

[Docket No. FI-271]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

(24 CFR § 1914.4)

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	State map repository	Local map repository
California	Sonoma	Healdsburg, city of	May 20, 1974. Emergency	Mar. 1, 1974		
Iowa	Pottawattamie	Avoca, city of	do	Jan. 23, 1974		
Massachusetts	Hampden	Holyoke, city of	do	Apr. 12, 1974		
Michigan	Genesee	Grant Blanc, city of	do			
Minnesota	Dodge	Kasson, city of	do			
Do.	Hennepin	Excelsior, city of	do			
Do.	Martin	Unincorporated areas	do			
Missouri	St. Louis	Grantwood Village, town of	do	Mar. 8, 1974		
New Jersey	Monmouth	Middletown, township of	do			
North Carolina	Haywood	Clyde, town of	do			
Oklahoma	Seminole	Seminole, city of	do			
Washington	King	Issaquah, city of	do	Feb. 8, 1974		

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Pub. L. 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)

Issued: May 13, 1974.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc. 74-11748 Filed 5-22-74; 8:45 am]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE,
DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE

SUBCHAPTER D—GRANTS

PART 57—GRANTS FOR CONSTRUCTION
OF HEALTH RESEARCH FACILITIES (IN-
CLUDING MENTAL RETARDATION RE-
SEARCH FACILITIES), TEACHING FACI-
LITIES, STUDENT LOANS, EDUCATION
IMPROVEMENT AND SCHOLARSHIPS

Nursing Student Loans

Correction

In FR Doc. 74-10741 appearing at page 16473 of the issue for Thursday, May 9, 1974, § 57.316 (b) (1) (iii) should read as set forth below:

(iii) Upon completion by the borrower of the third year of such service, the Secretary shall pay another 25 percent of the principal of, and interest on, each such loan which was unpaid as of the date the borrower began such service.

Title 50—Wildlife and Fisheries

CHAPTER I—BUREAU OF SPORT FISH-
ERIES AND WILDLIFE, FISH AND WILDLIFE
SERVICE, DEPARTMENT OF THE
INTERIOR

PART 33—SPORT FISHING

Monte Vista National Wildlife Refuge, Colo.

The following special regulation is issued and is effective on May 23, 1974.

§ 33.5 Special regulations; sport fish-
ing, for individual wildlife refuge
areas.

COLORADO

MONTE VISTA NATIONAL WILDLIFE REFUGE

Sport fishing by rod, reel and pole on the Monte Vista National Wildlife Refuge, Monte Vista, Colorado, is permitted from 1 p.m. to 5 p.m. on July 7, and from 8 a.m. to 5 p.m. on July 13, July 14, July 20, July 21, July 27, July 28, August 3 and August 4, 1974, but only on the area designated by signs as open to fishing. This open area, comprising one-half acre, is delineated on maps available at refuge headquarters, 6½ miles south of Monte Vista, Colorado, and from the Regional Director, Fish and Wildlife Service, 10597 West 6th Avenue, Denver, Colorado 80215. Sport fishing shall be in accordance with all applicable state regulations.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through August 4, 1974.

CHARLES R. BRYANT,
Refuge Manager, Monte Vista
National Wildlife Refuge,
Monte Vista, Colorado.

MAY 16, 1974.

[FR Doc. 74-11763 Filed 5-22-74; 8:45 am]

Title 38—Pensions, Bonuses, and
Veterans' ReliefCHAPTER I—VETERANS
ADMINISTRATION

PART 3—ADJUDICATION

Subpart A—Pension, Compensation and
Dependency and Indemnity CompensationELECTION OF FEDERAL EMPLOYEES'
COMPENSATION; REVOCABILITY

On page 12898 of the FEDERAL REGISTER of April 9, 1974, there was published a notice of proposed regulatory development to amend § 3.708 to delete the provision that an election between Veterans Administration benefits and benefits under the Federal Employees' Compensation Act based on injury or death in military service in final. In addition minor editorial changes were made in § 3.711. Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulations.

No written comments have been received and the proposed regulations are hereby adopted without change and are set forth below.

Effective date. Section 3.708 is effective May 17, 1974.

Approved: May 17, 1974.

By direction of the Administrator.

[SEAL]

R. L. ROUDEBUSH,
Deputy Administrator.

1. Section 3.708 is revised to read as follows:

§ 3.708 Office of Federal Employees' Compensation.

(a) *Military service*—(1) *Initial election*. Where a person is entitled to compensation from the Office of Federal Employees' Compensation based upon disability or death due to service in the Armed Forces and is also entitled based upon service in the Armed Forces to pension, compensation or dependency and indemnity compensation under the laws administered by the Veterans Administration, the claimant will elect which benefit he or she will receive. Pension, compensation, or dependency and indemnity compensation may not be paid in such instances by the Veterans Administration concurrently with compensation from the Office of Federal Employees' Compensation. Benefits are not payable by the Office of Federal Employees' Compensation for disability or death incurred on or after January 1, 1957, based on military service.

(2) *Right of reelection*. Persons receiving compensation from the Office of Federal Employees' Compensation based on death due to military service may elect to receive dependency and indemnity compensation at any time. Once payment of dependency and indemnity compensation has been granted, all further right to Federal Employees' Compensation Act benefits is extinguished and only dependency and indemnity compensation is payable thereafter.

(3) *Rights of children*. Where primary title is vested in the widow or widower, the claimant's election controls the rights of any of the veteran's children, regardless of whether they are in the claimant's custody and regardless of the fact that such children may not be eligible to receive benefits under laws administered by the Office of Federal Em-

ployees' Compensation. A child who is eligible for dependency and indemnity compensation or other benefits independent of the widow's or widower's entitlement may receive such benefits concurrently with payment of Office of Federal Employees' Compensation benefits to the widow or widower.

(4) *Entitlement based on 38 U.S.C. 351*. The provisions of this paragraph are applicable also in those cases in which disability or death occurs as a result of having submitted to an examination, medical or surgical treatment, hospitalization or training.

(b) *Civilian employment*. Where a person is entitled to compensation from the Office of Federal Employees' Compensation based upon civilian employment and is also entitled to compensation or dependency and indemnity compensation under laws administered by the Veterans Administration for the same disability or death, the claimant will elect which benefit he or she will receive. On or after September 13, 1960, an award cannot be approved for payment of compensation or dependency and indemnity compensation concurrently with compensation from the Office of Federal Employees' Compensation in such instances and an election to receive benefits from either agency is final. See § 3.958. There is no right of reelection. (Public Law 86-767; 74 Stat. 906) A child who is eligible for dependency and indemnity compensation or other benefits independent of the widow's or widower's entitlement may receive such benefits concurrently with payment of Office of Federal Employees' Compensation benefits to the widow or widower.

2. Section 3.711 is revised to read as follows:

§ 3.711 Public Law 86-211.

(a) *World War I and later services*. Any person receiving or entitled to re-

ceive pension based on service in World War I, World War II or the Korean conflict under laws in effect on June 30, 1960, may elect to receive pension under 38 U.S.C. 521. An election of pension under 38 U.S.C. 521 is final when the payee (or his or her fiduciary) has negotiated one check for this benefit. There is no right of reelection.

(b) *Service prior to World War I*—(1) *General*. Veterans of the Indian wars who meet the service requirements of 38 U.S.C. 511(b) and veterans of the Spanish-American War who meet the service requirements of 38 U.S.C. 512(a) may elect to receive pension under 38 U.S.C. 521. Any widow or widower eligible for pension under 38 U.S.C. 536 may elect to receive pension under 38 U.S.C. 541. An election of pension under 38 U.S.C. 521 or 541 is final, except as provided in paragraph (b) (2) of this section, when the payee (or his or her fiduciary) has negotiated one check for this benefit. There is no right of reelection.

(2) *Aid and attendance*. Any veteran who meets the service requirements of paragraph (b) (1) of this section and who is receiving or entitled to receive pension based on need of regular aid and attendance will be paid whichever is greater: The monthly rate authorized by 38 U.S.C. 511(a) or 512(a), or the monthly rate authorized by 38 U.S.C. 521. A widow or widower of a veteran of the Spanish-American War who is receiving or entitled to receive pension based on a need of regular aid and attendance will be paid whichever is the greater: The monthly rate authorized by 38 U.S.C. 536 (a) and (b) and 544, or the monthly rate authorized by 38 U.S.C. 541 and 544. Elections are not required for these purposes. The change in rate will be effective the first day of the month in which the facts warrant such change. (38 U.S.C. 511, 512, 536, 541, 544; Public Law 92-328, 86 Stat. 393)

[FR Doc. 74-11881 Filed 5-22-74; 8:45 am]

proposed rules

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 rulemaking prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Chapter IX]

[Docket No. AO-376]

BENTGRASS SEED GROWN IN OREGON

Notice of Recommended Decision and Opportunity To File Written Exceptions With Respect To Proposed Marketing Agreement and Order

Pursuant to the applicable rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk, U.S. Department of Agriculture, of this recommended decision of the Department, with respect to a proposed marketing agreement and order (hereinafter referred to collectively as the proposed "order") regulating the handling of bentgrass seed grown in Oregon. Any order that may result from this proceeding will be effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601-674), hereinafter referred to as the "act."

