Economic News Release: Employer Costs for Employee Compensation Summary for December 2020 <https://www.bls.gov/news.release/ecec.nr0.htm>.

(2) *LP-4 Nomination for Appointment to the Board (OMB Form No. 0581-NEW)*.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Natural grass sod producers.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: One per year.

Estimated Total Annual Burden on Respondents: (20 responses X 0.5 hour per response) 10 hours.

Total Cost: (10 hours X \$51) \$510.

(3) *LP-6 Quarterly Report and Remittance of Amount Due for Assessment (OMB Form No. 0581-NEW)*.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per form.

Respondents: Natural grass sod producers.

Estimated Number of Respondents: 1,460.

Estimated Number of Responses per Respondent: 2 per year.

Estimated Total Annual Burden on Respondents: (1,460 Number of respondents X 2 total number of reports X 0.50 hour per report) 2,920 hours.

Total Cost: (2,920 hours x \$51) \$148,920.

(4) *AMS-15 Organic Exemption (OMB Form No. 0581-0093)*.

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per exemption form.

Respondents: Natural grass sod producers.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: (Annual organic exemption required) 1.

Estimated Total Annual Burden on Respondents: (10 Number of respondents X 1 total number of reports X 0.25 hours per report) 2.50 hours.

Total Cost: (2.50 hours X \$51) \$127.50.

(5) *AD-755 Background Information on Form (OMB Form No. 0505-0001).*

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each natural grass sod producer and public member nominated to serve on the Board.

Respondents: Natural grass sod producers.

Estimated Number of Respondents: 14.33 (20 for initial nominations to the Board, 12 every year except 14 every third year in subsequent years).

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10 hours for the initial nominations to the Board and 7 hours annually thereafter.

Total Cost: (Number of respondents X responses per respondent X \$51) \$510 initial, and \$357 annually thereafter.

(6) *Requirement to Maintain Records Sufficient to Verify Reports Submitted Under the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 2 hours per recordkeeper maintaining such records.

Recordkeepers: Natural grass sod producers.

Estimated Number of Recordkeepers: 1,400.

Estimated Total Recordkeeping Hours: (1,400 Number of recordkeepers X 2.0 hours) 2,800 hours.

Total Cost: (1,400 Number of recordkeepers X 2.0 hours per recordkeeper X \$51) \$142,800.

As noted above, under the proposed Order, natural grass sod producers would be required to pay assessments, file reports with, and submit assessments to the Board. While the proposed Order would impose certain recordkeeping requirements on natural grass sod producers, information required under the proposed Order could be compiled from records currently maintained. The Order would require such records to be retained for at least 3 years beyond the fiscal year of their applicability.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other programs administered by USDA and other State programs.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information quarterly would coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. The requirement to keep records for three years is consistent with normal industry practices. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to

individual domestic producers who are subject to the provisions of the Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

Request for Public Comment Under the Paperwork Reduction Act

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and AMS's oversight of the program, including whether the information will have practical utility; (b) the accuracy of AMS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) the accuracy of AMS's estimate of the number of natural grass sod producers that would be covered under the program; (d) ways to enhance the quality, utility, and clarity of the information to be collected; and (e) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference the OMB number, docket number, date, and page number of this issue of the **Federal Register**. Comments should be sent to the address referenced in the **ADDRESSES** section of this proposed rule.

This proposed rule invites comments on the establishment of an industry-funded research, promotion, and information program for natural grass products. Comments should clearly indicate whether or not you support any or all of the provisions proposed. Indicate the reason for your position and include relevant information and data to further support your position.

List of Subjects in 7 CFR Part 1240

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Natural grass sod, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend title 7, chapter XI of the Code of Federal Regulations by adding part 1240 to read as follows:

PART 1240—NATURAL GRASS SOD PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Natural Grass Sod Promotion, Research, and Information Order

Sec.

