

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

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

RIN 0581-AE07

Natural Grass Sod Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule order and referendum.

SUMMARY: This document proposes to establish an industry-funded promotion, research, and information program for natural grass sod products. The proposed program, the Natural Grass Sod Promotion, Research, and Information Order (Order), was submitted to the U.S. Department of Agriculture (USDA) by Turfgrass Producers International (TPI), a group of natural grass sod producers. The purpose of the program would be to maintain and expand markets for natural grass sod products and the program would be financed by an assessment on domestic sod producers. This proposed Order also announces that USDA is conducting a referendum among eligible producers to determine whether they favor establishing the program. The program would be established if it is favored by a majority of industry producers voting in the referendum. A separate final rule on referendum procedures is published in this issue of the **Federal Register**. This proposed Order also announces the Agricultural Marketing Service's (AMS) intent to request approval from the Office of Management and Budget (OMB) of new information collection requirements to implement the program.

DATES: The voting period is January 13, 2025 through February 11, 2025. To be eligible to vote, current natural grass sod producers must have sold natural grass sod products in the United States during the representative period from January

1, 2024 through December 31, 2024. Anyone who believes that they are eligible to vote in the referendum must request a ballot from the Referendum Agents by emailing the contact provided in the **ADDRESSES** section below. Eligible producers must provide evidence of natural grass sod sales during the representative period. Ballots will be mailed to all known eligible natural grass sod producers on or before January 10, 2025. Ballots must be received by the Referendum Agents no later than the close of business 5 p.m. (Eastern Standard Time) on February 11, 2025.

ADDRESSES: Copies of the proposed Order may be obtained from the Referendum Agents, Research and Promotion Division; Livestock and Poultry Program, AMS, USDA; Room 2092-S, STOP 0249; 1400 Independence Avenue SW, Washington, DC 20250-0249; Telephone: (202) 302-1139; Email: Maribel.Reyna@usda.gov or can be viewed at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Maribel Reyna; Director; Research and Promotion Division; Telephone: (202) 302-1139 or Email: maribel.reyna@usda.gov.

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

As part of this rulemaking process, a proposed rule inviting comments was published in the **Federal Register** on October 16, 2023 (88 FR 71306) that provided for a 60-day comment period which ended on December 15, 2023. AMS received 174 comments, the majority of which (151), favored the establishment of a natural grass sod promotion, research, and information program. The comments are addressed later in this document.

Executive Orders 12866, 13563, and 14094

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

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

Executive Order 12988

This action has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a petition with the Secretary of Agriculture (Secretary) stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with the law and requesting a modification of the order or an exemption from the order. Any petition filed challenging the order, any provision of the order, or any obligation imposed in connection with the order, shall be filed within 2 years after the effective date of the order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 13175

This action has been reviewed under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, which requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on: (1) policies that have Tribal implications, including regulations, legislative comments, or proposed

legislation; and (2) other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

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

Background

This proposed Order is an industry effort to establish a national program with a board composed of natural grass sod producers and one public member to promote and strengthen consumer demand for natural grass. Initially, producers would pay one-tenth (1/10th) of one penny (\$0.01) per square foot of natural grass products sold in the United States, which would be calculated by multiplying the square footage, or the equivalent thereof, of natural grass products sold in the United States by \$0.001. No natural grass sod producer would be exempt from paying the assessment unless producing a certified organic product under the National Organic Program. A referendum to determine whether producers favor the Order would take place before the Order would go into effect. This proposed Order also announces AMS's intent to request approval by OMB of new information collection requirements to implement the program.

Authority in the 1996 Act

The proposed Order is authorized by the 1996 Act (7 U.S.C. 7411–7425), which authorizes USDA to establish agricultural commodity research and promotion orders that may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand existing markets and develop new markets and uses for agricultural

commodities. As defined in section 513 of the Act (7 U.S.C. 7412), the term “agricultural commodity” includes agricultural and horticultural products and “products processed or manufactured from [agricultural and horticultural products], as determined appropriate by the Secretary.” 7 U.S.C. 7412(1)(F). The Act’s definition of an agricultural commodity thus includes natural grass sod.

The 1996 Act includes provisions that authorize the Secretary to tailor programs to the specific characteristics of different commodities. Section 514 of the Act (7 U.S.C. 7413) provides USDA discretion in determining to whom an order should apply among the following: (1) producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if imports are subject to assessments). Natural grass sod producers fall within the categories of “first handlers” and “other persons in the marketing chain.”

In addition, while section 515 of the 1996 Act (7 U.S.C. 7414) directs that each order must establish an administrative board, the board may be composed of producers, first handlers and others in the marketing chain as appropriate, or importers (if imports are subject to assessments). A board may also include one or more members of the general public. Section 516 of the Act (7 U.S.C. 7415) states that an order may include different payment and reporting schedules; authority for research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; and provision for credits for generic and branded activities.

Section 518 of the 1996 Act (7 U.S.C. 7417) provides for a referendum to ascertain approval of an order to be conducted either prior to it going into effect or within 3 years after assessments first begin under the order. The Act also provides three different methods for determining approval of an order in a referendum: (1) by a majority of those persons voting, (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity, or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

Industry Overview

The 2022 USDA Census of Agriculture places the value of the U.S. natural grass sod industry at over \$2.2 billion, and natural grass sod is

produced on 1,447 farms in the United States, totaling 376,227 acres. These farms exist nationwide with documented active natural grass sod farms in no fewer than 49 States. The widespread distribution of natural grass sod farms is due in part to the diversity of natural grass species, allowing them to adapt to different climates. Grass species such as Bentgrass, Fine fescue, Tall fescue, and Kentucky bluegrass thrive in USDA plant hardiness zones 1a through 6a, while Bermudagrass, Buffalograss, Centipedegrass, Seashore Paspalum, Saint Augustinegrass, and Zoysiagrass perform well in zones 7a through 10a. There are also various species of native grasses and other adapted grasses that are gaining popularity in various regions. All these products are produced by natural grass sod farmers throughout the United States and are included in the definition of natural grass sod products in the proposed Order.

The \$2.2 billion of natural grass sod produced in 2022 by U.S. natural grass sod farms enters the market where it contributes significantly to industries that focus on sustainable growth through public and private initiatives supporting environmentally responsible investments, as well as those industries that support it. These sectors include the home lawn care, sports field, golf course, roadside, and other markets that are essential components of local economies nationwide. Seed industries, primarily in the Midwest and Pacific Northwest, supply seed for sod farms growing cool-season grasses including ryegrass, fescues, bluegrasses, and native or adapted mixtures. This industry produces over 600 million pounds of natural grass seed in Oregon alone, much of which is distributed to U.S. natural grass sod farms to produce sod that is then sold to other segments of the green industry.

In addition to contributing to rural agricultural economies, natural grass sod also contributes significantly to urban economies. In States that track sod sales data, landscape contractors in urban and suburban areas purchase between 39.2 percent and 68.2 percent of total sales, followed by sales to athletic complexes and golf courses that make up between 18.2 percent and 44.5 percent of total sales.¹ The natural grass

¹Waltz, Clint, 2018 *Sod Producers Report, Annual Survey Examines Inventory and Price*. UAC Winter Magazine, Winter 2018, at 44. See also Miller, Grady, 2018 *Sod Producers Report for North Carolina*, TurfFiles.ncsu.edu, <https://www.turfFiles.ncsu.edu/2018/04/2018-sod-producers-report-for-north-carolina/> (last visited Aug. 30, 2024); Richards, Steve. 2018 *SC Sod Producers Survey Results* (2018, Clemson University).

sod supply chain contributes to local economies through home improvement centers, lawn and landscaping services, equipment and materials purchases, and more. It is estimated that the U.S. lawn care industry alone was worth up to \$93 billion in 2018, employed more than 1 million people, and represented 513,305 businesses.²

Need for a Program

The need for a national research and promotion program is evidenced by trends that discourage consumers from using natural grass products. Natural grass sod producers in many areas of the United States are experiencing social and market trends that are increasingly impacting consumer perception and the value of natural grass. These trends minimize the value of natural grass lawns and athletic fields in urban and suburban environments and have resulted in consumers reducing the amount of grass they manage and/or replacing it with other products.