Interested persons may file written exceptions to this recommended decision with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, on or before June 12, 1974. They should be filed in quadruplicate. All such written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27 (b)).

Preliminary statement. A public hearing, on the record of which the proposed order was formulated, was held in Salem, Oregon, June 12, 13, and 14, 1973, pursuant to a notice thereof which was published in the May 8, 1973, issue of the FEDERAL REGISTER (38 FR 11465). Such notice set forth a proposed marketing agreement and order prepared and presented with a petition for a hearing thereon by the Highland Bentgrass Association.

The presiding officer announced at the hearing that all proposed findings and conclusions, and written arguments or briefs, based upon evidence received at the hearing may be filed with the Hearing Clerk, Administration Building, United States Department of Agriculture, Washington, D.C. 20250, and postmarked not later than August 31, 1973.

Purpose of the proposed order. The proponents of the proposed order have

provided information in the proposal and the hearing record that it is their desire to establish and maintain orderly marketing conditions for colonial bentgrass seed grown in Oregon, and to establish and maintain such production research, marketing research, and development projects as will help effectuate orderly marketing of such bentgrass seed. The proponents have set forth that they propose to accomplish such purpose through the proposed order by: (1) allotting, or providing methods for allotting, the amount of colonial bentgrass seed, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof, during any specified period(s); and (2) establishing or providing for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and use or efficient production of such bentgrass seed.

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of the right to exercise Federal jurisdiction;

(2) The need for the proposed regulatory program to effectuate the declared purposes of the act;

(3) The definition of the commodity and determination of the production area to be affected by the proposed order;

(4) The identity of the persons, and the marketing transactions to be regulated; and

(5) The specific terms and provisions of the proposed order including:

(a) Definition of terms used therein which are necessary and incidental to attain the declared objectives of the act, and including all those set forth in the notice of hearing, among which are those applicable to the following additional terms and provisions;

(b) The establishment, maintenance, composition, powers, and duties of a committee which shall be the administrative agency for assisting the Secretary in administration of the proposed order;

(c) The incurring of expenses and the levying of assessments on handlers to obtain revenue for paying such expenses;

(d) The method of regulating the handling of colonial bentgrass seed grown in the production area, including the establishment of base quantities and allocations and other terms and provisions relating to volume regulations;

(e) The establishment of requirements for reporting and recordkeeping on marketing transactions;

(f) The requirements of compliance with all provisions of the proposed order

and with regulations issued pursuant thereto; and

(g) Additional terms and conditions of miscellaneous provisions published (38 FR 11465) as §§ 70 through 81 which are common to marketing orders and other terms and conditions published in §§ 82 through 84 which are common to marketing agreements only.

Findings and conclusions. The findings and conclusions on the aforementioned material issues, all of which are based on the evidence adduced at the hearing and the record thereof, are as follows:

Bentgrass seed (see definition in the proposed order limiting the proposed order to the *Agrostis* species, commonly known as colonial bentgrass) is an agricultural commodity to which marketing orders may be issued pursuant to the act. The proposed order should regulate the handling of bentgrass seed by restricting the quantity of bentgrass seed which may be freely handled by handlers. It should provide a method for allotting the quantity of bentgrass seed from any crop year among handlers based on amounts sold by growers during a representative period determined by the Secretary, to the end, that the total quantity to be handled from such crop year will be apportioned equitably among the growers. This is for the purpose of carrying out the declared policy of the act by establishing and maintaining orderly marketing conditions and increasing returns to growers for bentgrass seed so as to approach the parity price.

(1) Bentgrass seed is harvested and cleaned by growers and sold to handlers for shipment throughout the United States and the world. Almost 99 percent of the 9.4 million pounds (production in 1971) of the bentgrass seed grown in the United States was produced in Oregon.

The record indicates that normally over 95 percent of the bentgrass seed produced in Oregon is shipped for use in other states and foreign countries. The domestic market for bentgrass seed grown in Oregon is the entire United States. Usually, at least 90 percent of the bentgrass seed produced in Oregon is exported to foreign countries.

Therefore, it is concluded that the handling of bentgrass seed produced in Oregon is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce in such commodity to such an extent as to make necessary the regulation of bentgrass seed grown in Oregon and handled for use in intrastate commerce as well as for use in interstate and foreign commerce.

It is determined from substantial evidence in the record of hearing on which these findings and conclusions are based that the right to exercise federal jurisdiction in the handling of bentgrass seed produced in Oregon is proper and appropriate under the act and the proposed marketing order hereinafter set forth.

(2) The need for the proposed regulatory program for bentgrass seed is supported by substantial evidence in the record of hearing. Prices received by growers for all bentgrass averaged \$40.00 per hundredweight from sales of 9 million pounds for the 1972 crop. The June 1973 parity price for all the bentgrass seed was \$72.22 per hundredweight. Prices received by growers were approximately 56 percent of the June 1973 parity price.

Price fluctuations for bentgrass seed were shown to be significant within crop years as well as between crop years. The price range during the last 14 years was from \$22.00 in 1959 to \$50.00 in 1969 per hundredweight for all bentgrass seed. Significant price fluctuations have continued through the years. During these years, costs of operations have increased.

The record of evidence showed that the average gross return of bentgrass for 1973 was \$120.00 per acre, while the reported cost of production was \$148.20 per acre. The record further indicated that this operating loss has been consistent through the years and has caused a decline in the number of growers each year.

Growers frequently finance production and harvesting costs with borrowed capital. Growers' assets are affected by the returns received from the bentgrass seed. Associated industries, such as credit agencies, manufacturers, and dealers in fertilizer, insecticides, machinery, etc., are directly affected by the wide price fluctuations growers receive for bentgrass seed.

Growers' motivations for increasing or decreasing production of bentgrass seed during any given season are influenced by prices received. Growers tend to plant in response to previous year's prices. Growers frequently are unable to accurately estimate their share of an indefinite or unknown annual supply and, therefore, plant in excess of the amount necessary to provide the market with a supply that would help avoid low returns to producers.

The record evidence shows that bentgrass growers, both individually and collectively, have been unable to cope with the industry-wide problem of balancing supply with demand. The favorable effects on price of reductions in production and sales of bentgrass seed by some individual producers have been negated by increases in production and sales by other producers.

According to the record, adduced at the hearing, growers of bentgrass seed in Oregon may expect that in the absence of a program such as proposed, conditions will likely continue to alternate be-

tween supplies in excess of demand resulting in depressed prices, and a period of relatively small supplies with sharply higher prices.

The record confirmed that need exists to regulate marketings by making allotments to growers which specify the maximum quantity of bentgrass seed a handler may purchase or handle from a grower, and thereby stabilize supplies, promote orderly marketing, and tend to cause prices to rise toward parity. The interests of consumers would be served by maintaining an adequate supply of bentgrass seed at more stable prices, and excessive price rises would be discouraged by removing all limitations on production and sales of bentgrass seed during any period when prices to growers have reached parity.

The need for a regulatory program, such as the proposed order, to better balance the supply of bentgrass with demand is clearly established in the record. Further, the terms and provisions of the proposed order which are authorized by the act would serve as a means of establishing and maintaining orderly marketing conditions for this commodity.

(3) Certain terms and provisions in the proposed order should be initially defined and explained therein for the purpose of designating specifically their applicability and limitations whenever they are thereafter used.

Accordingly, "Bentgrass" should be defined as the seed of those grasses of the *Agrostis* species identified as *Agrostis tenuis*, commonly known as colonial bentgrass, grown within the production area. The inclusion of all varieties under the specie *Agrostis tenuis* is necessary to effectively control the volume of marketing of bentgrass seed in the production area. Any exclusion of a variety of this specie would offer a means for producers to avoid volume controls and therefore negate the purpose and effect of the proposed order. Any variety of this specie of bentgrass could be produced and marketed under the proposed order.

However, the record shows that some handlers contracted with growers, prior to the time this proposed order was announced, for the production of certain proprietary varieties of the species *Agrostis tenuis* over a period of one or more future years. A proprietary variety, according to the record, should be considered as any variety of the specie *Agrostis tenuis* over which a person has exclusive ownership or control. The regulation of the handling of bentgrass seed produced under the terms of prior contracts could work an undue hardship on both the growers and the handlers. Therefore, it is concluded that all grower contracts for the production of proprietary varieties of bentgrass seed outstanding at the time of publication of this recommended decision should be exempt from such order as may be issued during the life of such contracts or for the ensuing four years, whichever period of time is shorter, provided that an application for such exemption is filed with

the committee within 60 days from the effective date of any such order and a satisfactory showing of such facts is made to the committee (see § ____ .43 of the proposed order). Extensions of contracts or new contracts for the production of proprietary varieties of *Agrostis tenuis* entered into after the time of publication of this recommended decision should not be exempt from the proposed order.

Consideration was given to include the species *Agrostis canina*, commonly known as velvet bentgrass, and *Agrostis palustris*, commonly known as creeping bentgrass. Although these species are grown in Oregon and are in the same marketing channels, the evidence showed that these species should not be included because they do not compete directly with colonial bentgrass, *Agrostis tenuis*. The uses of these species are different from those of colonial bentgrass, *Agrostis tenuis*.