1240.10 General.

1240.20 Definitions.

Natural Grass Sod Board

1240.30 Establishment and membership.

1240.31 Nominations and appointments.

1240.32 Nominee's Agreement to Serve.

1240.33 Term of office.

1240.34 Removal.

1240.35 Vacancies.

1240.36 Procedure.

1240.37 Reimbursement and attendance.

1240.38 Powers and duties.

1240.39 Prohibited activities

Expenses and Assessments

1240.45 Budget and expenses.

1240.46 Financial statements.

1240.47 Assessments.

Promotion, Research, and Information

1240.50 Programs.

1240.51 Independent evaluation.

1240.52 Patents, copyrights, trademarks, inventions, product formulations, and publications.

Reports, Books, and Records

1240.60 Reports.

1240.61 Books and records.

1240.62 Confidential treatment.

1240.63 Qualification of natural grass sod organizations.

Miscellaneous

1240.70 Right of the Secretary.

1240.71 Referenda.

1240.72 Suspension or termination.

1240.73 Proceedings after termination.

1240.74 Effect of termination or amendment.

1240.75 Personal liability.
1240.76 Separability.
1240.77 Amendments.
1240.78 OMB control number.

Subpart B—[Reserved]

Authority: 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

Subpart A—Natural Grass Sod Promotion, Research, and Information Order

§ 1240.10 General.

The terms defined/specified in this subpart shall apply to the natural grass sod promotion, research, and information Board authorized under the Act.

§ 1240.20 Definitions.

Act means the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411-7425), and any amendments thereto.

Board means the Natural Grass Sod Promotion, Research, and Information Board established pursuant to § 1240.30, or such other name as recommended by the Board and approved by USDA.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

Department or USDA means the U.S. Department of Agriculture, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

Eligible natural grass sod producer refers to a natural grass sod producer that has sold natural grass sod products in the United States during the Representative Period and is eligible to vote in the initial referendum or Subsequent Referenda.

Fiscal Year and marketing year means the 12-month period ending on December 31 or such other period as recommended by the Board and approved by the Secretary.

Information means information and programs for consumers, customers, architects, city planners, and various industry participants and trades personnel, including educational activities, information, and programs designed to enhance and broaden the understanding of the use and attributes of natural grass, increase efficiency in producing natural grass sod products, maintain and expand existing markets, and develop new markets and marketing strategies. These include:

(1) Consumer education and information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding natural grass; and

(2) Industry information, which means information and Programs that would enhance the image of the natural grass industry.

Initial referendum refers to the referendum required to approve this subpart as outlined in §1240.71.

Natural grass refers to plant species in the Poaceae family, or living plants in other taxa serving a similar purpose, as often found in sites such as lawns, sports fields, golf courses, parks, cemeteries, roadsides and others.

Natural grass sod producer means any person who produces natural grass sod products in the United States.

Natural grass sod product refers to natural grass produced for retail, wholesale, or commercial sale, including monostands or blends or mixtures of Bentgrass, Bermudagrass, Buffalograss, Centipedegrass, Fine fescue, Kentucky bluegrass, Ryegrass, Seashore Paspalum, St. Augustinegrass, Tall fescue, Zoysiagrass, Bahiagrass, other native or adapted plants harvested and sold as sod, and products containing natural grass with artificial elements that are sold as sod. For purposes of this Order, natural grass sod

product excludes all artificial and synthetic turf or grass products, natural grass seed, sprigs, and plugs.

Order means an order issued by the Secretary under section 7413 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

Part and subpart means the Natural Grass Sod Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Natural Grass Sod Promotion, Research, and Information Order shall be a subpart of such part.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

Produce means the process of growing and/or harvesting natural grass sod products for the purpose of selling such products either individually or in combination with other products, real property, or services in the United States.

Program means those generic research, promotion, and information programs, plans, or projects established pursuant to the Order.

Promotion means any action, including paid advertising and the dissemination of Information, utilizing public relations or other means, to enhance and broaden the understanding of the use and attributes of natural grass for the purpose of maintaining and expanding markets for natural grass sod products.

Qualified organization means any organization that has the primary purpose of representing natural grass sod producers, has natural grass sod producers as members, has a board of directors comprised of a majority of natural grass sod producers, and is approved by the Secretary pursuant to the qualification process set forth in § 1240.63.