As proposed by the industry, a natural sod checkoff would help educate consumers and other stakeholders about the value that plants, including natural grass, impart on urban and suburban areas. Plants, including natural grass, are often viewed as requiring large amounts of inputs from water, fertilizer, and chemicals, with few valuable outputs. This view frequently results in an inaccurate determination that natural grasses are resource intensive. However, when accounting for new technologies such as drought-tolerant varieties, reduced mowing, and improvements in irrigation, as well as the many ecosystem services (carbon sequestration, oxygen production, groundwater recharge, filtering of pollutants, stormwater, and runoff reduction) that are provided by lawns, parks, and roadsides, a more accurate characterization is that managed landscapes, including natural grass sod, provide many benefits in urban and suburban areas.

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

recognize that simply eliminating them from the system is not a sustainable approach for urban and suburban construction.

Plastic, artificial turf is the primary competitor and most common alternative to natural grass for athletic fields on school grounds, public parks, and collegiate or professional sports venues. In home lawns and other public spaces, alternative products also include patios, decks, mulch, concrete or brick pavers, and rubberized playgrounds. Data from the 2020 Synthetic Turf Council Market Report for North America indicates that the synthetic turf industry has grown 15 percent since 2017 with a current value of \$2.7 billion. The data also predicts continued growth at a rate of 5.7 percent through 2022, with sports fields representing 63 percent of the market and rapid growth in landscape applications.³ The landscape and sports field markets represent the two largest customer segments for natural grass sod producers for those who report data. However, the growth of the artificial turf market is reducing the market for natural grass landscapes and sports fields.

TPI is the proponent group that submitted the proposed Order to USDA on June 18, 2021, requesting the establishment of a natural grass sod research and promotion program. Since at least 2013, U.S. natural grass sod producers have been considering the implementation of a natural grass sod research and promotion program. Although State and local sod associations have explored the option of establishing voluntary research and promotion programs in previous years, they were deemed impractical and unsustainable without the administration and enforcement provided by AMS through the authority provided in the 1996 Act. In 2017, TPI, a trade association representing natural grass sod farmers, equipment manufacturers, seed producers, and other industry participants with members located in almost every U.S. State and over 30 countries, formally investigated AMS's research and promotion programs. From 2017 to 2019, TPI spoke with representatives at trade associations with aligned interests, AMS, a public policy consultant, and legal counsel to determine if a research and promotion program for the U.S. natural grass sod industry was feasible. After much deliberation and interest

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

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

This drafting committee has finalized the proposed Order contained herein for submission to AMS. The proposed Order contains all the relevant information on a natural grass sod research and promotion program, including the proposed assessment rate that was determined through an analysis of U.S. natural grass sod production farm and acreage data from the 2017 USDA–NASS Census of Agriculture along with internal data from TPI. A wide range of farm sizes, annual acres harvested, and assessment rates were assembled for analysis to determine an assessment rate that would (1) be amenable to sod producers; (2) not be overly burdensome; and (3) result in enough funds to carry out activities that would have an impact on the market. The formation committee of 14 members of different farm sizes, regions, and products all agreed that the proposed assessment rate met each of those conditions.

Specific Provisions

The proposed Order is authorized under the 1996 Act, which authorizes USDA to establish agricultural commodity research and promotion orders and is consistent with existing orders for other commodities. The

² National Association of Landscape Professionals (NALP), *Landscape Industry Statistics*, [Landscapeprofessionals.org](https://www.landscapeprofessionals.org), <https://www.landscapeprofessionals.org/LP/News/LP/Media/landscape-industry-statistics.aspx> (last visited Aug. 30, 2024).

³ Synthetic Turf Council, *2020 Synthetic Turf Market Report for North America*, <https://www.syntheticturf.org/news/512350/Synthetic-Turf-Council-STC-Releases-2020-Synthetic-Turf-Market-Report-for-North-America.htm> (last visited Aug. 30, 2024).

⁴ Turfgrass Producers International, *Industry Analysis and Justification for Natural Grass Sod Promotion, Research, and Information Order*, <https://www.ams.usda.gov/sites/default/files/media/SodIndustryAnalysisandJustificationDraft.pdf> (last visited Aug. 30, 2024).

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

This proposed Order includes revisions to the regulatory text of the proposed rule published on October 16, 2023 (88 FR 71302). These revisions were made to improve organization and clarity only. In addition, § 1240.48 was added to address the exemption from assessment for sales of organic sod products. Since the regulatory text proposed herein contains the complete proposed Order, this section will highlight key proposed provisions.

Definitions

Pursuant to section 513 of the 1996 Act (7 U.S.C. 7412), § 1240.20 of the

proposed Order would define certain terms that would be used throughout the Order. Several of the terms are common to all research and promotion programs authorized under the Act while other terms are specific to the proposed natural grass sod Order.

Proposed § 1240.20 would define the term “Act” to mean the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

The term “natural grass” would be defined as a plant species in the Poaceae family or living plants in other taxa serving a similar purpose, as often found in sites such as lawns, sports fields, golf courses, parks, cemeteries, roadsides, and others.

The term “natural grass sod producer” would be defined as any person who produces natural grass sod products in the United States.

The term “natural grass sod product” would refer to natural grass produced for retail, wholesale, or commercial sale, including monostands or blends or mixtures of Bentgrass, Bermudagrass, Buffalograss, Centipedegrass, Fine fescue, Kentucky bluegrass, Ryegrass, Seashore Paspalum, Saint 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 the proposed Order, the term “natural grass sod product” would exclude all artificial and synthetic turf or grass products, natural grass seed, sprigs, and plugs.

Establishment of the Board

Pursuant to section 515 of the 1996 Act (7 U.S.C. 7414), §§ 1240.30 through

1240.39 of the proposed Order would detail the establishment and membership of the proposed Natural Grass Sod Promotion, Research, and Information Board (Board), nominations and appointments, the term of office, removal and vacancies, procedures, reimbursement and attendance, powers and duties, and prohibited activities.

Section 1240.30(b) specifies that the Board would be composed of 11 members. Three members would represent the North/Cool-Season Region, four would represent the South/Warm-Season Region, three would represent the Transition Zone/California Region, and one would be a public member. See Table 1 below for a list of States in each region. The total number of Board members could not be changed without rulemaking. The apportionment of Board members among the regions would be intended to reflect the geographical distribution of the production of natural grass sod products in the United States, as well as the relative percentage of assessments paid by natural grass sod producers into the research and promotion program. Table 1 summarizes the geographical distribution of natural grass sod farms, acres of natural grass sod produced, and sales. At least once every 5 years but no more frequently than once every 3 years, the Board would review the geographical distribution of the production of natural grass sod products in the United States. Any changes in Board composition implemented by the Secretary would be made through rulemaking. All Board members would be appointed by the Secretary from nominations as set forth in proposed § 1240.31.

TABLE 1—FARMS, ACRES AND SALES BY PROPOSED REGIONS⁵

Region	Number of members	States	Farms	Acres	Sales ⁶
North/Cool Season	3	AK, CO, CT, DE, ID, IL, IN, IA, ME, MA, MI, MN, MT, NE, NH, NJ, NY, ND, OH, OR, PA, RI, SD, UT, VT, WA, WI, WY.	454	78,076	\$447,031,503
South/Warm Season ..	4	AL, AZ, FL, GA, HI, LA, MS, NM, SC, TX, U.S. Territories.	579	192,722	1,067,649,331
Transition Zone/California.	3	AR, CA, DC, KS, KY, MD, MO, NC, NV, OK, TN, VA, WV.	414	102,101	676,343,293

Any natural grass sod producer who does not owe outstanding assessments

⁵ See 2022 Census of Agriculture, USDA National Agricultural Statistics Service https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1_Chapter_2_US_State_Level/st99_2_034_034.pdf (last visited Aug.30, 2024).

⁶ Sales are counted in the place where the natural grass sod product was produced.

may seek nomination for any vacant position in the region they produce and sell natural grass sod products. Nominees that produce and sell in multiple regions may seek nomination in one region of their choice. To seek nomination to the Board, an interested natural grass sod producer would

provide the Board a short background statement outlining their qualifications. Any public member interested in seeking nomination would also provide the Board a short background statement outlining their qualifications.

Section 1240.32 of the proposed Order would specify the nominee’s agreement to serve. Natural grass sod

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

Section 1240.33 of the proposed Order would specify the terms of office of Board members. Except for the initial Board, each Board member would serve for 3 years or until the Secretary selects his or her successor. The initial Board member terms would be staggered at 1, 2, and 3 years. Each region would initially have one member who serves a 2-year term and two members who serve 3-year terms. Additionally, the South/Warm-Season Region would initially have one member who serves a 1-year term. The public member initial term would be a 3-year term. The Secretary would determine which of the initial members would serve a term of 1, 2, or 3 years. Generally, a member could not serve more than two consecutive terms. However, members who serve on the initial Board for 1 or 2 years and members who serve the remainder of a term could serve two additional, consecutive 3-year terms.

