

Subpart A—American Grapevine Genetics Research Initiative Order

DEFINITIONS

§ 1226.1 Act.

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

§ 1226.2 Assessable sales

Assessable sales means the total amount received from the first sale of grapevines or propagative material to a consumer that is attributable to a first handler without deduction for expenses and shall exclude: (a) sales of grapevines or propagative material from a producer to another producer; (b) sales of certified organic grapevines or propagative material that qualify for exemption under § 1226.53(b); and (c) amounts attributable to transportation, taxes, assessments, royalties, or other charges not directly related to the value of the grapevines or propagative material sold. Assessable sales shall constitute the base upon which assessments are calculated under § 1226.52.

§ 1226.3 Board.

Board means the American Grapevine Genetics Research Initiative Board established pursuant to § 1226.40.

§ 1226.4 Commercial production or commercial purposes.

Commercial production or commercial purposes means production of grapevines, grapes, organic products for sale or their disposition in any channel of commerce.

§ 1226.5 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.

§ 1226.6 Consumer.

Consumer means any person who purchases grapevines or propagative material from a first handler for the purpose of planting, growing, or otherwise using such grapevines or propagative material in commercial production, and not for resale.

§ 1226.7 Crop year.

Crop year means the 12-month period of January 1 through December 31 or such other period recommended by the Board and approved by the Secretary.

§ 1226.8 Cultivar.

Cultivar means a strain of a grapevine that has been developed through cultivation.

§ 1226.9 Department or USDA.

Department or USDA means the United States 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.

§ 1226.10 First handler

First handler means the first person who acquires title to or takes possession of and sells or otherwise transfers grapevines or propagative material to a consumer following production. A producer who propagates and first sells grapevines or propagative material to a consumer shall be deemed the first handler with respect to such sale.

- Eligible first handler means any person who, during the representative period, was subject to the Order and required to remit assessments on grapevines and propagative materials produced in the United States and sold into commerce.

§ 1226.11 Fiscal period.

Fiscal period means the 12-month period from January 1 to December 31, or such other period approved by the Secretary.

§ 1226.12 Grapevine.

Grapevine means a rooted grape plant grown by producers in the United States which produces grapes for juice, wine, table use, raisins or other products produced or derived from grapes or grape products.

§ 1226.13 Information.

Information means information and programs for consumers, customers and industry, including educational activities, information and programs designed to enhance and broaden the understanding of the use and attributes of grapevines and grapevine products, maintain and expand existing markets, and develop new markets and marketing strategies. These include:

- Educational information, which means any action taken to provide information to, and broaden the understanding of the general public regarding grapevines and grapevine products; and
- Industry information, which means information and programs that would enhance the image of the grapevine industry.

§ 1226.14 Intellectual Property

Intellectual Property means any patents, copyrights, trademarks, information, publications, product formulations, trade secrets or any other intangible property.

§ 1226.15 Market or marketing

Market or marketing means the propagation, sale or other disposition of grapevine in interstate, foreign, or intrastate commerce.

§ 1226.16 Nursery Industry.

Nursery Industry means United States producers growing rooted grapevine plants for commercial production and sale.

§ 1226.17 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.

§ 1226.18 Part and subpart.

Part means the American Grapevine Genetics Research Initiative Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a *subpart* of such part.

§ 1226.19 Partnership.

Partnership includes, but is not limited to:

- Spouses who have title to, or leasehold interest in, a grapevine or grapevine product producing entity as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and
- So-called “joint ventures” wherein one or more parties to an agreement, informal or otherwise, contributed land, facilities, capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, that results in the production or importation of grapevine and grapevine products and the authority to transfer title to the grapevines or grapevine products so manufactured or imported.

§ 1226.20 Person.

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

§ 1226.21 Producer.

Producer means the person engaged in the propagating of rooted grapevines for commercial sale and sells the grapevines or propagative material into commerce.

§ 1226.22 Programs, plans and projects.

Programs, plans and projects means research and information programs, plans, or projects established pursuant to the Order.

§ 1226.23 Propagate.

Propagate means asexual production of grapevines for commercial purposes.

§ 1226.24 Propagative material.

Propagative material means cuttings, buds, bud sticks, or graftsticks taken from a grapevine.

§ 1226.25 Research.