Quarterly period means one of the four 3-month periods that are based upon a calendar year cycle (*i.e.*, January 1-March 31, April 1-June 30, July 1-September 30, and October 1-December 31).

Representative period means the time period designated by the Secretary pursuant to section 518 (7 U.S.C. 7417) of the Act.

Research means any type of test, study, or analysis designed to enhance the image, desirability, use, marketability, production, environmental quality, or sustainability of natural grass, including research directed to product characteristics and product development like new products or improved technology in the production of natural grass sod products.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

State means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

Subsequent Referenda refers to any referendum conducted pursuant to § 1240.71 of this subpart after this subpart becomes effective.

Suspend means to issue a rule under 5 U.S.C. 553 to temporarily prevent the operation of an Order or part thereof during a particular period of time specified in the rule.

Terminate means to issue a rule under 5 U.S.C. 553 to cancel permanently the operation of an Order or part thereof beginning on a date certain specified in the rule.

United States means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

Natural Grass Sod Promotion, Research, and Information Board

§ 1240.30 Establishment and membership.

(a) *Establishment of the Board.* There is hereby established a Natural Grass Sod Promotion, Research, and Information Board to administer the terms and provisions of this part. The Board shall be composed of natural grass sod producers that sell natural grass sod products in the United States during a marketing year and a public member. Seats on the Board shall be apportioned as set forth in paragraph (b) of this section based on the geographical distribution of the quantity of natural grass sod products sold in the United States.

(b) *Composition of Board.* The Board shall be composed of 11 members who are natural grass sod producers and one public member. The Board shall be established as follows:

(1) *North/Cool-Season Region.* Three members shall be appointed from the North/Cool-Season Region, which includes the following States: Alaska, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming.

(2) *South/Warm-Season Region.* Four members shall be appointed from the South/Warm-Season Region, which includes the following States: Alabama, Arizona, Florida, Georgia, Hawaii, Louisiana, Mississippi, Nevada, New Mexico, South Carolina, Texas, and all territories and possessions of the United States, including but not limited to, the Commonwealth of Puerto Rico.

(3) *Transition Zone/California Region.* Three members shall be appointed from the Transition Zone/California Region, which includes the following States: Arkansas,

California, the District of Columbia, Kansas, Kentucky, Maryland, Missouri, North Carolina, Oklahoma, Tennessee, Virginia, and West Virginia.

(4) *States with the highest volume of natural grass sod production.* The three (3) States with the highest volume of natural grass sod production, as determined by the Secretary on an annual basis, shall have at least one (1) natural grass sod producer to serve as a representative on the Board, in their respective Region.

(5) *Public member.* One public member. The public member may not be a natural grass sod producer or have a financial interest in the production, sales, marketing or distribution of natural grass sod. Nominations to the Secretary for the public member position may be obtained through self-nomination to the Board and from Board members in such a manner as recommended by the Board and approved by the Secretary and shall be appointed by the Secretary. Should the Board fail to nominate a public member, the Secretary may appoint such member.

(c) *Reapportionment.* At least once in every 5-year period, but not more frequently than once in every 3-year period, the Board will review the geographical distribution of the square footage of natural grass sod Products sold within the United States. The review will be conducted using the Board's annual assessment receipts, industry data provided by USDA, and, if available, other reliable reports from the industry. If warranted, the Board will recommend to the Secretary that the membership, geographical regions, and/or size of the Board be adjusted to reflect changes in geographical distribution of the square footage of natural grass sod products sold in the United States. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

§ 1240.31 Nominations and appointments.

(a) Initial nominations shall be submitted to the Secretary by the industry organizations that have a board composed of a majority of natural grass sod producers; by individual natural grass sod producers; and from members of the public. The Secretary shall select the initial members of the Board from the nominations submitted.