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

Section 1240.36 of the proposed Order would specify procedures of the Board. A majority of the total number of Board members would constitute a quorum at any meeting of the Board. Each voting member of the Board would be entitled to one vote on any matter put to the Board and the motion would carry if supported by a majority (50

percent plus one vote) of Board members. However, recommendations to change the assessment rate, adopt a budget, or call for a referendum would require affirmation by two-thirds ($\frac{2}{3}$) of the Board members. When, in the opinion of the chairperson of the Board, such action is considered necessary, the members could vote by internet service, videoconference, teleconference, or any other means of communication. Actions taken under these procedures would be valid only if all members were notified of the meeting and all members were provided the opportunity to vote. Proxy voting would not be permitted. All votes would be recorded in Board minutes. The procedures for conducting Board meetings would be established by the Board and approved by the Secretary.

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

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

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

Section 1240.39 of the proposed Order specify prohibited activities that are common to all promotion programs authorized under the 1996 Act. Under this provision, Board members and employees could not engage in any actions that would be a conflict of interest; use funds collected by the Board to lobby (influencing any legislation or governmental action or policy by local, State, national, and foreign governments, or subdivisions thereof, other than recommending to the Secretary amendments to the Order); or engage in any advertising, including promotion, research, or information activities authorized to be carried out under the Order, that may be false, misleading, or disparaging to another agricultural commodity.

Expenses and Assessments

Pursuant to sections 515, 516, and 517 of the 1996 Act (7 U.S.C. 7414, 7415, and 7416), §§ 1240.45 through 1240.48 of the proposed Order detail requirements regarding the Board's budget and expenses, financial statements, assessments, and the exemption from assessment for sales of organic sod products. At least 60 calendar days before the start of the fiscal period, and as necessary during the year, the Board would submit a budget to the Secretary detailing its projected expenses. The budget would include a list of objectives and strategies, a summary of anticipated revenue, and expenses for each program along with a breakdown of staff and administrative expenses. Except for the initial budget, the Board's budgets would include comparative data for at least one preceding fiscal period. Each budget would provide for adequate funds to cover the Board's anticipated expenses. Any amendment or addition

to an approved budget would have to be approved by the Secretary, except that shifts of funds from one program, plan, or project to another that do not result in an increase in the Board's approved budget and are consistent with its bylaws need not have prior approval by the Secretary. The Board would reimburse the Secretary for all expenses incurred in the implementation, administration, enforcement, and supervision of the Order, including all referendum costs in connection with the Order.

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

Beginning 3 years after establishment of the Board, the Board would be limited to spending no more than 15 percent of its available funds for administration, maintenance, and functioning of the Board. Reimbursements to USDA would not be considered administrative costs. As an example, if the Board received \$2 million in assessments during a fiscal period, and had available \$500,000 in reserve funds, the Board's available funds would be \$2,500,000. In this scenario, the Board would be limited to spending no more than \$375,000 ($0.15 \times \2.5 million) on administrative costs. The 15 percent spending limit is consistent with section 515 of the 1996 Act (7 U.S.C. 7414).

The Board could establish an operating monetary reserve and carry over excess funds from one fiscal period to the next, provided the funds did not exceed two fiscal years' budgeted expenses. For example, if the Board's budgeted expenses for a fiscal period were \$2 million, it could carry over no more than \$4 million in reserve.

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

Section 1240.47 of the proposed Order would specify the assessments.

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

Twenty-four months after the Order becomes effective and periodically thereafter, the Board would review the assessment rate and, if approved by a vote of at least two-thirds ($\frac{2}{3}$) of the Board, submit a recommendation for a change in the assessment rate to the Secretary. The assessment rate could 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 voting in a referendum.

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

Based on 2017 USDA NASS production acreage, TPI estimates assessments would be valued at approximately \$14.9 million annually. Assessments would be collected from approximately 1,447 natural grass sod producers.

In addition, proposed § 1240.48, which was added in this version of the proposed rule, would allow individuals and entities producing certified organic natural grass sod, according to 7 CFR part 205, to be exempt from paying assessments on sales of organic sod. Organic producers would apply to the Board annually for a certificate of exemption using a form provided by the Board. If a producer sells organic sod and non-organic sod, then that producer

would be exempt from paying assessments only on its sales of organic sod. The producer would still be required to pay assessments on its sales of non-organic sod.

Pursuant to section 517(f) of the 1996 Act (7 U.S.C. 7416(f)) and § 1240.45(j) of the proposed Order, the Board would be permitted to invest assessments collected under the Order in the following: (1) obligations of the United States or any agency of the United States; (2) general obligations of any State or any political subdivision of a State; (3) interest-bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System; and (4) obligations fully guaranteed as to principal and interest by the United States.

The proposed program would be funded by the industry through assessments paid by natural grass sod producers, as defined in the proposed Order. Based on the proposed assessment rate and an analysis of industry statistics provided by USDA and maintained by TPI, publicly available farm statistics, and TPI data, it is estimated that the program would collect approximately \$14,900,000 annually in assessments, which would be used to conduct research, marketing, and promotion programs that would benefit the entire industry. The benefits of the program are expected to outweigh its costs. Evaluations of similar research and promotion programs by independent economists, required to be conducted every 5 years, have shown positive financial benefits with benefit-cost ratios in the range of \$2.14 to \$17.40 for every dollar invested in the programs.⁷ After reviewing and considering all relevant information, AMS has determined that the assessments proposed to be collected from natural grass sod producers would be relatively small in comparison to their revenue.

Unlike voluntary programs, in which the universe of assessment payers does not always include all the industry participants who would likely benefit from generic research and promotion activities, all natural grass sod producers would be required to contribute assessments under the proposed research and promotion program. Therefore, the proposed program would be best positioned to have the greatest industry impact with

⁷ See U.S. Gov't Accountability Office, GAO-18-54, AGRICULTURAL PROMOTION PROGRAMS: USDA Could Build on Existing Efforts to Further Strengthen Its Oversight (2017), <https://www.gao.gov/assets/690/688519.pdf> (last visited Aug. 30, 2024).

the broadest level of industry support by eliminating free riders. A free rider is an entity who benefits from a service without having to pay for it. The research and promotion program would be able to combine assessment funds from natural grass sod producers and have a broad impact on the industry by developing new markets, strengthening existing markets, conducting important consumer and scientific research, and promoting industry initiatives and activities.

Promotion, Research, and Information

Pursuant to section 516 of the 1996 Act (7 U.S.C. 7415), §§ 1240.50 through 1240.52 of the proposed Order would describe the promotion, research, and information projects authorized by the Order. The Board would develop and submit to the Secretary for approval programs, plans, or projects that would provide promotion, research, and information to support natural grass sod products, including consumer and industry information and advertising. The Board could implement a program or project only upon approval by the Secretary. The Board would evaluate each program to ensure it contributes to an effective promotion program and complies with the Act and Order.

At least once every 5 years, the Board would fund an independent evaluation to determine the effectiveness of the Order and programs pursuant to the 1996 Act. The findings of the evaluation would be made available to the Secretary and the general public. Finally, the proposed Order would specify that any patents, copyrights, trademarks, inventions, product formulations, and publications developed with funds received by the Board would be the property of the U.S. Government, as represented by the Board. These, along with any rents, royalties, and the like from their use would be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and could be licensed with approval of the Secretary.

Report, Books, and Records

Pursuant to section 515 of the 1996 Act (7 U.S.C. 7414), §§ 1240.60 through 1240.62 of the proposed Order would specify the reporting and recordkeeping requirements under the proposed Order as well as requirements regarding confidentiality of information. Each natural grass sod producer would be required to submit an assessment remittance form and assessments to the Board on a quarterly basis. The information required in the form would include, but not be limited to, the name

and contact information of the natural grass sod producer, the quantity of natural grass sod products sold, and the natural grass sod producer's identification numbers, as applicable. Records would be made available to the Board or USDA during normal business hours and retained for at least 3 years past the fiscal year.

