

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

Definitions

§12XX.X Act.

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

§12XX.X Board.

Board means the Natural Grass Sod Promotion, Research, and Information Board established pursuant to §12XX.XX, or such other name as recommended by the Board and approved by the Department.

§12XX.X Conflict of Interest.

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.

§12XX.X Department or USDA.

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.

§12XX.X Eligible Natural Grass Sod Producer

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.

§12XX.X Fiscal Year and Marketing Year.

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.

§12XX.X Information.

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:

(a) 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

(b) Industry information, which means information and Programs that would enhance the image of the Natural Grass industry.

§12XX.X Initial Referendum.

Initial Referendum refers to the referendum required to approve this Subpart as outlined in §12XX.X.

§12XX.X Natural Grass Sod Producer.

Natural Grass Sod Producer means any Person who Produces Natural Grass Sod Products in the United States.

§12XX.X Natural Grass

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.

§12XX.X Natural Grass Sod Product

Natural Grass Sod Product refers to a natural grass commodity 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.

§12XX.X Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§12XX.X Part and Subpart.

Part 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.

§12XX.X Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. Each legal entity within a corporate structure that has a separate tax identification number (“TIN”) or employer identification number (“EIN”) is considered a separate Person for purposes of this Subpart.

§12XX.X Produce.

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.

§12XX.X Program.

Program means those Research, Promotion, and Information programs, plans, or projects established pursuant to the Order.

§12XX.X Promotion.

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.

§12XX.X Quarterly Period. One of the four three (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).

§12XX.X Representative Period

Representative Period means the time period designated by the Secretary pursuant to §518 of the Act.

§12XX.X Research.

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.

§12XX.X Secretary.

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.

§12XX.X State.

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.

§12XX.X Subsequent Referenda.

Subsequent Referenda refers to any referendum conducted pursuant to §12XX.X of this Subpart after this Subpart becomes effective.

§12XX.X Suspend.

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.

§12XX.X Terminate.

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.

§12XX.X United States.

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 Board

§12XX.X Establishment and membership.

(a) Establishment of the Board. There is hereby established a 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. 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 thirteen (13) members who are Natural Grass Sod Producers. The Board shall be established as follows:

(1) North/Cool-Season Region: Four (4) 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: Five (5) 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: Four (4) 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.

(c) Reapportionment. At least once in every five-year period, but not more frequently than once in every three-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 the Department, 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.

§12XX .X Nominations and appointments.

(a) Initial nominations shall be submitted to the Secretary by the industry organizations that have a board comprised of a majority of Natural Grass Sod Producers and by individual Natural Grass Sod Producers. 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 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 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;

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

(7) Any Natural Grass Sod Producer nominated to serve on the Board shall file with the Secretary at the time of the nomination a background questionnaire;

(8) From the nominations made pursuant to this section, the Secretary shall appoint members of the Board on the basis of representation provided in §12XX.X(b);

(9) 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,

(10) 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.

§12XX.X 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 (3) withdraw from participation in deliberations, decision-making, or voting on matters that concern the relationship disclosed.

§12XX.X Term of office.

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

(c) Members serving the initial terms of all durations will be eligible to serve a second term of three (3) years. Members who are appointed to serve the remainder of a term are eligible to serve two (2) additional three-year terms.

§12XX.X 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. 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.

§12XX.X 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 six (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 six months.

§12XX.X 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% 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% 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 (2/3) 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.

§12XX.X 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.

§12XX.X 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 prepare and submit for the approval of the Secretary Fiscal Year budgets in accordance with §12XX.X.
- (g) To borrow funds necessary for startup expenses or other capital outlays of the Board as set forth in the Subpart;
- (h) 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;
- (i) To recommend changes to the assessment rates as provided in this Subpart;

- (j) 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;
- (k) 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;
- (l) 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;
- (m) To act as an intermediary between the Secretary and any Natural Grass Sod Producer;
- (n) To receive, investigate, and report to the Secretary complaints of violations of this Subpart;
- (o) To recommend to the Secretary such amendments to this Subpart as the Board considers appropriate; and
- (p) 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.

§12XX.X 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

§12XX.X Budget and expenses.

- (a) At least sixty (60) calendar days prior to the beginning of each Fiscal Year, and as may be necessary thereafter, the Board shall prepare and submit to the Department 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 three (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 (15%) 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 (2) Fiscal Year's 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.

§12XX.X 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 thirty (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 ninety (90) calendar days after the end of the Fiscal Year to which it applies.

§12XX.X 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 (24) 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 sixty (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%) of the assessments due before interest charges have accrued. In addition to the late payment charge, one and one-half percent (1.5%) 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

§12XX.X 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.

§12XX.X 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.

§12XX.X 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, §12XX.X 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.

Reports, Books, and Records

§12XX.X 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 §12XX.X. 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.

§12XX.X 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 three (3) years beyond the Fiscal Year to which they apply.

§12XX.X 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.

Miscellaneous

§12XX.X 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.

§12XX.X Referenda.

(a) Initial Referendum. The Order shall not become effective unless the Order is approved by a simple majority (50% + 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 seven years after this Order becomes effective and every seven 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% + 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 ten percent (10%) or more of the total number of Eligible Natural Grass Sod Producers; or

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

(c) The Initial Referendum and all Subsequent Referenda shall be conducted pursuant to the procedures outlined in Subpart B.

§12XX.X 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 one hundred and eighty (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.

§12XX.X Proceedings after termination.

(a) Upon termination of this Subpart, the Board shall recommend to the Secretary up to five (5) 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.

§12XX.X 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.

§12XX.X 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.

§12XX.X 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.

§12XX.X 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.

§12XX.X 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 number XXXXXX (Board nominee background statement) and OMB control number XXXXXXXX.