(b) Subsequent nominations shall be conducted as follows:

(1) The Board shall conduct outreach to all known natural grass sod producers that sell natural grass sod products in a marketing year as well as any known industry organizations that have a board comprised of a majority of natural grass sod producers. Natural grass sod producers and industry organizations may submit nominations to the Board;

(2) Natural grass sod producer nominees and the public member nominee may provide the Board a short background statement outlining their qualifications to serve on the Board;

(3) Nominees may seek nomination to the Board for all vacant seats for which the nominees are qualified;

(4) Natural grass sod producers must produce and sell natural grass sod products in the region for which they seek nomination. Nominees that produce and sell in multiple regions may seek nomination in one region of their choice. The Board will issue the call for nominations to all known natural grass sod producers and recommend nominees for each open seat and the additional nominees to the Secretary;

(5) The public member shall be nominated by a Qualified Organization and through self-nomination to the Board. The public member shall have no direct financial interest in the commercial production or marketing of natural grass sod except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall prescribe such additional qualifications, administrative rules

and procedures for selection and voting for each candidate as it deems necessary and the Secretary approves.

(6) The Board will evaluate all the nominees and recommend at least two names for each open seat. Other qualified persons interested in serving in the open seats, but not recommended by the Board, will be designated by the Board as additional nominees for consideration by the Secretary;

(7) The Board must submit nominations to the Secretary at least 90 days before the new Board term begins. From the nominations submitted by the Board, the Secretary shall select the members of the Board;

(8) Any natural grass sod producer and public member nominated to serve on the Board shall file with the Secretary at the time of the nomination a background questionnaire;

(9) From the nominations made pursuant to this section, the Secretary shall appoint members of the Board on the basis of representation provided in §1240.30(b);

(10) No two Board members shall be employed by a single corporation, company, partnership or any other legal entity that pays assessments under this Subpart; and,

(11) The Board may recommend to the Secretary modifications to its nomination procedures as it deems appropriate. Any such modification shall be implemented through rulemaking by the Secretary.

§ 1240.32 Nominee's agreement to serve.

Any producer or person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to: (a) serve on the Board if appointed; (b) disclose any relationship with any National Grass Sod Producer or with any organization that has or is being considered for a contractual relationship with the

Board; and (c) withdraw from participation in deliberations, decision-making, or voting on matters that concern the relationship disclosed.

§ 1240.33 Term of office.

(a) With the exception of the initial Board, each Board member shall serve for a term of 3 years or until the Secretary selects his or her successor. Each term of office shall begin and end on dates determined by the Board. No member may serve more than two full consecutive 3-year terms, except as provided in paragraph (b) of this section.

(b) For the initial Board, the terms of the Board members shall be staggered for 1, 2 and 3 years. Each region initially shall have one member who serves 2-year terms and two members who serve 3-year terms. In addition, the South/Warm-Season Region shall have one member who serves a 1-year term. The Secretary shall determine which of the initial members shall serve a term of 1, 2, or 3 years. The public member shall serve an initial three-year term.

(c) Members serving the initial terms of all durations will be eligible to serve a second term of 3 years. Members who are appointed to serve the remainder of a term are eligible to serve two additional 3-year terms. A public member serving the initial term is not eligible to serve two additional 3-year terms.

§ 1240.34 Removal.

The Board may recommend to the Secretary that a member be removed from office if the member consistently fails or refuses to perform his or her duties properly or engages in dishonest acts or willful misconduct, which removal is subject to the Secretary's approval. If the Secretary determines that a member fails or refuses to perform his or her duties properly or engages in acts of dishonestly or willful misconduct, the Secretary shall remove the person from office. A person appointed under this subpart

may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1240.35 Vacancies.

(a) If a member is removed from office or resigns, or in the event of death of any member, such position shall automatically become vacant.

(b) If a member becomes disqualified for ceasing to produce natural grass sod products or ceasing to do business in the region he or she represents, such position shall be vacated within a period of 6 months from the date of the disqualifying event.

(c) If a position becomes vacant, nominations to fill the vacancy will be conducted using the nominations process set forth in this subpart or the Board may recommend to the Secretary that he or she appoint a successor from the most recent list of nominations for the position.

(d) A vacancy will not be required to be filled if the unexpired term is less than 6 months.