Research means any type of test, study, or analysis designed to advance the production, product development, pest and disease resistance, plant health, or quality of grapevines, including research relating to new product development, cultivar development and enhancement of the image and desirability of the U.S. grapevine industry.

§ 1226.26 Secretary.

Secretary means the Secretary of Agriculture of the United States 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.

§ 1226.27 State.

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

§ 1226.28 Suspend.

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

§ 1226.29 Terminate.

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

§ 1226.30 United States.

United States means each of the several States and the District of Columbia, Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1226.31 Western States.

Western States means California, Oregon, and Washington.

§ 1226.32 Working Group.

Working Group means the American Grapevine Genetics Research Initiative Working Group formed to pursue development of an American grapevine research and promotion program.

§ 1226.40 Establishment and membership.

- ***Establishment and Composition of the Board.*** There is hereby established an American Grapevine Genetics Research Initiative Board, which shall administer the provisions of this Order. The Board shall be composed of six (6) first handler members and one (1) consumer member.
- ***First Handler Members.*** The first handler members shall be geographically representative of grapevine production in the United States as follows:
 - Four (4) first handler members from Western States; and
 - Two (2) first handler members from States other than Western States.
- ***Consumer Member.*** One member of the Board shall be a consumer and shall not be a first handler under this subpart. The consumer member shall be appointed by the Secretary from nominations submitted pursuant to § 1226.41(c).
- ***Adjustment of Membership.*** At least once every five years, the Board will review the geographical distribution of United States production of grapevines. The review will be conducted through an audit of state crop production and Board assessment records. If warranted, the Board will recommend to the Secretary that the membership on the Board be altered to reflect any changes in the geographical distribution of grapevine production.
- ***Board's ability to serve the diversity of the industry.*** When making recommendations for appointments, the industry should take into account the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population, size of the operations, methods of production and distribution, and other distinguishing factors to ensure that the recommendations of the Board take into account the diverse interests of first handlers responsible for paying assessments, and others, if appropriate.
- ***Consumer and Technical Advisory Committee.*** The Board may establish committees, including a Consumer and Technical Advisory Committee ("CTAC") to provide advice and recommendations to the Board regarding research, information, and program priorities under this Order. If established, CTAC members shall include a mix of consumers of grapevine or grape-related products and technical advisors with relevant expertise. One consumer member shall serve as a Board member and Chairperson of the CTAC for the duration of their term on the Board.

§ 1226.41 Nominations and appointments.

- ***Initial Board.*** For purposes of establishing the initial Board, the Working Group shall serve in an advisory capacity only and shall recommend nominees to the Secretary for appointment to the Board. In developing its recommendations, the Working Group may solicit and consider input from producers, first handlers, and grapevine and grape grower organizations. Recommendations may be made for Board positions representing the regions in which nominees are located or in which nominees market grapevines and grapevine products. Upon

the formation of the initial Board, the Working Group shall have no further role or authority under this subpart.

- ***First handler members.*** Except for the initial Board, nominations shall be conducted as follows:
 - The Board shall issue a call for nominations by March 1 of each year in which an election is to be held. The call shall include at a minimum, the following information:
 - A list of the vacancies and geographic qualifications for which nominees may be submitted.
 - The date by which nominations are due to the Board.
 - The date by which the nominees shall be submitted to the Secretary for consideration.
 - A list of those States entitled to participate in the nomination process.
 - The date, time, and location of any next scheduled meeting of the Board.
 - Nomination of members will be conducted by the Board. The Board staff will seek nominations for each vacant first handler seat from first handlers who have paid their assessments to the Board in the most recent fiscal period and are not exempt from paying assessments pursuant to § 1226.53. Nominations will be submitted to the Board office. The Board will submit the top two candidates for each position to the Secretary.
 - Nominees may provide the Board a short background statement outlining their qualifications to serve on the Board.
 - Nominees must be in compliance with the applicable provisions of this subpart.
 - The Board must submit nominations to the Secretary at least six months before the new Board term begins. The Secretary shall appoint the members of the Board.
 - No two members shall be employed by a single corporation, company, partnership, or any other legal entity.
 - The Board may modify its nomination procedures as it deems appropriate, provided such modifications are consistent with this subpart and applicable law. Substantive changes affecting eligibility or representation shall be subject to approval by the Secretary.
- ***Consumer member nominations.*** The Board shall submit to the Secretary not fewer than two (2) nominees for the consumer member position. The Secretary shall appoint one individual to serve as the consumer member of the Board.