The proposed Order would also require that all information obtained from persons subject to the Order as a result of the proposed recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of the Board and AMS. Pursuant to the 1996 Act, such information could be disclosed only if the Secretary considered it relevant, and the information were revealed in a judicial proceeding or administrative hearing brought at the direction or at the request of the Secretary or to which the Secretary or any officer of USDA was a party. Other exceptions for disclosure of confidential information would allow the issuance of general statements based on reports or information relating to a number of persons subject to the proposed Order, if the statements did not identify the information furnished by any person; or the publication, by direction of the Secretary, of the name of any person violating the Order and a statement of the particular provisions of the Order violated.

Regulatory Flexibility Act

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

The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The affected industry falls under the North American Industry Classification System (NAICS) code: 111421—Nursery and Tree Production. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers in this industry as those having annual receipts of no more than \$3,250,000.

Need for a Program

TPI, which represents natural grass sod farmers, equipment manufacturers, seed producers, and other industry participants, is the proponent group that submitted the proposed Order to USDA on June 18, 2021, requesting the establishment of a natural grass sod promotion, research, and information

program. In 2017, TPI began to explore the creation of a promotion and research program. TPI worked with natural grass sod producers and other industry organizations to gauge interest in the development of such a program. In 2020, a drafting committee was formed to develop a draft Order. The drafting committee comprised fourteen natural grass sod producers representing a wide variety of natural grass sod farms. The producers represented a range of farm sizes, years in business, and familiarity with other research and promotion programs. The drafting committee's proposed Order was part of the submission by TPI to USDA for consideration of a program. The proposed Order submitted by TPI is intended to educate the public on the value of natural grass products, market and promote the benefits of natural grass on a national scale, provide U.S. sod farmers with marketing tools, and provide information to organizations for use in the development of model codes and standards for building codes.

The synthetic turf industry is estimated to have a current value of \$2.7 billion. The market has grown 15 percent since 2017 and has continued to grow at a rate of 5.7 percent through 2022, with sports fields representing 63 percent of the market and rapid growth in landscape applications.⁸ The rise in synthetic turf numbers comes from social and market trends that have driven consumer perception of natural grass lawns and athletic fields in urban and suburban environments. These trends have caused consumers to misunderstand the value of natural grass lawns and athletic fields in urban and suburban environments. This has caused consumers to reduce the amount of grass they manage and/or replace it with other products like plastic, artificial turf, patios, decks, mulch, concrete, brick pavers, and rubberized playgrounds. These misconceptions have had a significant impact on natural grass sod producers in many areas of the United States.

Objectives of the Action

As noted in the preamble above, the program would conduct research, marketing, and promotion activities that would benefit the entire industry. Primary goals of the program include educating consumers and stakeholders of the benefits of natural grass and providing producers with marketing

⁸ Synthetic Turf Council, *2020 Synthetic Turf Market Report for North America*, <https://www.syntheticurf.org/news/512350/Synthetic-Turf-Council-STC-Releases-2020-Synthetic-Turf-Market-Report-for-North-America.htm> (last visited Aug. 30, 2024).

tools they can use to grow their business. The purpose of the program would be to strengthen the position of natural grass sod in the marketplace, maintain and expand markets for natural grass sod, and develop new uses for natural grass sod.

Legal Basis for the Proposed Rule

The proposed Order is authorized by the 1996 Act, which provides that USDA may establish research and promotion programs for agricultural commodities. Under section 513 of the Act (7 U.S.C. 7412), “agricultural commodities” are defined to include agricultural and horticultural products as well as “products processed or manufactured from [agricultural and horticultural products], as determined appropriate by the Secretary.” The Act also includes provisions that authorize the Secretary to tailor programs to the specific characteristics of each different commodity, including section 514 of the Act (7 U.S.C. 7413), which provides USDA discretion in determining to whom an order should apply among the following: “(A) the producers of an agricultural commodity; (B) the first handlers of the agricultural commodity and other persons in the marketing chain as appropriate; and (C) the importers of the agricultural commodity, if imports of the agricultural commodity are subject to assessment.”

Natural grass sod products fall within the 1996 Act’s definition of an agricultural commodity and natural grass sod producers, as defined in the proposed Order, fall within the categories of “first handlers” and “other persons in the marketing chain.” The proposed Order would establish a program of promotion, research, and information to promote consumer demand for natural grass sod products and strengthen the position of the natural grass sod industry in the marketplace, is consistent with the congressional intent of the Act to maintain and expand existing markets as well as develop new markets and uses for agricultural commodities. As such, USDA is authorized to establish the proposed Natural Grass Sod Promotion, Research, and Information Order upon its approval as specified under the Act.

As part of the approval process set forth in the 1996 Act, the industry must

formulate an Order and submit it to USDA for review and final approval. Implementation of the Order, like all rulemaking, is subject to public notice and comment, and is subject to ongoing referenda where participants are given the opportunity to vote to determine whether the program would continue to operate. If approved by USDA and through the ongoing referenda, the proposed Order would become a regulation codified in the U.S. Code of Federal Regulations and would carry the force of law.

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

Alternatives to the Proposed Rule

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

Although there has been sporadic success attempting to fund efforts at the local level with pooled resources of producers and/or associations, voluntary research and promotion efforts at the national level have historically been marginally successful due to the lack of funds available to undertake larger programs. There are several entities that fund natural grass research and promotion efforts at State and regional levels, but none have the capacity to fund these efforts on a large scale. For instance, many States sod associations fund research and promotion at levels under \$10,000 annually. TPI funds research and promotion through its foundation, The Lawn Institute, at up to \$50,000 to \$100,000 annually. However, these types of funds are raised through voluntary contributions and fundraising efforts such as auctions, raffles, activities, etc., and, while they have impacted natural grass research and promotion on a small scale, none of these efforts can achieve what is proposed through a natural grass sod checkoff. A natural grass sod checkoff would not only be able to raise significant funds for these efforts, but the checkoff could also respond to changing needs in research and promotion. Through the collection of an

assessment on all natural grass sod products sold in the United States, the proposed research and promotion program would leverage pooled assessment funds on a national scale and would have a more consistent and wider industry impact.

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

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

Impact on Small Businesses

The SBA defines, in 13 CFR part 121, small agricultural producers for industries classified as falling under NAICS 111421 (Nursery and Tree Production) as those having annual receipts of no more than \$3,250,000. According to data from the 2022 USDA Census of Agriculture, 1,447 firms—nearly 80 percent of producers—would be classified as small agricultural producers based on the value of sales per farm. Table 2 compares the average value of sales per farm to the proposed average assessment per farm for each category. Since the assessment would be calculated based on the volume of a producer’s sales, the proportionate burden of the assessment would be the same across the industry, regardless of firm size. On a farm basis, small natural grass sod producers would pay between \$205 and \$13,138 in assessments annually per firm, while large natural grass sod producers would pay between \$23,176 and \$66,387 annually.

TABLE 2⁹—NUMBER OF FARMS, ACRES, AVERAGE VALUE OF SALES, AND AVERAGE PROPOSED ASSESSMENT PER FARM

NAICS Code 111421	(2022 dollars)			
	Farms	Acres	Avg. value of sales per farm	Avg. annual assessment per farm
Total Industry	1,447	376,227	\$1,534,184	\$11,326
Small Firms (<\$3,250,000)	1,150	113,030	587,719	4,283
Large Firms (≥\$3,250,000)	297	263,167	5,198,948	38,598

The proposed assessment rate of 1/10th of one penny per square foot of natural grass products sold in the United States was decided upon by the industry in part because it was determined that rate would not create any undue burdens to sod farms of any size, including small businesses. Data from the National Quarterly Sod Report, 2023–24 Winter Quarter,¹⁰ indicate a range of natural grass sod prices across the United States from \$0.14 to \$0.81 per square foot. Thus, the proposed assessment rate would result in additional costs to sod producers of between 0.71 percent and 0.12 percent. Furthermore, when evaluating the prices based on weighted averages instead of ranges, the additional costs incurred would be between 0.38 percent and 0.13 percent.

This level of assessment should have minimal impact on sod farms of any size, large or small, and this consideration is one of the reasons the drafting committee supported the proposed rate. For instance, a sod farm that is considered a small business may harvest as little as 10 acres annually. At the proposed assessment rate and using pricing data from the National Sod Report, the annual contribution of that farm to the research and promotion program would be \$436 per year, while generating sales revenue between \$60,984 and \$352,836.