§ 1240.36 Procedure.

(a) The Board shall publicly announce all scheduled Board meetings through a direct communication, press release, or other means and give the Secretary the same notice of meetings of the Board (including committees, subcommittees, and the like) as is given to members so that the Secretary's representative(s) may attend such meetings.

(b) A majority (50 percent plus one) of the Board members shall constitute a quorum at any meeting of the Board.

(c) Each member of the Board shall be entitled to one (1) vote on any matter put to the Board and the motion will carry if supported by a majority (50 percent plus one vote) of Board members, except for recommendations to change the assessment rate,

adopt a budget, or call for a referendum, which require affirmation by two-thirds of the total number of Board members.

(d) At an assembled meeting, all votes shall be cast in person. At a meeting in which some or all members attend via an internet service, videoconference, or teleconference, members may cast votes remotely by using available technology according to procedures that shall be established by the Board.

(e) In lieu of voting at an assembled meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by a majority of members (unless two-thirds is required under the Order) by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at an assembled meeting. All votes shall be recorded in Board minutes.

(f) There shall be no proxy voting.

(g) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

§ 1240.37 Reimbursement and attendance.

Board members shall serve without compensation, but shall be reimbursed for reasonable travel expenses, as approved by the Board, which they incur when performing Board business.

§ 1240.38 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer this subpart in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules and regulations as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet not less than annually, organize, and select from among the members of the Board a chairperson, vice chairperson, secretary/treasurer, other officers, and committees and subcommittees, as the Board determines to be appropriate. The committees and subcommittees may include persons other than Board members, including representatives of natural grass sod producers, as the Board deems necessary and appropriate, provided Board members constitute a majority of all committees and subcommittees;

(d) To employ or contract with persons, other than the Board members, as the Board considers necessary to assist the Board in carrying out its duties, and to determine the compensation and specify the duties of the persons;

(e) To develop and submit programs to the Secretary for the Secretary's approval, and enter into contracts or agreements related to such programs, which must be approved by the Secretary before becoming effective, for the development and carrying out of Programs of Promotion, Research, and Information. The payment of costs for such activities shall be from funds collected pursuant to this Order. Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a Program together with a budget or budgets that shall show the estimated cost to be incurred for such Program;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit

accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor; and

(5) Any other provisions required by the Secretary.

(f) To allocate, to the extent practicable, up to fifty percent (50%) of the assessments collected on the sale of natural grass sod Products in a State or group of States, as defined in § 1240.20, less administrative costs, to one or more Programs proposed by a Qualified Organization representing such State or group of States. On an annual basis, the Board shall solicit proposals for Programs, select the Programs that shall receive funding, and enter into contracts only with the entities that will directly implement the Programs. If the Qualified Organization is not the entity that will implement the Program, the Board may reimburse the Qualified Organization for reasonable administrative costs incurred while making such proposal. For purposes of this § 1240.38, the Secretary shall have the authority to approve an organization that the Board nominates to be a “Qualified Organization” pursuant to the qualification process set forth in § 1240.63

(g) To prepare and submit for the approval of the Secretary fiscal year budgets in accordance with § 1240.45.

(h) To borrow funds necessary for startup expenses or other capital outlays of the Board as set forth in the subpart;

(i) To invest assessments collected and other funds received pursuant to this subpart and use earnings from invested assessments to pay for activities carried out pursuant to this subpart;

(j) To recommend changes to the assessment rates as provided in this subpart;

(k) To cause its books to be audited by an independent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(l) To periodically prepare and make public reports of program activities and, at least once each fiscal year, to make public an accounting of funds received and expended;

(m) To maintain such minutes, books and records, and prepare and submit such reports and records from time-to-time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(n) To act as an intermediary between the Secretary and any natural grass sod producer;

(o) To receive, investigate, and report to the Secretary complaints of violations of this subpart;

(p) To recommend to the Secretary such amendments to this subpart as the Board considers appropriate; and

(q) To work to achieve an effective, continuous, and coordinated Program of Promotion, Research, and Information and to carry out programs designed to provide maximum benefits to the natural grass sod industry.