§ 1226.42 Term of office.

- Except the initial Board, each Board member will serve a three-year term or until the Secretary selects his or her successor. Each term of office shall begin on January 1 and end on December 31. No member may serve more than two consecutive terms.

- For the initial Board, the terms of Board members shall be staggered for two, three, and four years. Determination of which of the initial members shall serve a term of two, three, or four years shall be at random. Those members serving an initial term of two, three, or four years may serve one successive three-year term.

1226.43 Vacancies.

- If any member of the Board ceases to be a first handler subject to assessment under this subpart, such position shall automatically become vacant.
- If a member of the Board consistently refuses to perform the duties of a member of the Board, neglects their duties, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office.
- Should the position of a member become vacant, successors for the unexpired terms of such member shall be appointed in the manner specified in § 1226.41, except that said nomination and replacement shall not be required if said unexpired terms are less than six months. In the event of failure to provide nominees for such vacancies, the Secretary may appoint other eligible persons.

§ 1226.44 Procedure.

- A simple majority of Board members shall constitute a quorum and any action of the Board shall require the concurring votes of a majority of those present and voting.
- All Board members will receive a minimum of 10 days advance notice of all Board and committee meetings, unless the Chairperson declares an emergency meeting.
- Each member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members present.
- The Board may appoint committees as necessary. It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present. Committees may also consist of individuals other than Board members and such individuals may vote in committee meetings. These committee members shall be appointed by the Chairperson of the Board and shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board.
- In lieu of voting at a properly convened 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 one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication, and all telephone votes shall be confirmed promptly in writing. In that event, all members and the Secretary must be notified, and all members must be provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All votes shall be recorded in Board minutes. A majority of the members must vote in favor of the action in order for it to pass.

- There shall be no voting by proxy.
- The Chairperson shall be a voting member.
- The organization of the Board and the procedures for the conducting of meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

§ 1226.45 Compensation and Reimbursement.

The members of the Board, when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

§ 1226.46 Powers and Duties.

The Board shall have the following powers and duties:

- To administer this subpart in accordance with its terms and conditions and to collect assessments.
- 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.
- To meet, organize, and select from among the first handler members of the Board a chairperson, a vice-chairperson, other officers, committees, and subcommittees, as the Board determines to be appropriate.
- To notify first handlers of all Board meetings through press releases or other means and to give the Secretary the same notice of meetings of the Board as is given to members so that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary.
- To create, from time to time, committees that may include first handlers, consumers, technical advisors, or other members of the grape or nursery industries to assist in the development of research and information programs for grapevines and propagative material.
- 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 such persons.
- To develop and submit programs, plans, and projects to the Secretary for the Secretary's approval, and enter into contracts or agreements related to such programs, plans and projects, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs, plans or projects 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:
 - The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

- 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;
 - The Secretary may audit the records of the contracting or agreeing party periodically; and
 - 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.
- To prepare and submit for approval of the Secretary a fiscal period budget in accordance with § 1226.50;
 - To borrow funds necessary for the startup expenses of the Order;
 - To invest assessments collected and other funds received pursuant to the Order and use earnings from invested assessments to pay for activities carried out pursuant to the Order;
 - To pay the cost of the activities with assessments collected under § 1226.52;
 - To recommend changes to the assessment rates as provided in § 1226.52(c);
 - To maintain such records and books 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;
 - To cause its books to be audited by an independent, competent auditor at the end of each fiscal period and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;
 - To act as intermediary between the Secretary and any first handler;
 - To furnish to the Secretary any information or records reasonably necessary for the Secretary to administer this Order;
 - To receive, investigate, and report to the Secretary complaints of violations of the Order;
 - To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and
 - To work to achieve an effective, continuous, and coordinated program of functional genomic research focused on providing solutions to the high priority needs of the grapevine and nursery industries.

§ 1226.47 Prohibited activities.

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

- Any action that would be a conflict of interest;

- 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, other than recommending to the Secretary amendments to the Order; and
- Any program, plan, or project including advertising that is false, misleading, or disparaging to another agricultural commodity.