"Production Area" means the locale where the bentgrass seed grown is subject to the terms and provisions of the proposed marketing order. Growers in the State of Oregon produce almost 99 percent of the bentgrass seed grown in the United States. Some shifts in production have occurred from some parts of the State of Oregon to others and other shifts may occur in the future, because it is possible to produce bentgrass seed generally throughout the State. Bentgrass seed is now produced commercially in each hereinafter named district of the State. Therefore, it is determined that the State of Oregon constitutes the smallest regional production area that is practicable, consistent with carrying out the declared policy of the act and the production area should be so defined.

The production area should be defined as hereinafter set forth.

(4) The term "grower" should be deemed to be synonymous with producer and should be defined to mean any person engaged in a proprietary capacity in the production of bentgrass seed in the production area for market.

Growers include individuals, partnerships, corporations, or any other business units which in any way own all or a portion of the bentgrass seed produced. The term "grower" would include a husband and wife, who together produce bentgrass seed.

In sharecropping arrangements, each person receiving a share of the crop would be a grower. A cash renter of bentgrass acreage who produces bentgrass seed thereon and has the full right of disposition of the crop, would be the grower. For the purposes of nominating grower members, conducting elections and carrying out the proposed order, the Committee should establish a list of registered growers. Every person engaged in a proprietary capacity in the commercial production of bentgrass seed for market should be included on the list of registered growers.

"Handle" should be defined to mean the act or function, or both, of placing

bentgrass seed in the current of the commerce within the production area or between the production area and any point outside thereof. It should include the purchase of bentgrass seed from a grower, or the acquisition of bentgrass seed from a grower by any means, if bentgrass seed is viable seed. However, if bentgrass seed is ground into meal, heated, or its viability completely destroyed, the marketing of such product should not be termed handling bentgrass seed.

Handle should also mean to sell, consign, ship or transport bentgrass seed, except by a common or contract carrier of bentgrass owned by another person. The transporting of bentgrass seed within the production area by growers for cleaning and storage should not be construed as handling by such growers. However, if a grower sells, consigns, or otherwise places bentgrass seed into market channels, except through a registered handler, then the grower himself must be considered as a handler. "Handle" should not include the transaction where one grower sells or loans bentgrass seed to another grower in order to enable the latter to fulfill his allotment.

"Handler" should be defined in the proposed order to identify the persons who would be subject to regulation. It should mean any person who handles bentgrass seed. In order to facilitate administration of the proposed order, to obtain nominations and conduct elections of handler members of the Committee, to keep handlers informed of regulatory actions and monitor the quantity of bentgrass seed handled, all handlers should be registered with the Committee.

Any act by any person whereby he purchases cleaned bentgrass seed from a producer, or he sells or transports cleaned bentgrass seed within the production area or between the production area and any point outside thereof is handling.

The definition of "person" should be the same as that term is set forth in the act.

(5) (a) Certain terms applying to specific individuals, agencies, legislation, concepts, or things are used throughout the proposed order. These terms should be defined in the proposed order for the purpose of designating specifically their applicability and establishing appropriate limitations of their respective meanings wherever they are used.

The definition of "Act" provides the correct legal citations for the statute pursuant to which the proposed regulatory program is to be operative and avoids the need for referring to these citations throughout the proposed order.

Section 8c(7) (c) of the act (7 U.S.C. 608c(7) (c)) provides for an administrative agency for effective operation of an order. It is desirable to establish such an agency to administer this proposed order, as an aid to the Secretary in carrying out the purposes of the proposed order and the declared policy of the act. The term "Bentgrass Administrative Committee"

is a proper identification of the agency and reflects the character thereof.

"Crop year" should be defined to mean the period July 1 through June 30 inclusive, as this period begins shortly before the beginning of harvest of bentgrass seed and continues for 12 consecutive months. It establishes an operation period for the levying of assessments, other financial operations, regulatory provisions and recordkeeping under the proposed order.

"Districts" should be defined as the geographical divisions of the production area which delineate the producing sections generally in accordance with industry understanding of subdivisions of the production area and to assure equitable representation of such subdivisions on the Committee.

The terms "Foundation Seed, Registered Seed, and Certified Seed" should be defined because they are terms relating to quality of seed and the proposed order makes provisions for using quality limitation as well as quantity limitation to aid in improving and stabilizing the market for bentgrass seed. The terms should be defined as specified in the regulations under the Federal Seed Act (7 U.S.C. 1551 et al.).

"Proprietary interest" is construed to mean the assumption of the risk or sharing the risk of loss in production and marketing of a crop of bentgrass seed. Each party to a joint venture should be considered a grower in proportion to the share of his proprietary interest; for instance, each party to a 50-50 joint venture should be considered the grower of half the bentgrass seed sold.

Since there are so many possible sharing arrangements by growers, rather than to try to cover them all in the proposed order, it is appropriate that the proposed order should provide that the administrative committee, with approval by the Secretary, develop criteria to cover such sharing arrangements as the necessity therefore arises.

"Proprietary variety" should be defined as any variety of bentgrass, as defined in the proposed order, over which a person has exclusive ownership or control. Some growers have contracted to produce proprietary varieties of bentgrass and sell the seed produced to the person owning or controlling the contract.

"Secretary" should be defined to include not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for programs of this nature, but also, in order to recognize the fact that it is physically impossible for him to perform personally all functions and duties imposed upon him by law, any other officer or employee of the U.S. Department of Agriculture who is, or who may hereafter be, authorized to act in his stead.

"Quantity" of bentgrass seed should be defined to mean the weight of cleaned bentgrass seed in pounds. It is customary for a grower to clean his bentgrass seed, or have it cleaned, before it is sold by him. Therefore the application of the term "quantity" to the bentgrass seed

after it is cleaned is the customary way in which this term is used.

(b) Bentgrass Administrative Committee—Record evidence shows that a committee of 12 members, with representation as hereinafter provided in §____.20, with a like number of alternates, should be a workable, equitable, representative committee providing adequate industry representation and assuring recommendations of marketing regulations reflective of the general consensus of the industry and should also be adequate for the discharge of the other various committee duties and responsibilities.

Since a declared policy of the act is to assist producers, it is appropriate that a preponderance of committee members should be producers. Nine of the twelve committee members should be growers of bentgrass seed for market at the time of their selection and during their term of office in the respective districts as hereinafter defined, or who are officers or employees of corporate producers in the respective districts. For purposes of committee membership, a grower is a handler if the quantity of bentgrass seed handled by him exceeds the quantity produced by him. Three handler members and their alternates, selected from the production area at large, who are currently handling bentgrass seed and who handled bentgrass seed during the previous crop year, should complement the producer membership, providing balanced judgments and a broad perspective of the production area bentgrass seed marketing situation.

Grower representation on the committee should be distributed among such districts on the basis of their past record of acreage and production in each district. This basis should provide equitable representation on the Committee and should also provide the separate districts with reasonable representation. This should be accomplished by allowing District No. 1, consisting of Marion County, Oregon, with approximately 68 percent of the production, 5 grower members; District No. 2, consisting of Linn County, Oregon, with approximately 12 percent of the production, 1 grower member; District No. 3, comprising Benton and Lane Counties, Oregon, with approximately 6 percent of the production, 1 grower member; District No. 4, comprising Polk and Yamhill Counties, Oregon, with approximately 6 percent of the production, 1 grower member; and District No. 5 embracing all other counties of Oregon, with under 3 percent of the production, 1 grower member.

The proposed order should provide for reapportionment and redistricting so that the Secretary may, upon recommendation of the Committee, give consideration to adjustments and to make adjustments when warranted in committee representation in the event of significant changing conditions in the future, such as major shifts in production within the production area.

Provisions should be included for growers in each district to nominate persons

for each committee member and alternate position to represent them on the Committee. It would be desirable to hold one or more public meetings to nominate the initial committee members and their alternates. However, if this procedure might cause undue delay, the Secretary should have the flexibility of accepting nominations obtained in an appropriate alternative manner.

If nominations cannot be obtained by the use of one or more public meetings, or by other means, without undue delay, the Secretary is authorized to select the committee without regard to nomination. Such selection should, of course, be on the basis of the representation provided in the proposed order.

Each person selected by the Secretary as a committee member or alternate should qualify by filing with the Secretary a written acceptance of his willingness and intention to serve in his position.

Provision should be set forth in the proposed order for the filling of any vacancies on the committee, including selection by the Secretary without regard to nominations where such nominations are not made as prescribed, in order to provide for maintaining a full membership on the committee.

The proposed order should provide that an alternate member shall be selected for each member of the committee in order to insure that each district has representation at meetings. Each alternate who is selected should have the same qualifications for membership as the member for whom he is alternate so that during the member's absence or in the event that the member should die, resign, be removed from office, or be disqualified, the district representation on the committee will remain unchanged. In such cases, the alternate should serve until a successor to such member has been selected and qualified.

A 3-year term, with the election of 4 committee members each year seems reasonable, and will allow the bentgrass seed industry to express its approval or disapproval of committee membership each year. The terms of office of the initial members of the committee should be established by the Secretary so the term of office for 3 grower members and 1 handler member should be the initial crop year, the term of office for 3 grower members and 1 handler member should be the initial crop year plus the succeeding crop year, and the term of office for 3 grower members and 1 handler member should be the initial crop year plus the 2 succeeding crop years. The terms of office of each committee member should continue until his successor is selected and has qualified.