§ 1240.39 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments or subdivision thereof, other than recommending to the Secretary amendments to this subpart; and

(c) Any Program or advertising that is false, misleading, or disparaging to another agricultural commodity. Natural grass sod products of all geographic origins shall be treated equally.

Expenses and Assessments

§ 1240.45 Budget and expenses.

(a) At least 60 calendar days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to USDA a budget for the fiscal year covering its anticipated expenses and disbursements in administering this Part. The budget for Research, Promotion, or Information may not be implemented prior to approval by the Secretary. Each such budget shall include:

(1) A statement of objectives and strategy for each Program;

(2) A summary of anticipated revenue, with comparative data for at least one preceding fiscal year, except for the initial budget;

(3) A summary of proposed expenditures for each Program; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding fiscal year, except for the initial budget.

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department. Shifts of funds that do not result in an increase in the Board's approved budget and are consistent with governing bylaws need not have prior approval by the Department.

(d) The Board is authorized to incur such expenses, including provision for a reserve, as the Secretary finds reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval from the Department, the Board may borrow funds necessary for startup expenses or other capital outlays of the Board as set forth in the subpart, which funds shall be subject to the same fiscal, budget, and audit controls as other funds of the Board.

(f) The Board may accept voluntary contributions. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use. The Board may receive funds from outside sources with approval of the Secretary for specific authorized projects.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, enforcement and supervision of this Subpart, including all referendum costs in connection with this subpart.

(h) For fiscal years beginning 3 years after the date of the establishment of the Board, the Board may not expend for administration, maintenance, and the functioning of the Board an amount that is greater than 15 percent of the assessment and other income received by and available to the Board for the fiscal year. For purposes of this limitation,

reimbursements to the Secretary, and other Board expenses outlined in guidance provided by the Secretary shall not be considered administrative costs.

(i) The Board may establish an operating monetary reserve and may carry over to subsequent Fiscal Years excess funds in any reserve so established; provided that, the funds in the reserve do not exceed two fiscal years' budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this subpart.

(j) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this subpart in:

- (1) Obligations of the United States or any agency of the United States;
- (2) General obligations of any State or any political subdivision of a State;
- (3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System;
- (4) Obligations fully guaranteed as to principal interest by the United States; or
- (5) Other investments as authorized by the Secretary.

§ 1240.46 Financial statements.

(a) The Board shall prepare and submit financial statements to the Department on a quarterly basis, or at any other time as requested by the Secretary. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Department within 30 calendar days after the end of the time period to which it applies.

(c) The Board shall submit to the Department an annual financial statement within 90 calendar days after the end of the fiscal year to which it applies.

§ 1240.47 Assessments.

(a) The Board's programs and expenses shall be paid by assessments on producers of natural grass sod products in the United States, other income of the Board, and other funds available to the Board.

(b) Each natural grass sod producer shall be required to pay an assessment to the Board in the amount of one-tenth (1/10th) of one penny (\$0.01) per square foot, or the equivalent thereof, of all natural grass sod products that the natural grass sod producer sells in the United States.

(c) Twenty-four months after this subpart becomes effective and periodically thereafter, the Board shall review the assessment rate and, if so approved by a vote of at least two-thirds (2/3) of the Board, submit a recommendation for a change in the assessment rate to the Secretary. The assessment rate may not exceed one-eighth (1/8th) of one penny (\$0.01) per square foot of natural grass sod products sold without approval by a majority of natural grass sod producers in a referendum conducted pursuant to the procedures in this part.

(d) Upon the effective date of this Subpart, all natural grass sod producers shall be responsible for maintaining proper and sufficient sales receipts and records in order to accurately calculate their assessments owed to the Board pursuant to this Subpart. After each quarterly period, or such other time period set by the Board, natural grass sod producers shall calculate the amount of assessments they owe the Board and remit such payment to the Board no later than the last calendar day of the month following the end of the quarterly period, or such other time period set by the Board, in which the natural grass sod products were sold.