EXPENSES AND ASSESSMENTS

§ 1226.50 Budget and Expenses

- At least 60 days prior to the beginning of each fiscal period, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal period covering its anticipated expenses and disbursements in administering this Order. Each such budget shall include:
 1. A statement of objectives and strategy for each program, plan, or project;
 2. A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);
 3. A summary of proposed expenditures for each program, plan, or project; and
 4. Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).
- Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.
- Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Minor shifts of funds which do not change the Board's approved expenditures and which are consistent with governing bylaws need not have prior approval by the Secretary.
- The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are 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.
- With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.
- The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

- The Board may also receive funds provided from other sources, with the approval of the Secretary, for authorized activities.
- The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.
- For fiscal periods beginning three (3) or more years after the date of the establishment of the Board, the Board may not expend for administration, maintenance, and functioning of the Board in any fiscal period an amount that exceeds 15 percent of the assessments and other income received by the Board for that fiscal period. Reimbursements to the Secretary required under paragraph (h) of this section are excluded from this limitation on spending.
- The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established; provided, however, that the funds in the reserve do not exceed the last two fiscal periods' budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this subpart.
- 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 part 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.

§ 1226.51 Financial statements

- The Board shall prepare and submit financial statements to the Department at least quarterly 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.
- Each financial statement shall be submitted to the Department no later than 45 calendar days after the end of the time period to which it applies.
- The Board shall submit to the Department an audited annual financial statement not later than 120 calendar days after the end of the fiscal period to which it applies.

§ 1226.52 Assessments

- The Board's programs and expenses shall be paid from assessments imposed on eligible first handlers' assessable sales, other income of the Board, and other funds available to the Board,

including those funds collected pursuant to § 1226.62 and subject to the limitations contained in § 1226.62. Each eligible first handler shall be responsible for remitting such assessments to the Board in accordance with this subpart.

- Each eligible first handler shall remit such assessments to the Board in accordance with reporting requirements established under this subpart. No assessment shall be remitted on sales attributable to a first handler who has been granted an exemption under §1226.53.
- Assessments shall be levied solely on assessable sales, as defined in § 1226.12, at a rate of 2.5 percent. The assessment rate may be reviewed and modified upon a two-thirds majority vote of the Board and approval by the Secretary. The maximum assessment rate permitted under this Order is 5 percent.
- All assessment payments and reports will be submitted to the office of the Board. All assessment payments for a fiscal period are to be received no later than March 31 of the following year. A late payment charge shall be imposed on any eligible first handler who fails to remit to the Board the total amount required to be remitted under this subpart on or before the due date established by the Board and documented on forms. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the eligible first handler was required to remit. The rate of interest shall be prescribed in regulations issued by the Secretary.
- Any eligible first handler who fails to pay assessments owed under this subpart may be subject to actions under Federal debt collection procedures.
- The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.
- Assessments paid on sales attributable to a first handler who has been granted an exemption under § 1226.53 shall be eligible for a refund. Requests for such refunds must be submitted to the Board within 90 days of the last day of the fiscal period in which the assessments were paid. No interest shall be paid on refunded assessments.

§ 1226.53 Exemptions

- ***De minimis exemption.*** An exemption from the payment of assessments under § 1226.52 shall be available for sales attributable to a first handler whose average annual assessable sales are less than \$250,000, calculated over four fiscal periods consisting of the fiscal period for which the exemption is claimed and the three immediately preceding fiscal periods. A first handler shall not be required to remit assessments on sales attributable to a first handler holding a valid certificate of exemption issued by the Board.
 - A first handler seeking to claim a de minimis exemption shall file an application for a certificate of exemption with the Board, on a form provided by the Board, for each fiscal period for which the exemption is claimed. The first handler shall certify that its average annual assessable sales of grapevines and propagative material, calculated over the applicable four fiscal periods, are less than \$250,000. The first handler shall retain a copy of the certificate of exemption.