Required Reporting and Recordkeeping

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

The primary reporting requirement under the proposed Order is the

requirement that producers submit quarterly remittance forms. It is estimated that it would take approximately 2 hours annually, or 30 minutes every quarter, to complete and submit the remittance form to the Board. This is estimated to cost each natural grass sod producer \$112.36 per year. For the purpose of estimating the cost of reporting and recordkeeping, this proposed rule uses \$56.18 per hour. To arrive at this amount, AMS used the mean hourly earnings of farmers, ranchers, and other agricultural managers from the U.S. Department of Labor, Bureau of Labor Statistics, May 2023 National Occupational Employment and Wages Estimates,¹¹ that is, \$43.35 and added an additional 29.6 percent to account for benefits and compensation.¹² This calculation results in a total hourly wage of \$56.18. Costs of benefits and compensation guidance was obtained from the Bureau of Labor Statistics News Release issued March 13, 2023.¹³ For additional discussion of the costs of the reporting and recordkeeping requirements under the proposed Order, please see the Paperwork Reduction Act section below.

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

Regarding outreach efforts, USDA would keep natural grass sod producers informed throughout the program implementation and referendum processes to ensure that they are aware

of and are able to participate in those processes. USDA would also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Paperwork Reduction Act

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

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

OMB Number: 0581–0349.

Expiration Date of Approval: 3 years from approval date.

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

Abstract: The information collection requirements are essential to carry out the intent of the 1996 Act. The information collection pertains to a proposal submitted by TPI for the development of a national research and promotion program for natural grass sod. The program would be administered by a board of producer members (and one public member) appointed by the Secretary. The program would be financed by an assessment on natural grass sod products sold by natural grass sod producers. The program would provide an exemption from assessment for any organic natural grass products sold under the National Organic Program (7 CFR part 205). The purpose of the proposed program is to help build the market for natural grass sod products.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the proposed Order, and their use is necessary to fulfill the intent of the 1996 Act.

The information collection requirements under the program address Board nominations, collection of assessments and reports, and the organic exemption. For Board nominations, natural grass sod producers and the public member would need to complete the

⁹ USDA, 2022 USDA NASS Census, https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1_Chapter_1_US/st99_1_039_039.pdf (last visited Aug. 30, 2024).

¹⁰ USDA, Agricultural Marketing Service, Livestock, Poultry, and Grain Market News, https://www.ams.usda.gov/mnreports/ams_2930.pdf (last visited Aug. 30, 2024).

¹¹ U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages, May 2023; 11–9013 Farmers, Ranchers, and Other Agricultural Managers, <https://www.bls.gov/oes/current/oes119013.htm> (last visited Aug. 30, 2024).

¹² U.S. Department of Labor, Bureau of Labor Statistics, News Release, Employer Costs for Employee Compensation—December 2023, <https://www.bls.gov/news.release/pdf/eccec.pdf> (last visited Aug. 30, 2024).

¹³ U.S. Department of Labor, Bureau of Labor Statistics, Economic News Release: Employer Costs for Employee Compensation Summary for December 2023, <https://www.bls.gov/news.release/pdf/eccec.pdf> (last visited Aug. 30, 2024).

“Nomination for Appointment” form to identify nominees for appointment as members of the Board. Nominees would also need to complete a “Nominee’s Agreement to Serve” form to disclose any relationship that could create a conflict of interest while serving on the Board. And the Background Information Form, AD-755 ensures the individual is qualified to serve on the Board. Assessments and reports would be collected using the “Quarterly Report and Remittance of Amount Due” form. In addition, producers of organic sod would need to complete the “Organic Exemption Request” form to obtain an exemption from assessment for any organic natural grass sod products sold under the National Organic Program.

For the purpose of estimating the cost of reporting and recordkeeping, this proposed rule uses \$56.18 per hour. To arrive at this amount, AMS used the mean hourly earnings of farmers, ranchers, and other agricultural managers from the U.S. Department of Labor, Bureau of Labor Statistics, May 2023 National Occupational Employment and Wages Estimates,¹⁴ that is, \$43.35 and added an additional 29.6 percent to account for benefits and compensation.¹⁵ This calculation results in total hourly earnings of \$56.18, which was used to calculate annual costs.

Information collection requirements included in this proposal are:

(1) LP-7 Application for Self-Certification of Nominating Organizations (OMB Form No. 0581-0349)

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

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

Estimated Number of Respondents: 25.

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

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

Total Cost: (2.50 hours × \$56.18) \$140.45.

(2) LP-4 Nomination for Appointment to the Board (OMB Form No. 0581-0349)

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

Respondents: Natural grass sod producers.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: One per year.

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

Total Cost: (10 hours × \$56.18) \$561.80.

(3) LP-6 Quarterly Report and Remittance of Amount Due for Assessment (OMB Form No. 0581-0349)

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

Respondents: Natural grass sod producers.

Estimated Number of Respondents: 1,447.

Estimated Number of Responses per Respondent: Four per year.

Estimated Total Annual Burden on Respondents: (1,447 Number of respondents × 4 total number of reports × 0.50 hour per report) 2,894 hours.

Total Cost: (2,894 hours × \$56.18) \$162,585.

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

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

Respondents: Natural grass sod producers.

Estimated Number of Respondents: 10.

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

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

Total Cost: (2.50 hours × \$56.18) \$140.45.

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

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

Respondents: Natural grass sod producer nominees and public member nominees.

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

Estimated Number of Responses per Respondent: 1.

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

Total Cost: (Number of respondents × responses per respondent × \$56.18) \$561.80 initial, and \$393.26 annually thereafter.

(6) Requirement To Maintain Records Sufficient To Verify Reports Submitted Under the Order

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

Recordkeepers: Natural grass sod producers.

Estimated Number of Recordkeepers: 1,447.

Estimated Total Recordkeeping Hours: (1,447 Number of recordkeepers × 2 hours) 2,894 hours.

Total Cost: (1,447 Number of recordkeepers × 2 hours per recordkeeper × \$56.18) \$162,585.

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

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

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the 1996 Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The

¹⁴ U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages, May 2023; 11-9013 Farmers, Ranchers, and Other Agricultural Managers, https://www.bls.gov/oes/current/oes_nat.htm (last visited Aug. 30, 2024).

¹⁵ News Release for Employer Costs for Employee Compensation—June 2024, <https://www.bls.gov/news.release/pdf/ceec.pdf> (last visited Aug. 30, 2024).

forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information quarterly would coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. The requirement to keep records for 3 years is consistent with normal industry practices. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual domestic producers who are subject to the provisions of the 1996 Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

Comment Analysis

A proposed rule for the Natural Grass Sod Promotion, Research, and Information Order was published in the **Federal Register** on October 16, 2023 (88 FR 71306). A notice to trade was announced by AMS and the proposed rule provided a 60-day comment period ending December 15, 2023. A total of 174 comments were received. Of those, 151 comments supported the proposed Order as written, and seven comments supported the proposed Order but suggested some edits. Eight commenters opposed the proposed Order and did not believe there was a need to establish a research, promotion, and education checkoff program. Two comments did not support the proposed Order and provided additional recommendations. Six comments neither supported nor opposed the proposed Order.

Comments in Full Support

The 151 comments that fully supported the proposed Order as written explained that the proposed checkoff program would be vital in funding research to improve the sod varieties that currently exist as well as educating consumers on the benefits of natural grass sod. Other comments agreed, the program could help create a united voice that is representative of their diverse industry members. And some comments held that with the collected funding, the industry could develop educational resources to differentiate natural grass sod from synthetic turf as well as identify environmentally friendly management practices.

Comments in Support, With Modifications

Seven commenters supported the proposed Order but suggested modifications. Of the seven, five commenters expressed concerns about the amount of funds that could potentially be returned to States under proposed § 1240.38(f). The commenters explained that a 50 percent maximum rate of return to States seemed excessive. Three of the five commenters suggested a lower maximum rate of return such as 25 percent, while the other two commenters suggested the maximum rate of return should not exceed 30 percent.

Section 1240.38(f) of the proposed Order describes permitted allocations of assessment funds to States. Specifically, this section provides the Board with the ability to allocate “up to” 50 percent of assessments collected on the sale of natural grass sod products in a State or group of States to programs proposed by a qualified organization that represents the State or group of States. The drafters of this provision included natural grass sod producers from throughout the United States. They determined that a 50 percent maximum rate of return for State programs is appropriate because of the significant variations in regional and local markets for sod, and the consequent need for the Order to be flexible enough to offer programs tailored to address those variations in different parts of the country. Therefore, we believe that proposed § 1240.38(f) provides for a reasonable allocation to State programs while maintaining a sufficient level of funding for national programs. Accordingly, these suggestions are not adopted.