(e) If any natural grass sod producer fails to pay the assessment within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest. The one-time late payment charge shall be equal to ten percent (10 percent) of the assessments due before interest charges have accrued. In addition to the late payment charge, one and one-half percent (1.5 percent) per month interest on the outstanding balance, including any late payment charge and accrued interest, will be added to any accounts for which payment has not been received by the Board within 60 calendar days after the assessments are due. Such interest will continue to accrue monthly until the outstanding balance is paid to the Board. Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures or other means as the Board recommends to the Secretary.

(f) The Board may accept advance payment of assessments from any natural grass sod producer that will be credited toward any amount for which that person may become liable. The Board may not pay interest on any advance payment.

(g) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall receive assessments and shall pay such assessments and any interest earned to the Board when it is formed.

Promotion, Research, and Information

§ 1240.50 Programs.

(a) The Board shall develop and submit to the Secretary for approval Programs authorized by this Subpart. Such Programs shall provide for Promotion, Research, Information and other activities, including consumer and industry information and advertising.

(b) No Program shall be implemented prior to its approval by the Secretary. Once a program is so approved, the Board shall take appropriate steps to implement it.

(c) The Board must evaluate each program authorized under this subpart to ensure that it contributes to an effective and coordinated Program of Research, Promotion, and Information. The Board must submit the evaluations to the Secretary. If the Board finds that a program does not contribute to an effective Program of Promotion, Research, or Information, then the Board shall terminate such Program.

(d) No Program authorized under this subpart shall reference a brand or trade name of any natural grass sod product without the approval of the Board and Secretary.

§ 1240.51 Independent evaluation.

At least once every five years, the Board shall authorize and fund from funds otherwise available to the Board, an independent evaluation of the effectiveness of this subpart and the Programs conducted by the Board pursuant to the part. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this section.

§ 1240.52 Patents, copyrights, trademarks, inventions, product formulations, and publications.

(a) Any patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government, as represented by the Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, inventions, product formulations, or publications, inure to the benefit of the Board, shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1240.73 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions, trademarks, information, publications, or product formulations be developed through the use of funds collected by the Board under this subpart together with funds contributed by another organization or person, the ownership and related rights to such patents, copyrights, inventions, trademarks, information, publications, or product formulations shall be determined by an agreement between the Board and the party contributing funds toward the development of such patents, copyrights, inventions, trademarks, information, publications, or product formulations in a manner consistent with paragraph (a) of this section, subject to the approval by the Secretary.

Reports, Books, and Records

§ 1240.60 Reports.

(a) Natural grass sod producers will be required to provide periodically to the Board such information as the Board, with the approval of the Secretary, may require. Such information may include, but not be limited to:

- (1) The name and contact information of the natural grass sod producer;
- (2) The quantity of natural grass sod products sold;
- (3) The date that any assessments were paid; and

(4) The natural grass sod producer's TIN, EIN, or other identification as may be applicable.

(b) Such information shall be reported to the Board no later than the 30th calendar day of the month following the end of the quarterly period in which the natural grass sod products were sold and shall accompany the collected payment of assessments as specified in §1240.47. First quarter data (January-March) shall be reported to the Board no later than the April 30th; second quarter data (April-June) shall be reported no later than July 31st; third quarter data (July-September) shall be reported no later than October

31st; and fourth quarter data (October-December) shall be reported no later than January 31st of the following marketing year.

(c) In addition to the information required to be regularly reported to the Board, the Board may request additional information from natural grass sod producers as deemed necessary by the Board, subject to approval by the Secretary.

§ 1240.61 Books and records.

Each natural grass sod producer shall maintain any books and records necessary to carry out the provisions of this subpart and regulations issued thereunder, including such records as are necessary to verify any required reports. Such books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. Natural grass sod producers must maintain the books and records for 3 years beyond the fiscal year to which they apply.

§ 1240.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or natural grass sod producers. Only those Persons having a specific need for such information solely to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or at the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part or subpart violated by such Person.

§ 1240.63 Qualification of natural grass sod organizations.