With regard to committee meetings and procedure, the evidence of record shows that 9 members, including alternates acting as members, should be necessary to constitute a quorum and any action of the committee will require the concurring vote of at least 7 members.

The committee should have authority to follow procedures which will assure its

proper and efficient operation. In order to facilitate the transaction of routine, noncontroversial business where it might be expensive and unreasonable to call an assembled meeting, or in other instances when rapid action may be necessary, the committee should be authorized to conduct meetings by telephone, telegraph or other means of communication. Such possibilities as conference telephone calls or simultaneous meeting of groups of its members in two or more places with direct communications connections should be considered and utilized if advantageous to the operation of the proposed order.

At least nine concurring votes and no dissenting votes should be necessary for approval of any committee action voted on at nonassembled meetings. Any votes cast at nonassembled meetings should be confirmed promptly in writing to provide a record of how each member, or the alternate acting in his stead, voted.

It is appropriate that the members and alternates of the committee be reimbursed for necessary expenses incurred when performing authorized committee business, since it would be unfair for them to bear personally such expense incurred in the interests of all bentgrass seed growers in the production area.

The committee should be given those specific powers which are set forth in section 8c(7)(c) of the act (7 U.S.C. 608c(7)(c)). Such powers are necessary to enable an administrative agency of this character to function properly under the proposed marketing order. The committee's duties as set forth in the proposed order are necessary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this nature.

An annual report should be prepared by the committee as soon as possible after the close of each marketing year to document fully its operations for the season to the industry and the Secretary.

(c) The committee should be authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it for its maintenance and functioning and to enable it to exercise its powers and perform its duties pursuant to the proposed order. The committee should be required to prepare a budget at the beginning of each crop year and as often as may be necessary thereafter, showing estimates of the income and expenditures necessary for the administration of the proposed order during such period. Each such budget should be submitted to the Secretary with an analysis of its components in the form of a report which should also recommend to the Secretary the rate of assessment believed necessary to secure the income required for that period. While expenses and income cannot be anticipated with exact mathematical certainty, the committee with its knowledge of conditions within the industry will be in good position to ascertain the necessary assess-

ment rate and make recommendations in this regard. The funds to cover committee expenses should be obtained by levying assessments on handlers. The act specifically authorizes the Secretary to approve the incurring of expenses by the administrative agency established under the proposed order and requires that each order of this nature contain provisions requiring handlers to pay, pro rata, the necessary expenses.

As his pro rata share of such expenses, each person who first handles bentgrass seed during such crop year should pay assessments to the committee at a rate fixed by the Secretary on all bentgrass seed he so handles. In this way, each handler's total payment of assessments during a crop year would be proportional to the quantity of bentgrass seed handled by such handler and assessments would be levied on the same bentgrass seed only once.

The rate of assessment should be established by the Secretary on the basis of the Committee's recommendation, or the Secretary may use other available information in addition to that provided by the Committee so as to assure the imposition of such assessments as are consistent with the act. Such rate should be fixed on a unit basis, such as a pound or hundredweight.

The proponents proposed a modification of § ____56. The record of evidence indicated that the original proposed maximum rate of assessment of 5 cents per hundredweight on current production levels would be very inadequate for the costs of establishing and maintaining the Committee. The proposed modification would set the maximum rate of assessment at 1 cent per pound. Although the Committee may be able to operate on a budget which, except for unusual circumstances would require an assessment below the maximum, this maximum rate seems fair and should be adopted.

Although handling of bentgrass from the production area is a continuous 12-month operation, the period near the beginning of the crop year will be one of extra activity, for the Committee will be closing out one crop year, auditing its account, preparing the annual report, surveying the crop and marketing situation, developing a marketing policy and holding meetings to develop recommendations for regulations. This means that in all probability a large percentage of the committee's expenses will be incurred in advance of receipt of income for the current crop year.

In order to provide funds for the administration of this program during the crop year prior to the time sufficient assessment income becomes available during such period, the committee should be authorized to accept advance payments of assessments from handlers and also, when such action is deemed to be desirable, to borrow money to meet such deficiency. Furthermore, the committee should be authorized to establish a reserve fund which could be used to pay operating expenses until assessments are received from the new crop year in sufficient amount to pay current expenses.

The provision for the acceptance by the administrative agency of advance assessment payments is included in other marketing order programs and has been found to be a satisfactory and desirable method of providing funds to cover costs of operation prior to the time when assessment collections are made in an appreciable amount. Revenue accruing to the committee from assessments later in the season would normally provide the means of repaying any loans.

Should it develop that assessment income during a crop year plus any funds in reserve would not, at the previously fixed rate, provide sufficient income to meet expenses, the funds to cover such expenses should be obtained by increasing the rate of assessment. Circumstances might necessitate amending the budget for the crop year to increase it and such increase would not have been planned in the original assessment rate. Since the act requires that administrative expenses shall be paid by handlers, this is the only source of income to meet such expenses. The increased assessment rate should be applied to all bentgrass seed handled during the particular crop year, so that the total payments by each handler during each crop year will be proportional to his share of the total volume of bentgrass seed handled by all handlers during that year.

Should the regulatory provisions of the proposed order be suspended during any portion or all of a crop year, it will be necessary to obtain funds to cover expenses during such year unless funds in the reserve are sufficient for such purpose. Thus authorization should be provided to require the payment of assessments to meet any necessary expenses during such year.

The assessment rates under the program would be set at the beginning of the crop year based on an estimate of number of pounds of bentgrass seed to be marketed. Should crop failure or partial crop loss reduce the crop so that assessment income falls below expenses, it might be necessary for handlers to cover the deficit through increased assessments. Since this would impose an extra burden on the industry, it would be equitable and less burdensome for handlers to establish an operating reserve during years of normal production. The reserve fund would be built during years when income exceeds expenses. In order that reserve funds not be accumulated beyond a reasonable amount, however, a limit of not to exceed approximately 1 crop year's expenses should be provided.

Except as necessary to establish and maintain an operating reserve as set forth in the proposed order, handlers who have paid part of any excess should be entitled to a proportionate refund of any excess funds that remain at the end of a crop year.

Upon termination of the proposed order, any funds in the reserve that are not used to defray the necessary expenses of liquidation should, to the extent practicable be returned to the handlers from whom such funds were collected. However, should the proposed order be termi-

nated after many years of operation, the precise equities of handlers may be impractical to ascertain. Therefore, it would be desirable and necessary to permit the unexpended reserve funds to be disposed of in any manner that the Secretary may determine to be appropriate in such circumstances.

Funds received by the Committee from assessments should be used solely for the purpose of the proposed order. The Committee should as a matter of good business practice, maintain up-to-date books and records clearly reflecting the operation of its affairs. It should provide the Secretary with periodic reports at appropriate times such as at the end of each crop year or at such other times as may be necessary, to enable him to maintain appropriate supervision and control over activities and operations.

The proposed marketing order should provide authority for production and marketing research and market development. Such activity could contribute to greater efficiency in production and marketing and stimulate sales and use of bentgrass seed. Since the act contains no authority for paid advertising for bentgrass seed, market development does not include paid advertising.

(d) The declared policy of the act is to establish and maintain such orderly marketing conditions for bentgrass seed among other commodities, as will tend to establish parity prices to growers and be in the public interest. The regulation of the handling of bentgrass seed, as authorized in the proposed order, provides a means for carrying out such policy.

Growers begin to incur production cost shortly after September 1 for the ensuing crop year, and it is desirable to provide them with definite marketing guides as to the quantity of bentgrass seed that may be saleable so they can adjust their cultural and production plans accordingly. Since the marketing policy meeting is of importance to all segments of the bentgrass seed industry, except as otherwise provided by the Secretary, but not earlier than the preceding September 1, or such earlier date as the committee, with the approval of the Secretary, may establish, the committee should meet and adopt its marketing policy for the ensuing crop year.

In developing a comprehensive marketing policy, the committee should consider the prospective carrying of growers and handlers, the desirable carryout, trade demand, market prices for bentgrass seed and other relevant factors affecting marketing conditions. On the basis of its evaluation of these factors, the committee should recommend to the Secretary the total quantity of bentgrass seed (hereinafter referred to as the "Total Desirable Quantity") that should be allotted for handling during the crop year. If considerations indicate a need for limiting the quantity of bentgrass seed marketed, the committee should recommend to the Secretary a total desirable quantity and allotment percentage, hereinafter discussed, for the crop year.

The committee should meet again prior to February 1 of each crop year to review

its marketing policy and, if conditions warrant, recommend to the Secretary an appropriate increase in the total desirable quantity and allotment percentage for the current crop year. Any increase should be to assure availability of adequate supplies, in view of changes in market conditions that may have taken place. A decrease would not be practical because it could cause undue hardship to the growers who had previously sold all of their allotment for the crop year.

Notice of marketing policy recommendations for a crop year and any later changes should be submitted promptly to the Secretary and also to all growers and handlers. This is necessary so all interested persons will be made aware of the marketing policy and can plan accordingly.