Two comments expressed support for the proposed Order but provided further recommendations on referendum voting procedures and Board representation. One commentator objected to the proposed Order’s allocation of one vote to each producer and suggested that votes should be weighted according to the percentage of total assessments the producer would pay under the program. The commentator also suggested that Board seats should be proportionate in representation to what producers would pay into the program. Another commentator suggested that the program should be implemented only if 60 percent of producers voting in the referendum, rather than a simple majority, favor the proposed Order.

The 1996 Act authorizes the Secretary to conduct an initial referendum among persons to be subject to an assessment to determine whether they favor issuance of a proposed order.

Additionally, the Act provides that approval of a proposed order may be determined in a referendum (1) by a majority of those persons voting, (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity, or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. TPI conducted outreach sessions to gather early industry approval and determined that the one-producer one-vote method was the most agreed upon approach by the industry. The commenters suggesting an alternative method for assigning votes did not provide data or information to suggest otherwise.

Additionally, consistent with section 515(b)(2)(D) of the 1996 Act (7 U.S.C. 7414(b)(2)(D)), the composition of the Board is based on the geographical distribution of the quantity of natural grass sod products produced (and sold) in the United States. Furthermore, the proposed Order requires a review of the geographical distribution of the production of sod at least every five years and, if warranted, a reapportionment of Board membership to reflect changes in the geographical distribution of the production of sod. These procedures are mandated by the statute to ensure fair and equitable representation of the natural grass sod industry on the Board.

Comments Opposed

Seven comments received were opposed to the proposed program for various reasons.

Some commenters stated that the program would be redundant because the industry already has associations that perform similar roles. To be sure, there are currently voluntary programs dedicated to the promotion and research of natural grass sod products that have achieved impactful results. However, a nationally established research and promotion program would have the capacity to fund existing efforts on a larger scale. For instance, many States sod associations fund research and promotion at levels under \$10,000 annually. TPI funds research and promotion through its foundation, The Lawn Institute, at up to \$50,000 to \$100,000 annually.

However, these types of funds are raised through voluntary contributions and fundraising efforts such as auctions, raffles, activities, etc., and, while they have successfully been able to impact natural grass research and promotion on a small scale, none of these efforts can achieve the potential \$14.9 million of funding that would come through a

natural grass sod checkoff. A natural grass sod checkoff would not only be able to raise significant funds for these efforts, but the checkoff could also respond to changing needs in research and promotion. The proposed natural grass sod checkoff board, like other checkoff boards, would have the flexibility to modify how assessment funds are administered to various research and promotion projects. At the direction of the industry and with USDA approval, they would also be able to modify the program as needed within the guidelines of the Act and the oversight of USDA-AMS. Additionally, an industry-wide vote will be conducted to determine whether the industry is in favor of the program. Accordingly, these suggestions are not adopted.

Other commentors stated that the program would discriminate between the cool season grass states and the warm season grass states due to the frequency of harvest of the warmer states versus the cooler states and the varying size of production between the warmer and cooler states. There is some merit to this position. Generally, warm-season grasses can be laid year-round since they are typically planted in warm regions with few winter freezes, while cool-season grass sod is typically planted only in the fall season. Thus, there is a possibility that warm-season grass sod producers could pay into the checkoff more often if they choose to harvest their sod year-round or longer than the typical season for cool-season grass sod producers.

However, commodity checkoff programs have been established to “operate as ‘self-help’ mechanisms for producers and processors to fund generic promotions,”¹⁶ which allow producers to enjoy the benefit associated with pooling their money together to create economies of scale in their promotional efforts.¹⁷ The aim of the checkoff is that everyone benefits equally and proportionally, no matter their individual contributions. Accordingly, these suggestions are not adopted.

Comments Opposed, With Further Recommendations

Two commentors opposed the proposed Order but also offered recommendations for USDA consideration. Both commentors suggested that the referendum is being conducted prematurely given that the last time the industry provided educational sessions on the proposed Order was in May 2020.

TPI conducted extensive industry engagement, providing educational outreach to local organizations and individual producers, and soliciting input on interest in a national checkoff program, and determined that there was substantial interest in moving forward with a national program. Additionally, the industry hosted a webinar to get feedback from natural grass sod producers regarding their interest in developing a national grass sod checkoff program. On May 19, 2020, U.S. sod producers participated in a 2-hour online seminar to learn more about USDA research and promotion programs. After this webinar, attendees were polled to determine their interest in developing a national checkoff program for the natural grass sod industry and 64 percent stated they were very interested, 20 percent stated they were interested, 13 percent stated they were interested in learning more, and only 3 percent stated they were not interested. Since the industry formally submitted its proposed Order on June 18, 2021, USDA has been conducting various required steps to offer a new research and promotion program for industry consideration. These steps have included the preparation and review of various documents, including those announcing the agency’s intent to propose a new program through OMB’s regulatory review process, and the drafting and ultimate publication of a proposed rule and proposed referendum procedures on October 16, 2023.

TPI also submitted industry letters of support that confirmed the industry’s desire to pursue a research, promotion, and education sod order to fund research and communicate the benefits of natural grass to the public. Further, if in the future the industry determines that the Order is no longer in its best interests, the Order may be amended through the regulatory process or terminated.

The commentors also stated that AMS should ensure that every sod producer in the United States is identified and informed about the proposed Order prior to any referendum. Further, the commentors encouraged AMS to conduct a remedial round of public outreach to re-assess industry support for the program following a 3-year period (from May 2020, when a program webinar was held, to December 2023, when AMS published the proposed program in the **Federal Register**) when they claim the proposed Order was not visible or part of regular industry discussions. AMS will use several methods to identify as many eligible natural grass sod producers as possible, to include self-identification from

producers and industry input. In addition to the industry outreach that was previously conducted, AMS will conduct its own outreach to ensure that as many eligible natural grass sod producers as possible are informed of the referendum, the referendum schedule, instructions, and any other items related to the potential implementation of the proposed Order.

Additionally, the commentors encouraged USDA to establish a clear schedule and procedures for the referendum. AMS, through public notice on its website, post cards, letters, and through its external networks, will make a referendum schedule, instructions, and other relevant information available to all eligible producers, trade associations and related industry media, which can further disseminate the information.

The commentors also requested that USDA complete an improved analysis to consider various factors such as the cost to collect, report, and remit assessments, particularly on operations with multiple farms, in multiple States. AMS is aware that each industry is diverse in various ways, such as size, method of production and distribution, business practices, marketing strategies, staff size, and region. The updated regulatory analysis in this proposed rule did not factor every unique method of collecting assessments but rather focused on the number of farms reported and square foot of sod sold nationwide according to the 2022 U.S. Census. Furthermore, the commentors did not include any information or data to show that USDA’s analysis of the impact of assessments on sod producers under the proposed program is inaccurate. Conducting the upfront referendum will provide eligible sod producers the ability to submit a vote and determine if the sod industry favors the establishment of the checkoff program.

The commentors also opposed the apportionment of Board members among the regions in proposed § 1240.30(b) and argued that the South Region should be assigned more members. They stated that, according to Table 1, the South Region represents 63.7 percent of total U.S. sales. They therefore argued that the South Region should be allocated 6 members instead of 4 members out of the 10 total producer members on the Board.

As an initial matter, we note that the commentors’ calculation appears to be inaccurate. In addition, the version of Table 1 that appeared in the first proposed rule (88 FR 71306) reflected numbers reported in the 2017 Census. In this second proposed rule, Table 1 has been updated to reflect the most recent

¹⁶ 7 U.S.C. 7401(b)(8).

¹⁷ 7 U.S.C. 7401(b)(10).

numbers reported in the 2022 Census. The updated 2022 Census data indicates that the South Region accounts for approximately 49 percent of sod sales and 52 percent of the volume of sod produced in the United States.

Section 515(b)(2)(D) of the 1996 Act (7 U.S.C. 7414(b)(2)(D)) states that “[t]o ensure fair and equitable representation of the agricultural commodity industry covered by an order, the composition of each board shall reflect the geographical distribution of the production of the agricultural commodity involved in the United States.” Thus, AMS recognizes that the 2022 Census data could be cited to support re-assigning one Board member from the North Region to the South Region.

AMS agrees that commodity sales and production data are important to consider in determining the composition of the Board. However, AMS also recognizes that other factors are relevant to ensure “fair and equitable representation” of natural grass sod producers on the Board, including factors such as the number and size of sod farms in a State or region, as well as the types of natural grass sod produced in the State or region.