- Upon receipt of a completed application, the Board shall determine whether the first handler qualifies for the de minimis exemption for the applicable fiscal period. The Board may require applicants for exemption to submit supporting documentation, including, but not limited to, sales records or receipts, as necessary to verify eligibility. An approved exemption shall apply beginning with the fiscal period for which the exemption is granted.
- A first handler holding a valid certificate of exemption shall not be required to remit assessments on sales for the applicable fiscal period.
- The Board may, with the approval of the Secretary, require first handlers who receive a de minimis exemption to submit reports to the Board as necessary to administer this subpart
- Any first handler who receives a certificate of de minimis exemption but whose average annual assessable sales of grapevines and propagative material equal or exceed \$250,000 over the applicable four-fiscal-period average shall no longer be eligible for the exemption and shall remit all assessments owed for the applicable fiscal period and submit any required reports to the Board in accordance with § 1226.70.
- ***Organic exemption.***
 - A first handler who domestically produces grapevines under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:
 - Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;
 - The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a first handler regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;
 - The first handler maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501-6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and
 - Any first handler so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.
 - To apply for exemption under this section, an eligible first handler shall submit a request to the Board on an Organic Exemption Request Form (Form AMS-15) at any time during the fiscal period initially, and annually thereafter on or before the start of the fiscal period, for as long as the first handler continues to be eligible for the exemption.
 - A first handler’s request for exemption shall include the following:

- The applicant's full name, company name, address, telephone and fax numbers, and email address;
 - Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;
 - Certification that the applicant produces organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;
 - A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent;
 - Certification, as evidenced by signature and date, that all information provided by the applicant is true; and
 - Such other information as may be required by the Board, with the approval of the Secretary.
- If a first handler complies with the requirements of this section, the Board will grant an assessment exemption and issue a certificate of exemption to the first handler within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.
 - The exemption will apply immediately following the issuance of the certificate of exemption.

RESEARCH AND INFORMATION

§ 1226.60 Programs, plans, and projects.

- The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects may provide for:
 - The establishment, issuance, effectuation, and administration of appropriate programs for research and information, including first handler and consumer information, with respect to grapevines and propagative material; and
 - The establishment and conduct of research with respect to tests, study, or analysis designed to advance the production, product development, pest and disease resistance, plant health, or quality of grapevines, including research relating to new product development and cultivar development and enhancement.
- No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is approved, the Board shall take appropriate steps to implement it.
- Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan, or project.

- Should patents or protected varieties result out of programs, plans, and projects, the Board shall negotiate ownership and terms of use in the best interest of the grapevine nursery industry. The Board may request, but is not limited to, a nonexclusive, irrevocable, royalty-free license to practice, use and sublicense patents or protected varieties. Ownership and terms of use shall be executed in writing.

§ 1226.61 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this section.

§ 1226.62 Copyrights, trademarks, information, publications, and product formulations.

- Copyrights, trademarks, information, publications, and product formulations developed solely by the Board under this subpart shall be the property of 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 as copyrights, trademarks, information publications, or product formulations, 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, § 1226.83 shall apply to determine disposition of all such property.
- Should copyrights, trademarks, information, publications, and product formulations be developed jointly by the Board and another organization or person, the ownership and related rights shall be determined by an agreement between the Board and other party or parties contributing funds towards the development of such property.
- The Board shall, along with any organization or person, use all reasonable efforts to make all work products created under this agreement broadly available to grapevine nurseries and grape growers in the U.S.

REPORTS, BOOKS AND RECORDS

§ 1226.70 Reports.

- Each first handler subject to this subpart shall be required to provide to the Board periodically such information as required by the Board, with the approval of the Secretary, which may include but not be limited to the following:
 - Number of grapevines and propagative material on which an assessment was paid;
 - Sold propagative material details as determined relevant by the Board;
 - Total sales dollars on the above; and
 - Name and full address.
- All reports required under this section are due to the Board by March 31 of the following year.

- This report shall accompany the payment of the collected assessments.

§ 1226.71 Books and Records.

Each first handler 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. First handlers must maintain the books and records for three years beyond the fiscal year to which they apply.

§ 1226.72 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, producers, first handlers, consumers, or advisors. Only those persons having a specific need for such information 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 on 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:

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

MISCELLANEOUS

§ 1226.80 Right of the Secretary

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

§ 1226.81 Referenda.

- ***Initial referendum.*** The Order shall not become effective unless the Order is approved by a majority of eligible first handlers represented in the referendum who, during a representative period of time, have been engaged in the production of grapevines and would be subject to assessments on grapevines and propagative materials produced in the United States and sold into commerce.
- ***Subsequent referenda.*** Every seven years, the Secretary shall conduct a referendum to determine whether eligible first handlers favor the continuation of the Order. The Order shall continue if it is favored by a majority of eligible first handlers represented in the referendum who, during a representative period of time, have been engaged in the production of

grapevines. The Secretary will also conduct a referendum at the request of the Board, or if 10 percent or more of the eligible first handlers request the Secretary to hold a referendum, or at any time as determined by the Secretary.