If the Secretary finds, on the basis of the committee's recommendation or other information, that limiting the quantity of bentgrass seed that may be freely marketed from a given crop would tend to effectuate the declared policy of the act, he should determine the total desirable quantity of bentgrass seed that may be acquired by handlers to meet normal market requirements and establish an annual allotment percentage for the purpose of releasing such total desirable quantity. If market requirements warrant release of supplies in excess of the total of all grower allocation bases, an annual allotment percentage of over 100 percent should be established. The Secretary's action, while normally based on the committee's recommendation, may also take into consideration other information which, for example, might include such items as changes in crop or market conditions, the estimated season average price for bentgrass seed and legal limitations, if any, that might be applicable. The desirable quantity should be apportioned among growers on the basis of their individual allocation bases as discussed hereinafter. The proposed order should provide that in years when regulations are in effect handlers would be prohibited from handling bentgrass seed in excess of the growers allotment (except for any bentgrass seed exempted from provisions of the proposed order).

Operation of the proposed order should provide for apportioning among bentgrass seed growers the total desirable quantity of bentgrass seed that may be purchased from them. To equitably apportion this quantity of bentgrass seed, reliance should be based on pounds of sales-history of the growers.

The method of apportioning the desirable quantity of bentgrass seed for market should rely on the sales history of growers during the crop years 1967 through 1973. The evidence of record is that the initial base for existing growers should be the average crop year pounds of bentgrass seed produced and sold by him or on his behalf, during any one of the crop years 1967 through 1972 and that produced and sold by him during 1973 if such production and sales covered such two crop years. For growers who only had sales during one of the crop years 1967 through 1973, the sales

of that year would be his base. The use of the average is to moderate the influence of the unusually bountiful year or years or substantial loss for any grower while providing each with a base reflecting his volume of sales. The formula seems equitable and makes provisions for growers with only one crop year's sales history to be allowed an allocation base.

The proponents proposed a change in § 41, paragraph C, to provide for a 6-year adjustment instead of a 4-year adjustment. This change should accommodate the farming techniques of the bentgrass seed growers and encourage efforts to maintain and improve quality.

Allocation bases for succeeding crop years should be recomputed by adding the sales of bentgrass seed of the preceding year to the total number of pounds of bentgrass seed used to compute his preceding base and dividing by the number of years of sales of such bentgrass seed until a 6-year average has been computed.

For subsequent crop years, the allocation base should be recomputed by adding the sales of the preceding year, subtracting the poundage for the earliest chronological year of sales and determining a new average.

A grower must produce and sell to maintain his allocation base. Non-use of an allocation base for three consecutive years should be cause for cancellation of the base, because if this were not done, non-operators could tie-up a portion of the allotments and thus impede the proper functioning of the order.

For succeeding crop years, the Committee should recommend to the Secretary any adjustment in allocation bases that is required to reflect increased bentgrass seed usage, entry of new growers, and expansion by existing growers. A limitation of 5 percent of the total allocation bases for the preceding crop year should be used in granting bases for new growers and expansion for existing growers.

To assure equity to new producers, record evidence indicated that new producers should be given priority in granting the first 50 percent of any increase. In the absence of applications from new producers, for any or all of the first 50 percent of any increase, the unallocated portion of the first 50 percent and the second 50 percent of any increases in allocation bases should be distributed to growers with existing allocation bases.

The record indicates that both tenants and landlords should be protected in circumstances when a change of growers, either by lease or ownership, occurs. Cash tenants would be fully protected because allocation bases would be issued to the grower with proprietary interest in the crop. Questions arose over the position of the landlord in a cash-rent situation or both landlord and tenant in a share-rent situation. Any landlord or tenant (operating on a share-rent basis) who has potentially drastically lower allocation bases by reason of a change of either tenant or landlord, may apply to the Committee for new allocation bases.

Likewise, any new tenant may apply for a new allocation base, provided he has not previously been assigned a base. The new allocation, in either case, would be provided from the maximum of 5 percent increase in allocations allowable each year and from anticipated increases in allocation bases resulting from grower retirement or surrender of their allocation bases for other reasons. Such procedure would seem to provide equal protection for both lessee tenants and land owners.

Administrative procedures required to establish volume limitations during the allocation period under the proposed marketing order are (1) determination of a base quantity for each grower, known as an "allocation base", and total of all allocation bases; (2) committee recommendations for and establishment by the Secretary of the total desirable quantity of bentgrass seed; (3) computation of a uniform percentage which the total desirable quantity is of the total of all allocation bases and (4) application of such uniform percentage to each producer's allocation base to determine his "allotment" in pounds of cleaned bentgrass seed for the crop year.

Administration of the proposed marketing order will be facilitated by computation of the uniform percentage referred to in (3) and (4) of the above paragraph. This provides a readily available and easily understood expression of the ratio of the total desirable quantity to the total of all allocation bases in the form of a ratio or percentage figure applicable to each grower. The uniform percentage provides each grower with an equitable allotment of the total desirable quantity under a uniform rule. His allotment is readily ascertainable by multiplying his allocation base by the uniform percentage. The resulting number of pounds of cleaned bentgrass seed thereby becomes his "allotment."

Provisions should be made for adjustment of a grower's allocation base when it is shown that during the base period, the growers' sales were substantially not representative due to unusual conditions beyond the control of the grower, such as adverse weather, insects, disease or fire.

The proponents proposed a modification to § 42 that would provide that not later than March 1 of each crop year, the Committee will, with approval of the Secretary, establish an allotment of bentgrass seed for the ensuing crop year for each grower who has an allocation base. The proposed modification would enable bentgrass seed growers with any anticipated excess production to make such changes in the management of their farm as they believe are appropriate, in view of their bentgrass seed allotment. The proposed modification seems reasonable and should be adopted.

If marketing conditions arise which make it appropriate that total allotments should exceed total allocation base quantities, the resulting uniform percentage should be applied to each grow-

er's base so that his allotment will exceed 100 percent of his allocation base.

Provisions that an allotment be non-transferable except in conjunction with a transfer of an allocation base are in the proposal and, the evidence adduced at the hearing, make it clear that such provisions should be retained. Transfer of allocation bases should be permitted to facilitate changes in ownership of land and changes in enterprise of growers. An allotment is a percentage of an allocation base, therefore, the transfer of an allotment without accompanying transfer of an allocation base is not practical under the proposed order.

Since bentgrass seed production is not a process which can be precisely adjusted during a growing season to meet needs, it is unlikely that growers will always be able to precisely balance their supplies of bentgrass seed and their allotments. Some growers produce more than their allotments and other growers may produce less than their allotments. The record of evidence indicates provision should be made to allow for exchange of bentgrass seed between growers, without affecting their allotments, providing the amount of bentgrass seed which all handlers handle from any grower does not exceed his allotment. This provision is practical and will help to effectuate the purposes of the proposed order and should be approved. Alternatively, a grower who produces more than his allotment may carry over the excess into the following crop year for handling under a subsequent allotment.

Bentgrass seed in the hands of growers upon the effective date of the proposed order should be allowed to be marketed without regard to any allotment. However, growers should make application to the committee requesting that such bentgrass seed be designated as prior production. The committee may limit the amount certified for handling in any one crop year to not less than 25 percent of such prior production. Such limitation should be applied uniformly among all growers.

Occasionally bentgrass seed is obtained from cleaning cereal grain or other seed crop. Provisions should be made to exempt from the order the handling of a minimum quantity of bentgrass seed on behalf of any grower, regardless of whether it was obtained from cleaning or from his own production providing he has not been assigned a bentgrass seed allotment.

The record evidence showed that provisions should be made that contracts relating to proprietary varieties existing prior to the date of publication of this recommended decision be exempted from such order as may be issued, during the life of such contracts or for the ensuing four years, whichever period of time is shorter. Proprietary varieties should be defined in the proposed marketing agreement and order § 12 as "any variety of the species *Agrostis tenuis* over which a person has exclusive ownership or control." Evidence of existing contracts by growers should be presented to the committee within 60 days from the effective

date of the proposed order. This provision should accommodate growers who have previously signed contracts to produce and market proprietary varieties of bentgrass seed to fulfill their outstanding contracts. Contracts relating to proprietary varieties entered into after the date of publication of this recommended decision should be covered under the proposed order.

Provisions should be made to require all bentgrass seed to meet the provisions of Federal and State seed acts and regulations issued thereunder. The committee should have the authority to establish higher standards for bentgrass seed handled under the proposed order. The Federal and State seed acts do not limit the size of a lot of seed. It is possible to have substantial quantities of seed within a large lot which is of lower or higher quality than the lot average. When such a large lot is subdivided into smaller lots the quality of some lots may be significantly different from the average quality of the large lot. Many buyers prefer to have the quality of each smaller unit equal to that of the large lot average. By regulating both quality and maximum size of lot, the marketing of bentgrass seed on a quality basis can be better controlled. The record evidence supports the quality regulation provisions of the proposed order. The establishing of higher standards would be made only if it were in the best interest of growers to insure a higher quality supply of seed. Any such proposed change should allow for a two years notice before the change could be made effective, thus allowing ample opportunity for consideration by all interested parties.