AMS examined other options for allocating Board seats among the regions. However, when all the relevant data is considered (number of farms, size of farms, types of natural grass sod grown, production data, and sales data), AMS believes that the proposed composition of the Board, which allocates 3 members to the North Region, 4 members to the South Region, and 3 members to the Transition Zone Region, should remain unchanged.

The proposed 3–4–3 Board structure allows each producer member on the Board to represent approximately the same number of farms in their assigned region. If the Board composition is modified to re-assign one member from the North Region to the South Region, resulting in a 2–5–3 Board structure, the two remaining members from the North Region would be asked to represent almost twice as many farms as the Board members from the South Region. As a result, this structure would not allow for equal representation of Board members per number of farms in each region.

Additionally, sod producers in the Transition Zone Region grow both warm and cool season grasses. However, most farmers in these States, especially in Arkansas, California, North Carolina, Oklahoma, and Tennessee, exist in USDA Plant Hardiness Zones 8a-b and grow predominately warm-season

grasses.¹⁸ As a result, they would likely make Board decisions similar to those that would be made by sod producers from the South Region. AMS policy is that the diversity of the Board should reflect the diversity of the industry in terms of the experience of members, methods of production and distribution, marketing strategies, and other distinguishing factors that will bring different perspectives and ideas to the Board’s attention. In addition, AMS policy is that both larger and smaller production States should contribute to Board decision making about how resources are used for research and promotion programs.

Furthermore, proposed § 1240.30(b)(4) includes a provision that would ensure each of the three highest production States have at least one producer member on the Board in their respective region. Finally, proposed § 1240.30(c) includes a measure to adjust seats every three to five years based on changes in production, and the Board is authorized to recommend changes to the Order—which could include the way that seats are allocated—should they determine a need in the future. Therefore, the proposed composition of the Board will remain unchanged.

The commentors also argued that proposed § 1240.38(f) does not ensure enough money is funneled back to State programs, as that section permits a maximum of 50 percent to go back to States but does not include a minimum amount that must be allocated to State programs. The commentors pointed out that this would allow a 0 percent return to States and suggested that there should be a minimum allocation to States. The provision for allocating funds to State programs is not intended to be a funding mechanism for State checkoff boards but, rather, a method to fund research and promotion initiatives specific to State markets that might otherwise be addressed insufficiently by national research and promotion initiatives. In addition to the State funding allocation under proposed § 1240.38(f), qualified State programs could apply for and receive additional funding from the Board on a project-by-project basis. We believe that the provision provides for a reasonable allocation for State generic programs while maintaining an appropriate level of funding for the national program.

The two commentors also objected to the rule in proposed § 1240.71 allocating only one vote per producer. One commentor stated that votes from larger producers should count more,

and the other commentor stated that the proposed Order should be approved only if favored by either a majority of all producers in the United States or by a majority of all sod-producing acres in the United States.

Section 518(e) of the 1996 Act (7 U.S.C. 7417(e)) provides for three options by which a proposed order may provide for its approval in a referendum: (1) by a majority of those persons voting, (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity, or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Assigning one vote to each producer, regardless of size, ensures that small businesses as well as large firms have a voice in the referendum. Furthermore, as noted above, this method, combined with a voting procedure in which a majority of those persons voting in a referendum determines approval of an order, is authorized by statute. Accordingly, the proposed Order will be approved in the referendum if it is favored by a simple majority (50 percent + one vote) of the natural grass sod producers voting 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.

Lastly, the commentors argued that AMS’s analysis of local sod markets is insufficient, and they asserted that a national sod program would not benefit sod producers because their local markets are so different from each other. AMS reviewed the industry analysis and justification and determined that it was an accurate depiction of the sod industry and local sod markets. Additionally, AMS received 151 comments that fully supported the proposed Order as written. These comments explained that the proposed checkoff program would be vital in funding research to improve the sod varieties that currently exist as well as educating consumers on the benefits of natural grass sod. The program could help create a united voice that is representative of their diverse industry members. With the collected funding the industry could develop educational resources to differentiate natural grass sod from synthetic turf as well as identify environmentally friendly management practices.

Accordingly, these suggestions are not adopted.

Neither Agree or Disagree

Six comments received neither supported nor opposed the proposed

¹⁸ USDA, 2023 USDA Plant Hardiness Zone Map, <https://planthardiness.ars.usda.gov>.

Order. Most of these comments included questions about the benefits of natural grass sod and how certain regions could restore native plants that do not require irrigation.

List of Subjects in 7 CFR Part 1240

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

For the reasons discussed in the preamble, AMS proposes to add subpart A to 7 CFR part 1240 to read as follows:

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

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

- Sec.
1240.10 General.
1240.20 Definitions.

Natural Grass Sod Promotion, Research, and Information Board

- 1240.30 Establishment and membership.
1240.31 Nominations and appointments.
1240.32 Nominee's agreement to serve.
1240.33 Term of office.
1240.34 Removal.
1240.35 Vacancies.
1240.36 Procedure.
1240.37 Reimbursement and attendance.
1240.38 Powers and duties.
1240.39 Prohibited activities.

Expenses and Assessments

- 1240.45 Budget and expenses.
1240.46 Financial statements.
1240.47 Assessments.
1240.48 Exemptions from assessments

Promotion, Research, and Information

- 1240.50 Programs.
1240.51 Independent evaluation.
1240.52 Patents, copyrights, trademarks, inventions, product formulations, and publications.

Reports, Books, and Records

- 1240.60 Reports.
1240.61 Books and records.
1240.62 Confidential treatment.
1240.63 Qualification of natural grass sod organizations.

Miscellaneous

- 1240.70 Right of the Secretary.
1240.71 Referenda.
1240.72 Suspension or termination.
1240.73 Proceedings after termination.
1240.74 Effect of termination or amendment.
1240.75 Personal liability.
1240.76 Severability.
1240.77 Amendments.
1240.78 OMB control number.

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

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

§ 1240.10 General.

The terms defined/specified in this subpart shall apply to the Natural Grass Sod Promotion, Research, and Information Order authorized under the Act.

§ 1240.20 Definitions.

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

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

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

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

Eligible natural grass sod producer refers to a natural grass sod producer that has sold natural grass sod products in the United States during the representative period and is eligible to vote in the initial referendum or subsequent referenda.

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

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

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

(2) Industry information, which means information and programs that

would enhance the image of the natural grass sod industry.

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

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

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

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

Order means an order issued by the Secretary under section 514 of the Act (7 U.S.C. 7413) that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

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 Order shall be a subpart of such part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Natural Grass Sod Promotion, Research, and Information Board

§ 1240.30 Establishment and membership.

(a) *Establishment of the Board.* There is hereby established a Natural Grass

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

(b) *Composition of the Board.* The Board shall be composed of 11 members, including 10 members who are natural grass sod producers and one public member. The Board shall be established as follows:

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

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

(3) *Transition Zone/California Region.* Three members shall be appointed from the Transition Zone/California Region, which includes the following States: Arkansas, California, the District of Columbia, Kansas, Kentucky, Maryland, Missouri, North Carolina, Oklahoma, Tennessee, Virginia, and West Virginia.

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

(5) *Public member.* The Board shall have one public member. The public member may not be a natural grass sod producer or have a financial interest in the production, sales, marketing, or distribution of natural grass sod.

(c) *Reapportionment.* At least once in every 5-year period, but not more frequently than once in every 3-year period, the Board will review the geographical distribution of the square footage of natural grass sod products

produced within the United States. The review will be conducted using the Board's annual assessment receipts, industry data provided by USDA, and, if available, other reliable reports from the industry. If warranted, the Board will recommend to the Secretary that the membership, geographical regions, and/or size of the Board be adjusted to reflect changes in geographical distribution of the square footage of natural grass sod products produced in the United States. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

§ 1240.31 Nominations and appointments.

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

(b) Subsequent nominations shall be conducted as follows:

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

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

(3) Nominees may seek nomination to the Board for all open or vacant seats for which they 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 to any known industry organizations that have a board composed of a majority of natural grass sod producers and recommend nominees for each open seat and the additional nominees to the Secretary;

(5) The public member may be nominated by a qualified organization or through self-nomination to the Board. The public member shall have no direct financial interest in the commercial production or marketing of natural grass sod except as a consumer and shall not be a director, stockholder, officer, or

employee of any person engaged in the production or sale of natural grass sod.

(6) The Board may prescribe such additional qualifications, administrative rules and procedures for selection and voting for each candidate as it deems necessary, and the Secretary approves.