§ 1226.82 Suspension and Termination

- 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 persons voting in a referendum conducted pursuant to the Act.
- The Secretary shall suspend or terminate this subpart at the end of the fiscal period whenever the Secretary determines that its suspension or termination is approved or favored by a majority of eligible first handlers voting for approval who, during a representative period determined by the Secretary, have been engaged in the production of grapevines.
- If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:
 - Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and
 - As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1226.83 Proceedings Upon Termination.

- Upon the termination of this subpart, the Board shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. 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 claim existing at the time of such termination.
- The said trustees shall:
 - Continue in such capacity until discharged by the Secretary;
 - Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;
 - 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 the trustees, to such person or persons as the Secretary may direct; and
 - Upon request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such person's title and right to all funds, property, and claims vested in the Board or the trustees pursuant to the Order.

- Any person to whom funds, property, or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.
- 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 the largest existing national grape research organization in the interest of continuing grapevine research, and information programs.

§ 1226.84 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 thereof, shall not:

- 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; or
- Release or extinguish any violation of this subpart or any regulation issued thereunder; or
- 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.

§ 1226.85 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.

§ 1226.86 Separability.

If any provision of this subpart is declared invalid or the applicability thereof 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.

§ 1226.87 Amendments.

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

§ 1226.88 OMB Control Numbers.

The control number 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, is OMB control number 0581-NEW, except for the Board nominee background statement form which is assigned OMB control number 0505-0001.

Subpart B – Referendum Procedures

§ 1226.100 General.

Referenda to determine whether eligible first handlers favor the issuance, amendment, suspension, or termination of the American Grapevine Research Initiative Order shall be conducted in accordance with this subpart.

§ 1226.101 Definitions.

- **Administrator** means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employees of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.
- **Eligible first handler** means any person who, during the representative period, was subject to the Order and required to remit assessments on grapevines and propagative materials produced in the United States and sold into commerce.
- **Grapevine** means a rooted grape plant grown by producers in the United States.
- **Order** means the American Grapevine Genetics Research Initiative Order.
- **Person** means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this paragraph (f), the term "partnership" includes, but is not limited to:
 - A husband and a wife who have title to, or leasehold interest in, a grapevine nursery as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and
 - So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.
- **Propagative material** means cuttings, buds, bud sticks, or graftsticks taken from a grapevine.
- **Referendum agent or agent** means the individual or individuals designated by the Secretary to conduct the referendum.
- **Representative period** means the period designated by the Secretary.
- **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.

§ 1226.102 Voting.

- Each person who is an eligible first handler, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each first handler in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce grapevines, in which more than one of the parties is a first handler, shall be entitled to cast one ballot in the referendum covering only such first handler's share of the ownership.

- Proxy voting is not authorized, but an officer or employee of a corporate first handler or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such person. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.
- All ballots are to be cast by mail, overnight delivery, electronic mail, or facsimile, or by other means as instructed by the Secretary.

§ 1226.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions in this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

- Determine the period during which ballots may be cast.
- Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.
- Give reasonable public notice of the referendum:
 - By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and
 - By such other means the agent may deem advisable.
- Mail to eligible first handlers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.
- At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.
- Prepare a report on the referendum.
- Announce the results to the public.

§ 1226.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing the referendum agent's functions listed in this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1226.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if the agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1226.106 Referendum Report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1226.107 Confidential Information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Subpart C – Administrative Provisions

§ 1226.520 Late payment and interest charges for past due assessments.

- A late payment charge shall be imposed on any first handler who fails to make timely remittance to the Board of assessments required to be collected and remitted under this subpart. The late payment charge shall be imposed on any assessments not received within 30 calendar days of the date they are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. Notwithstanding the foregoing, the Board may waive any late payment charge if it determines, in its sole discretion, that a waiver is justified under the circumstances.
- In addition to the late payment charge, 1.5 percent per month interest on the outstanding balance, including any late payment charge and accrued interest, shall be added to any accounts for which payment has not been received by the Board within 30 calendar days after the assessments required to be remitted under this subpart are due. Such interest shall continue to accrue monthly until the outstanding balance is paid to the Board.