Provisions should be made for the purpose of identifying bentgrass seed under the proposed order. The identifying marks should be established by the committee.

Unfair trade practices by growers or handlers should be prohibited. The Secretary, upon recommendation of the committee, may prohibit such trade practices for any period or periods. The committee should recommend such rules, procedures and recordkeeping requirements as are necessary to administer the prohibitions.

The committee should have all necessary information and data for the performance of its functions under the proposed order including but not limited to that necessary to establish allocation base quantities, allotments, modifications thereof, and verification of compliance with regulations. The industry has routinely maintained adequate information and has it in its possession and the requirement that such information be furnished to the committee in the form of reports would not constitute an undue burden. It is difficult to anticipate every type of report or kind of information which the committee may find necessary in the conduct of its operations under the proposed order. One report that should be submitted by each handler is the quantity of bentgrass seed purchased from growers or the quantity of bent-

grass seed handled on behalf of each and all growers. Therefore, the committee should have the authority to require, with approval of the Secretary, reports and information from handlers, as needed, of the type set forth in the proposed order, and at such times and in such manner as may be necessary.

All reports and records furnished or submitted pursuant to the proposed order to the committee should be treated as confidential and be disclosed to no person other than the Secretary and persons authorized by the Secretary. The record evidence makes it clear that members of the committee should not have access to confidential information about a handler or a grower. The employees of the committee would have access to such information. The reasons for this provision are sound and should be included in the proposed order. Under certain circumstances, release of information compiled from handlers' reports may be helpful to the committee and the industry generally. However, such reported information should not be released other than on a composite basis, and such releases should not disclose information concerning individual operations. Such prohibition is necessary to prevent the disclosure of information that may affect detrimentally the business operations of the persons who furnish the report. However, since the operation of this allocation program is inextricably involved with individual growers' allocation base quantities and allotments, such allocation bases and allotments should not be treated as confidential.

Since questions could arise with respect to compliance, it would be appropriate to provide in the proposed order that handlers be required to maintain for each marketing year complete records on their purchases, handling, and disposition of bentgrass seed. Such records should be retained for not less than 2 years after the termination of the marketing year in which the transaction occurred, so that, if needed in connection with enforcement, or other necessary purposes under the proposed order, the requisite records will be available for the purpose. Such a 2-year period would afford an adequate and reasonable time for access thereto and would not impose an unreasonable or burdensome obligation on handlers inasmuch as such records are generally retained for similar time for purposes of business operations.

The successful operation of the proposed order depends upon the degree of compliance with its provisions. In this connection, it is necessary that the committee's designees for this purpose be given full authority to examine and verify records and ascertain the quantity of bentgrass seed handled. The verification of records and reports and the inspection needed in connection therewith should be performed during reasonable working hours and in such manner that normal operations of the handlers would not be interrupted.

No handler should be permitted to handle bentgrass seed (as the term is

hereinafter defined in the proposed order), the handling of which is prohibited pursuant to the proposed order; and no handler should be permitted to handle bentgrass seed (as the term is hereinafter defined in the proposed order) except in conformity with the proposed order. For example, no handler should be permitted to handle bentgrass seed from any grower in excess of such grower's allotment. If the program is to operate effectively, compliance therewith is essential; and, hence, no handler should be permitted to evade any of its provisions. Any such evasion on the part of even one handler could be demoralizing to the handlers who are in compliance and would tend, thereby, to impair the effective operation of the program.

The provisions of § ____71 through § ____81, as hereinafter set forth, are generally similar to those which are included in marketing agreements and orders now operating.

Such provisions are identified by section numbers and headings, as follows: § ____71 *Right of the Secretary*; § ____72 *Effective time*; § ____73 *Termination or Suspension*; § ____74 *Proceedings after termination*; § ____75 *Effect of termination or amendment*; § ____76 *Duration of immunities*; § ____77 *Agents*; § ____78 *Derogation*; § ____79 *Personal liability*; § ____80 *Separability*; and § ____81 *Amendments*; and are incidental to and not inconsistent with the act and are necessary to effectuate the other provisions of the proposed order and to effectuate the declared policy of the act. The hearing record supports the inclusion of each such provision in the proposed order.

Provisions should be included requiring the Secretary to terminate the provisions of the proposed marketing agreement and order whenever he finds that any or all provisions of it obstruct or do not tend to effectuate the declared policy of the act, or at the end of any crop year whenever he finds that such termination is favored by a majority of the growers who, during such period, held allotments for more than 50 percent of the volume of all the allotments of all bentgrass seed in the area of production. Such determination should be made on the basis of a referendum conducted by the Secretary to determine whether the requisite number of growers favor termination of the program.

Those provisions which are applicable to the proposed marketing agreement only identified by section number and heading, are as follows: § ____82 *Counterparts*; § ____83 *Additional parties*; and § ____84 *Order with marketing agreement*. Such provisions are also included in marketing agreements now in effect for other commodities and the record supports inclusion of such provisions in the proposed marketing agreement.

Rulings on briefs of interested parties. At the conclusion of the hearing, the Presiding Officer fixed August 31, 1973, as the time within which interested parties were to file briefs with respect to the evidence adduced at the hearing and the

findings and conclusions to be drawn therefrom.

Five briefs were filed on behalf of certain interested parties. These briefs were considered in conjunction with the evidence in the record in making the findings and conclusions set forth herein.

An objection was made to the inclusion of Seaside and Pennecross varieties of bentgrass under the order because of the price differences between these varieties and colonial species of bentgrass. However, as indicated earlier in the recommended decision, the uses of Seaside and Pennecross are different from those of colonial bentgrass and do not have a significant competitive relationship, and therefore the varieties Seaside and Pennecross have been excluded from the proposed order.

An objection filed stated that the proposed order will not achieve its primary purpose—improving stability of prices because competition between bentgrass, bluegrass and the fine fescues will prevent the proposed order from attaining the desired results. Record evidence showed that the uses for colonial bentgrass seed are significantly different from the uses for the other kinds of seed referred to above. Record evidence adduced at the hearing further showed that each kind of grass seed has certain demand factors, largely independent of the demand factors for the other kinds of grass seed. The grass seeds bluegrass and the fine fescues are not directly competitive with colonial bentgrass seed. Therefore, the objection is denied.

An objection was filed to the definition of person as defined in § ----.10 of the proposed order on the grounds that it does not allow a vote to each individual in a partnership. The same kind of objection could have been made to allowing one vote for a business unit owned by a husband and wife. It is found and concluded that the provision in the proposed order for one vote for each business unit engaged in the commercial production of bentgrass for market is fair and reasonable.

An objection was filed to defining "Grower" in § ----.7 of the proposed order to mean any person engaged in a proprietary capacity in the commercial production of bentgrass for market, and proposed that only landowners should be included in the definition. The objection was intended to disqualify all tenants or other non-landowners engaged in a proprietary capacity in commercial bentgrass production. The objection is denied because it would fail to recognize those segments of the industry who are actually operating in a proprietary capacity in the commercial production of bentgrass seed for market.

To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions as set forth herein, the request to make such findings or reach such conclusions are denied for the reasons previously cited in this decision.

General findings. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The tentative marketing agreement and order, as herein set forth, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said tentative marketing agreement and order authorize regulation of the handling of bentgrass seed grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The said proposed marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of bentgrass seed grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of bentgrass seed grown in the production area, as defined in said proposed marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended marketing agreement and order. The following marketing agreement and order¹ are recommended as the detailed means by which the foregoing conclusions may be carried out:

DEFINITIONS

§ ----.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ ----.2 Bentgrass.

"Bentgrass" means bentgrass seed of those grasses of the *Agrostis* species identified as *Agrostis tenuis* (commonly known as colonial bentgrass) grown in the production area.

§ ----.3 Committee.

"Committee" means the Bentgrass Administrative Committee established pursuant to § ----.20.

§ ----.4 Crop year.

"Crop year" means the 12 months beginning July 1 of any year through June 30 of the following year inclusive, or such other period as the Committee, with the approval of the Secretary, may establish; except that the initial crop

¹ Sections 82, 83, and 84 apply only to the proposed marketing agreement and not to the proposed order.

year shall begin on the effective date of this order and end a year after the following June 30.

§ ----.5 District.

"District" means the applicable one of the following defined subdivisions of the production area or as such subdivisions may be redefined pursuant to § ----.20.

- (a) District 1—Marion County, Oregon.
- (b) District 2—Linn County, Oregon.
- (c) District 3—Benton and Lane Counties, Oregon.
- (d) District 4—Polk and Yamhill Counties, Oregon.
- (e) District 5—All other counties in Oregon.

§ ----.6 Foundation Seed, Registered Seed or Certified Seed.

"Foundation Seed, Registered Seed or Certified Seed" means the class of bentgrass seed as defined in § 201.2(cc), § 201.2(dd) or § 201.2(ee) of the regulations under the Federal Seed Act (53 Stat. 1275) (7 U.S.C. 1551 et al.).

§ ----.7 Grower.

"Grower" and "Registered Grower" is synonymous with "producer" and means any person engaged in a proprietary capacity in the commercial production of bentgrass for market. "Registered Grower" means any grower who has been registered as a grower with the Committee pursuant to rules and regulations issued by the Committee.