(a) Organizations receiving qualification from the Secretary will be entitled to submit requests for funding to the Board pursuant to § 1240.38. Only one natural grass sod producer organization per State may be qualified and only one natural grass sod producer per group of States may be qualified.

(b) Any natural grass sod producer organization whose primary purpose is to represent natural grass sod producers within a State or group of States may request qualification.

(c) Qualification shall be based, in addition to other available information, upon a factual report submitted by the organization that shall contain such information as the Secretary deems relevant for making such determination, including the following:

- (1) The geographic territory covered by the organization's active membership;
- (2) The nature and size of the organization's active membership and proportion of active membership accounted for by natural grass sod producers;
- (3) The extent to which natural grass sod producers are represented on the organization's board of directors;
- (4) Evidence of stability and permanency of the organization;
- (5) Sources from which the organizations operating funds are derived;
- (6) The functions of the organization; and

(7) The ability and willingness of the organization to further the purpose and objectives of the Act.

(d) The primary consideration in determining the eligibility of an organization shall be whether its natural grass sod producer membership consists of a sufficiently large number of natural grass sod producers who produce a relatively significant volume of Sod as to reasonably warrant its qualification to submit requests for funding to the Board. Any natural grass sod producer organization found eligible by the Secretary under this section will be qualified by the Secretary, and the Secretary's determination as to eligibility shall be final.

Miscellaneous

§ 1240.70 Right of the Secretary.

All fiscal matters, Programs, contracts, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1240.71 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless the Order is approved by a simple majority (50 percent + one vote) of the natural grass sod producers voting in the initial referendum that have been engaged in the production and sale of natural grass sod products in the United States during a representative period determined by the Secretary. Each natural grass sod producer may cast one vote in the initial referendum.

(b) *Subsequent Referenda.* The Secretary shall conduct Subsequent Referenda:

(1) Not later than 7 years after this Order becomes effective and every 7 years thereafter, to determine whether natural grass sod producers favor the continuation of this Subpart. This subpart shall continue if it is approved by a simple majority (50 percent +

one vote) of natural grass sod producers voting in the subsequent referendum that have been engaged in the production and sale of natural grass sod products in the United States during a representative period determined by the Secretary. Each natural grass sod producer may cast one vote in the Subsequent Referenda;

(2) At the request of the two-thirds of the members of the Board established in this Subpart;

(3) At the request of 10 percent or more of the total number of eligible natural grass sod producers; or

(4) At any time as determined by the Secretary.

(c) *Referendum procedures.* The initial referendum and all Subsequent Referenda shall be conducted pursuant to the procedures outlined in subpart B.

§ 1240.72 Suspension or termination.

(a) The Secretary shall Suspend or Terminate this part or subpart or a provision thereof, if the Secretary finds that this part or subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by eligible natural grass sod producers in a subsequent referendum.

(b) The Secretary shall Suspend or Terminate this subpart at the end of the fiscal year whenever the Secretary determines that its suspension or termination is favored by a simple majority of eligible natural grass sod producers voting in a subsequent referendum.

(c) If, as a result of a Subsequent Referendum, the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 calendar days after making the determination, Suspend or Terminate, as the case may be, the collection of assessments under this subpart.

(2) As soon as practical, Suspend or Terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1240.73 Proceedings after termination.

(a) Upon termination of this subpart, the Board shall recommend to the Secretary up to five of its members to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other existing claim at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to this subpart;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and trustees, to such Person or Persons as the Secretary directs; and

(4) Upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person's title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this Subpart.

(c) Any Person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical,

to one or more organizations in the United States whose mission is generic promotion, Research, and Information programs.

§ 1240.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1240.75 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1240.76 Separability.

If any provision of this subpart is declared invalid or the applicability of it to any person or circumstances is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1240.77 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or any interested Person affected by the provisions of the Act, including the Secretary.

§ 1240.78 OMB control number.

The control numbers assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, are OMB control numbers 0505-0001 (Background Information Form), 0581-0093 (Organic Exemption), and 0581-NEW.

Subpart B—[Reserved]

Melissa Bailey,

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