(7) 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;

(8) The Board must submit nominations to the Secretary at least 90 days before the new Board term begins. From the nominations submitted by the Board, the Secretary shall select the members of the Board. If the Board fails to submit nominations for the public member position, the Secretary may appoint such member;

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

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

(11) 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,

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

§ 1240.32 Nominee's agreement to serve.

Any producer or person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with any national grass sod producer or with any organization that has or is being considered for a contractual relationship with the Board; and

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

§ 1240.33 Term of office.

(a) With the exception of the initial Board, each Board member shall serve for a term of 3 years or until the Secretary selects his or her successor. Each term of office shall begin and end on dates determined by the Board. No

member may serve more than two consecutive terms, except as provided in paragraph (c) of this section.

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

(c) Members serving terms of 1 or 2 years on the initial Board and members who are appointed to serve the remainder of a term are eligible to serve two additional consecutive 3-year terms.

§ 1240.34 Removal.

The Board may recommend to the Secretary that a member be removed from office if the member consistently fails or refuses to perform his or her duties properly or engages in dishonest acts or willful misconduct, which removal is subject to the Secretary's approval. If the Secretary determines that a member consistently fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. A member may also be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1240.35 Vacancies.

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

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

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

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

§ 1240.36 Procedure.

(a) The Board shall publicly announce all scheduled Board meetings through a direct communication, press release, or

other means and give the Secretary the same notice of meetings of the Board (including committees, subcommittees, and the like) as is given to members so that the Secretary's representative(s) may attend such meetings.

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

(c) Each member of the Board shall be entitled to one vote on any matter put to the Board and the motion will carry if supported by a majority (50 percent plus one vote) of Board members, except for recommendations to change the assessment rate, adopt a budget, or call for a referendum, which require affirmation by two-thirds of the total number of Board members.

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

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

(f) There shall be no proxy voting.

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

§ 1240.37 Reimbursement and attendance.

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

§ 1240.38 Powers and duties.

The Board shall have the following powers and duties:

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

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules and regulations as may be necessary to

administer the Order, including activities authorized to be carried out under the Order;

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

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

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

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

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

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

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

(5) Any other provisions required by the Secretary.

(f) To allocate, to the extent practicable, up to 50 percent of the assessments collected on the sale of natural grass sod products in a State or group of States, as defined in § 1240.20, less administrative costs, to one or more programs proposed by a qualified organization representing such State or group of States. On an annual basis, the

Board shall solicit proposals for programs, select the programs that shall receive funding, and enter into contracts only with the entities that will directly implement the programs. If the qualified organization is not the entity that will implement the program, the Board may reimburse the qualified organization for reasonable administrative costs incurred while making such proposal. For purposes of this section, the Secretary shall have the authority to approve an organization that the Board nominates to be a "qualified organization" pursuant to the qualification process set forth in § 1240.63;

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

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

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

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

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

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

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

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

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

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

(q) To work to achieve an effective, continuous, and coordinated program of promotion, research, and information and to carry out programs designed to provide maximum benefits to the natural grass sod industry.

§ 1240.39 Prohibited activities.

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

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

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

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

Expenses and Assessments

§ 1240.45 Budget and expenses.

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

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

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

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

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

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

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

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

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

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

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

(h) For fiscal years beginning 3 years after the date of the establishment of the Board, the Board may not expend for administration, maintenance, and the functioning of the Board an amount that is greater than 15 percent of the assessment and other income received by and available to the Board for the fiscal year. For purposes of this limitation, reimbursements to the Secretary, and other Board expenses outlined in guidance provided by the Secretary, shall not be considered administrative costs.

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

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

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System;

(4) Obligations fully guaranteed as to principal and interest by the United States; or

(5) Other investments as authorized by the Secretary.

§ 1240.46 Financial statements.

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

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

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

§ 1240.47 Assessments.

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

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

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

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

period set by the Board, in which the natural grass sod products were sold.

(e) If any natural grass sod producer fails to pay the assessment within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest. The one-time late payment charge shall be equal to 10 percent of the assessments due before interest charges have accrued. 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, 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 return such assessments, and any interest earned to the Board when it is formed.

§ 1240.48 Exemptions from assessments.

(a) A natural grass sod producer (producer) who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as "organic" or "100 percent organic" (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified "organic" or "100 percent organic" (as defined in the NOP) products of a producer 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;

(3) The producer 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

(4) Any producer 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.

(b) To apply for exemption under this section, a producer shall submit a request to the Board on an *Organic Exemption Request Form* (form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) The request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under OFPA and NOP;

(3) Certification that the applicant produces organic products eligible to be labeled "organic" or "100 percent organic" under NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under OFPA and NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An exempt producer shall provide a copy of the Certificate of Exemption to each person to whom the producer sells natural grass sod products.

(f) The producer shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(g) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

Promotion, Research, and Information

§ 1240.50 Programs.

(a) The Board shall develop and submit to the Secretary for approval programs authorized by this subpart. Such programs shall provide for promotion, research, information and other activities, including consumer and industry information and advertising.

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

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

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

§ 1240.51 Independent evaluation.

At least once every 5 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 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.

§ 1240.52 Patents, Copyrights, Trademarks, Inventions, Product Formulations, and Publications.

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

(b) Should patents, copyrights, trademarks, inventions, product formulations, or publications 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, trademarks,

inventions, product formulations, or publications shall be determined by an agreement between the Board and the party contributing funds toward the development of such patents, copyrights, trademarks, inventions, product formulations, or publications in a manner consistent with paragraph (a) of this section, subject to the approval by the Secretary.

Reports, Books, and Records

§ 1240.60 Reports.

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

(1) The name and contact information of the natural grass sod producer;

(2) The quantity of natural grass sod products sold;

(3) The date that any assessments were paid; and

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

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

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

§ 1240.61 Books and records.

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

§ 1240.62 Confidential treatment.

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

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

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

§ 1240.63 Qualification of natural grass sod organizations.

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

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

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

(1) The geographic territory covered by the organization's active membership;

(2) The nature and size of the organization's active membership and proportion of active membership accounted for by natural grass sod producers;

(3) The extent to which natural grass sod producers are represented on the organization's board of directors;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) The functions of the organization; and

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

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

Miscellaneous**§ 1240.70 Right of the Secretary.**

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

§ 1240.71 Referenda.

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

(b) *Subsequent referenda.* The Secretary shall conduct subsequent referenda:

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

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 two-thirds of the members of the Board established in this subpart;

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

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

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

§ 1240.72 Suspension or termination.

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

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

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

(1) Not later than 180 calendar days after making the determination, suspend or terminate the collection of assessments under this subpart.

(2) As soon as practical, suspend or terminate activities under this subpart in an orderly manner.

§ 1240.73 Proceedings after termination.

(a) Upon termination of this subpart, the Board shall recommend to the Secretary up to five of its members to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon designation by the Secretary, shall become trustees of all 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 persons title and right to all 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 natural grass sod promotion, research, and information programs.

§ 1240.74 Effect of termination or amendment.

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

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

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

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

§ 1240.75 Personal liability.

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

§ 1240.76 Severability.

If any provision of this subpart is declared invalid or the applicability of it to any person or circumstances is held invalid, the validity of the remainder of

this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1240.77 Amendments.

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

§ 1240.78 OMB control number.

The control numbers assigned to the information collection requirements by the OMB pursuant to the PRA of 1995, 44 U.S.C. chapter 35, are OMB control numbers 0505–0001 (Background Information Form), 0581–0093 (Organic Exemption), and 0581–0349.

* * * * *

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–28389 Filed 12–9–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2552; Project Identifier MCAI–2022–01243–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–09–14, which applies to certain Airbus Helicopters (Airbus) Model SA330J helicopters. AD 2021–09–14 requires repetitively inspecting for a gap between the main gearbox (MGB) oil cooling fan assembly (fan) rotor blade and the upper section of the guide vane bearing housing, installing improved MGB fan rotor shaft bearings, and repetitively inspecting the improved MGB fan rotor shaft bearings. Since the FAA issued AD 2021–09–14, Airbus has developed modifications to the components of the MGB fan bearing assembly and issued new material regarding these modifications. This proposed AD would retain the actions required by AD 2021–09–14 and would also require installing the improved MGB fan rotor bearing assembly, which would constitute terminating action for the repetitive inspections. These actions

are specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by January 24, 2025.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–2552; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu*; website: *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*.

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2024–2552.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aviation Safety Engineer, FAA; 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (303) 342–1080; email: *hal.jensen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2024–2552; Project