§ ----.8 Handle.

"Handle" means to purchase bentgrass from the grower thereof, or to sell, consign, ship or transport (except as a common or contract carrier of bentgrass owned by another person) or acquire bentgrass, whether or not of own production except that (a) the shipment or transportation within the production area of bentgrass by the grower thereof for cleaning or storage therein shall not be construed as "handling"; (b) the sale, shipment, or transportation of bentgrass by the grower thereof to a registered handler shall not be construed as handling by the grower; and (c) the transaction where one grower sells or loans bentgrass to another grower in order to enable the latter to fulfill his allotment shall not be construed as "handling."

§ ----.9 Handler.

"Handler" and "registered handler" means any person who handles bentgrass: *Provided, however,* That with respect to the acquisition of a grower's bentgrass by a person other than a registered handler, the grower shall be the handler of such bentgrass. "Registered handler" means any handler who has been registered as a handler with the Committee pursuant to rules and regulations issued by the Committee.

§ ----.10 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ ----.11 Production area.

"Production area" means the State of Oregon.

§ ----.12 Proprietary variety.

"Proprietary variety" means any variety of bentgrass of the species *Agrostis tenuis* over which a person has exclusive ownership or control.

§ ----.13 Secretary.

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

§ ----.14 Quantity.

"Quantity" means the weight of cleaned bentgrass in pounds.

§ ----.15-19.

(Additional definitions as required).

BENTGRASS ADMINISTRATIVE COMMITTEE

§ ----.20 Establishment and Membership.

(a) There is hereby established a Bentgrass Administrative Committee consisting of twelve members, each of whom shall have an alternate. Nine of the members and each of their alternates shall be growers or officers or employees of growers, who are not also handlers. Of the grower members, five of them and each of their alternates shall be producers of bentgrass in District 1, one member and his alternate in District 2, one member and his alternate in District 3, one member and his alternate in District 4, and one member and his alternate in District 5. Three of the members and their alternates shall be handlers or officers or employees of handlers who shall be elected from the production area at large. A producer handler who is classified as a handler may serve as a handler member or alternate handler member only. For purposes of committee membership a grower is a handler if the quantity of bentgrass seed handled by him exceeds the quantity produced by him.

(b) The Committee, with the approval of the Secretary, may redefine the Districts into which the production area is divided, and reapportion the representation of any District on the Committee: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in bentgrass production within the Districts and the production area.

§ ----.21 Eligibility.

Each grower member of the Committee and his alternate shall be, at the time of his selection and during his term of office, a grower or an officer or employee of a grower in the District for which selected. Each handler member of the Committee and his alternate shall be, at the time of his selection and during his term of office, a handler or an officer or employee of a handler.

§ ----.22 Nominations.

(a) *General.* Separate nominations shall be made for each member position and the respective alternate member for such position listed in § ----.20. Except as otherwise provided for obtaining initial nominations, nominations shall be certified by the Committee and submitted to the Secretary by June 1 of each crop year, together with information deemed by the Committee to be pertinent or requested by the Secretary. If nominations are not submitted in the specified manner by such date, the Secretary may, without regard to nomination, select the members and alternate members of the Committee on the basis of representation provided for in § ----.20.

(b) *Grower members.* The Committee shall conduct nominations for grower members and their respective alternates in each District through meetings or on the basis of ballots to be mailed by the Committee to all growers of record. Only growers eligible to serve on the Committee from the District in which the nominations are to be held shall be eligible to vote and each such grower shall have one vote for each grower position to be filled. If a grower is also a handler, such grower may vote either as a grower or as a handler, but not both. No grower shall participate in the election of nominees in more than one District regardless of the number of Districts in which such person is a grower. A multidistrict grower may elect the district in which he votes.

(c) *Handler nominations.* The Committee shall conduct nominations for handler members and their respective alternates through meetings or on the basis of ballots to be mailed by the Committee to all handlers of record. Each handler shall have one vote for each handler position to be filled.

(d) *Initial nominations.* For the purpose of obtaining the initial nominations, the Secretary shall perform the functions of the Committee as soon as practicable after the effective date of this proposed order.

§ ----.23 Selection.

(a) *Selection.* Members shall be selected by the Secretary from nominees submitted by the Committee or from among other eligible persons on the basis of the representation provided for in § ----.20.

(b) *Term of office.* The terms of office of the initial members of the Committee shall be established by the Secretary so that the term of office for three grower members and one handler member shall be the initial crop year, the term of office for three grower members and one handler member shall be the initial crop year plus the succeeding crop year, and the term of office for three grower members and one handler member shall be the initial crop year plus the two succeeding crop years. Successor members of the Committee shall serve for terms of three crop years, except for shorter

terms occasioned by the death, removal, resignation, or disqualification of any member, and subject to any such disqualification, each member shall serve until his successor is selected and has qualified.

§ ----.24 Acceptance.

Each person selected by the Secretary as a member or alternate member shall qualify by filing a written acceptance with the Secretary as soon as practicable after being notified of his selection.

§ ----.25 Vacancy.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member or alternate member of the Committee, or in the event of the failure of any person selected as a member to qualify, a successor for the unexpired term or the term shall be nominated and selected in the manner provided in § ----.22 and § ----.23, so far as applicable, unless a selection is deemed unnecessary by the Secretary.

§ ----.26 Alternates.

(a) An alternate for a member of the Committee shall act in the place and stead of such member during his absence, and in the event of the member's removal, resignation, disqualification, or death until a successor for such member's unexpired term has been selected and has qualified.

(b) If a member or his alternate is unable to attend a Committee meeting, the Committee may designate any other alternate from the same group (grower or handler) and the same District to serve in the member's place if such alternate is not serving in the place of another member.

§ ----.27 Procedure.

(a) Nine members (including alternates acting as members) of the Committee shall constitute a quorum at an assembled meeting of the Committee and any action of the Committee at such meeting shall require the concurring vote of at least seven members (including alternates acting as members). At any assembled meeting, all votes shall be cast in person.

(b) All meetings of the Committee shall be public as to all matters affecting growers. For the purpose of handling intra-committee operations, or when circumstances do not allow time to call a public meeting, the Committee may provide for voting by mail, telephone, telegraph, or other means of communication upon due notice to all members and any proposition to be so voted upon first shall be explained accurately, fully, and identically. Any such vote other than by mail, telegraph, or other written means of communication shall be promptly confirmed by the member in writing or by telegraph. Nine concurring votes shall be required for approval of a Committee action so voted upon.

(c) Members and alternate members of the Committee shall serve without

compensation, but shall be allowed such reasonable expenses as approved by the Committee in attending to authorized Committee business.

§ ----28 Powers.

The Committee shall have the following powers:

- (a) To administer the provisions of this order in accordance with its terms;
- (b) To make rules and regulations to effectuate the terms and provisions of this order;
- (c) To receive, investigate, and report to the Secretary complaints of violations of this order; and
- (d) To recommend to the Secretary amendments to this order.

§ ----29 Duties.

The Committee shall have among others the following duties:

- (a) To select from among its members such officers and adopt such rules or bylaws for the conduct of its meetings as it deems necessary;
- (b) To hire employees, appoint such subcommittees and advisory committees as it may deem necessary, and to determine the compensation and to define the duties of each;
- (c) To keep minutes, books, and records which will reflect all of the acts and transactions of the Committee and which shall be subject to examination at any time by the Secretary;
- (d) To submit to the Secretary as soon as practicable after the beginning of each crop year a budget for such period, including a report in explanation of the items appearing therein, and a recommendation as to the rate of assessment for such period;
- (e) To prepare quarterly statements of the financial operations of the Committee and to make copies of each such statements available to growers and handlers for examination at the office of the Committee and to send two copies to the Secretary;
- (f) To cause the books of the Committee to be audited by a competent accountant (acceptable to the Secretary) at least once each crop year and at such other times as the Committee may deem necessary or as the Secretary may request, to submit two copies of each such audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the office of the Committee by growers and handlers;
- (g) To prepare a marketing policy each crop year which policy shall be submitted to the Secretary for his approval;
- (h) To act as intermediary between the Secretary and any grower or handler;
- (i) To investigate and assemble data on the growing, handling, and marketing conditions with respect to bentgrass;
- (j) To submit to the Secretary such available information as he may request or the Committee may deem desirable and pertinent;
- (k) To notify growers and handlers of all meetings of the Committee to consider recommendations for regulation;

and of all regulatory actions taken affecting growers and handlers;

- (l) To give the Secretary the same notice of meetings of the Committee and of meetings of its subcommittees as is given to the applicable membership; and
- (m) To investigate compliance and to use means available to the Committee to prevent violations of the provisions of this order.

RESEARCH AND DEVELOPMENT

§ ----30 Research and Development.

The Committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and development projects designed to assist, improve, or promote the marketing, distribution, and utilization or efficient production of bentgrass. The expense of such projects shall be paid from funds collected pursuant to § ----56.

MARKETING POLICY

§ ----35 Marketing Policy.

Prior to and as far in advance of each ensuing crop year as it finds feasible, but in any event not prior to the preceding September 1, the Committee shall submit to the Secretary a report setting forth the marketing policy it deems desirable for such crop year. Such marketing policy shall set forth the Committee's evaluation of the various factors of supply and demand that will affect the marketing of bentgrass during the crop year, including:

- (a) *Carryin*. The estimated quantity of bentgrass in all hands (growers, handlers, brokers, and wholesalers) at the beginning (July 1) of the crop year;
- (b) *Production*. The estimated bentgrass production during the crop year;
- (c) *Trade Demand*. The prospective domestic and export trade demand, taking into consideration prospective imports;
- (d) *Carryout*. The quantity in all grower and handler inventories at the end of the crop year;
- (e) *Market prices for bentgrass*; and
- (f) *Other relevant factors*. On the basis of its evaluation of these factors, the Committee shall recommend to the Secretary the total quantity of bentgrass (hereinafter referred to as the "Total Desirable Quantity") that should be allotted for handling during the crop year. If, in the event of subsequent changes in the supply and demand factors, the Committee deems it advisable that the total desirable quantity be increased for such crop year, it shall prepare a new or revised marketing policy and submit a report thereon to the Secretary together with its recommendations for an appropriate revision in the total desirable quantity for such crop year. The Committee shall announce each marketing policy (including new and revised policies) and notice and contents thereof shall be provided to growers and handlers by bulletins, newspapers, or other appropriate media.

VOLUME REGULATION

§ ----36 Total desirable quantity.

Whenever the Secretary finds, on the basis of the Committee's recommendation or other available information, that establishing, limiting, or increasing the quantity of bentgrass available for handling during a crop year, would tend to effectuate the declared policy of the Act, he shall establish the total desirable quantity for such crop year, which all handlers may acquire in the crop year. The Committee shall equitably apportion such quantity among producers by establishing allocation bases and allotments as provided in § ----41 and § ----42.

§ ----41 Grower Allocation Bases.

(a) Upon request of the Committee, each grower desiring an allocation base for bentgrass shall register with the Committee and furnish to it on forms prescribed by the Committee, a report of the number of pounds of such bentgrass produced by him and sold by him, or on his behalf, during each of the crop years 1967 through 1973, and names of handlers to whom sales were made as may be required by the Committee and approved by the Secretary.

(b) For the crop year which begins in 1974 a separate allocation base shall be established by the Committee for each registered grower in accordance with the option of such grower as either (1) the average crop year pounds of bentgrass produced and sold by him, or on his behalf, during any one of the crop years 1967 through 1972 and that produced and sold by him during 1973 if his production and sales covered such two crop years; or (2) the crop year pounds of bentgrass produced and sold by him, or on his behalf, during any one of the crop years 1967 through 1973 if he had production and sales in only one of such crop years.

(c) For each crop year subsequent to the crop year 1974, each allocation base shall be recomputed by the Committee as follows: (1) Allocation bases shall be adjusted by adding the grower's preceding crop year's sales of bentgrass to the total number of pounds used in computing his preceding allocation base and dividing by the number of years of sales of such bentgrass until a six year average has been computed; (2) and thereafter by (i) adding the grower's preceding crop year's sales of bentgrass to his six crop year's total sales of bentgrass used in computing his existing allocation base; (i) subtracting the quantity of sales of such bentgrass during the first of such six crop years; (iii) recalculating a new six crop year simple average which shall be the new allocation base.

(d) A condition for the continuing validity of an allocation base is production and sale of bentgrass thereunder. If no bona fide effort has been made in reference to the original allocation base, to produce and sell bentgrass thereunder during any three consecutive crop years, such allocation base

shall be declared invalid due to lack of use and cancelled at the end of such third consecutive year of non-production and sale.

(e) The Committee shall, for the crop year 1975 and each subsequent year, recommend to the Secretary an adjustment in allocation bases which will reflect (1) increase in usage of bentgrass; (2) desires of new growers to gain entry, and growers with existing allocation bases to expand, as evidenced by application for allocation bases or increased allocation bases; and (3) any additional factors which bear on industry adjustments to new and changing conditions.

(f) (1) Notwithstanding the foregoing provisions of paragraph (e) of this section any increase in the quantity of bentgrass provided for by this order shall be no more than 5 percent of the total of all allocation bases encompassed by this order during the previous crop year: *Provided*, That new growers, if any, shall be accorded priority in granting the first 50 percent of any such increase. In the absence of applications from new producers for any or all of the first 50 percent of any increase, the unallocated portion of the first 50 percent and the second 50 percent of any increases in allocation bases shall be equitably distributed to growers with existing allocation bases.

(2) Any person may apply, under rules and procedures to be established by the Committee with the approval of the Secretary, either for a new allocation base or for an increase in an existing allocation base. Such applications may be submitted each crop year, but must be filed with the Committee not later than January 1 of a crop year in order to be considered for an award of a new allocation base or the adjustment of an existing allocation base to take effect the following crop year.

(g) The Committee recommendations, with justifications, supporting data, and a listing and summary of all applications for new or adjusted allocation bases, shall be submitted to the Secretary no later than March 1 of each crop year.

(h) (1) Not more than 60 days after receipt of the Committee recommendations, the Secretary shall either approve said recommendations or make whatever alterations therein that he deems necessary in the public interest. In the event no such recommendations or listing of applications are received, the Secretary may issue adjustments in allocation bases each crop year. The decision of the Secretary shall be final; and he shall communicate his decision and the reasons therefor to the Committee in writing.

(2) Within 30 days after receipt of the Secretary's decision, the Committee shall notify each applicant of the Secretary's decision and of their allocation bases for the following crop year.

(i) The Committee shall, with the approval of the Secretary, establish rules, guides, bases, or standards to be used in determining allocation base awards or adjustments that are to be recommended to the Secretary taking into account,

among other things, the minimum economic enterprise requirements for bentgrass production.

(j) Growers' allocation bases may be transferred to other growers as authorized by regulations recommended by the Committee and approved by the Secretary.

(k) Hardship determination in establishment of original allocation bases. Where allocation of a base involves a new owner, or a new lessee, if predecessor owner or lessee is abandoning or relinquishing his allocation base and allotment, and such relinquishing occurs during the interim between the period of the year for base determination for other established growers and the effective date of this order the successor grower may apply to the Committee for an allocation base determined by such history. In considering such applications the Committee shall take into account the extent of abandonment of allocation bases by such predecessor(s). Such determinations shall be subject to review and approval by the Secretary.

(l) The Committee shall check and determine the accuracy of the information submitted pursuant to this section and is authorized to make a thorough investigation of any application. Whenever the Committee finds an error, omission, or inaccuracy in any such application, it shall correct the same and shall give the grower who submitted the application a reasonable opportunity to discuss with the Committee the factors considered in making the correction. In the event the error, omission, or inaccuracy requires correction of an allocation base, the applicable allotment computed for the grower pursuant to § ----.42 shall be on the basis of the corrected allocation base. All allocation base applications, allocation bases assigned, and adjustments therein, shall be subject to review by the Secretary.

§ ----.42 Grower allotments.

(a) Prior to the beginning of each crop year but no later than March 1, the Committee shall apportion to each grower who has an allocation base for bentgrass an allotment of bentgrass which handlers may acquire from each grower during the crop year. Each such allotment shall be computed by dividing the total desirable quantity of bentgrass established pursuant to § ----.36 by the sum of the allocation bases of bentgrass for all growers and multiplying the grower's allocation base by the resulting percentage. The result shall be the grower's allotment of bentgrass. Except as otherwise provided, no handler may acquire any quantity of bentgrass (including bentgrass of his own production) which would result in all handlers having acquired a greater quantity of bentgrass with respect to such grower than the grower's applicable allotment. Each allotment shall be expressed in pounds of cleaned bentgrass.

(b) The Committee, with the approval of the Secretary, may establish by

regulation such means of certification or identification with respect to allotments to growers as may be required to effectuate the purposes of any regulation issued under this order.

§ ----.43 Bentgrass harvested prior to effective date of this order.

Any person in the possession of bentgrass harvested prior to the effective date of this order or other later date as the Committee may determine, but not more than 90 days following the effective date of this order, shall be entitled, upon application to the Committee to have such bentgrass so designated, and upon so doing, the bentgrass may be certified for handling without regard to any allotment: *Provided*, That the amount certified for handling under this paragraph in any one crop year may be limited by the Committee to not less than 25 percent of the total amount originally so designated.

Grower contracts on proprietary varieties of bentgrass in effect as of the date of publication of the Secretary's recommended decision about this order, are exempt from the order for the life of such contracts, or for the ensuing four years, whichever period of time is shorter: *Provided*, That holders of the contracts present valid evidence thereof to the Committee within 60 days after the Committee begins to function. Contracts on proprietary varieties of bentgrass entered into after the date of publication of the recommended decision, shall not be exempt from this order.

§ ----.44 Foundation and registered bentgrass seed.

The handling of foundation and registered bentgrass seed shall be subject to this order.

§ ----.45 Disposition of excess bentgrass.

Bentgrass produced by a grower in excess of his annual allotment may be disposed of in accordance with such rules and regulations as the Committee, with the approval of the Secretary, may establish. Further, bentgrass in excess of a grower's allotment, may be released for marketing by the Committee, with the approval of the Secretary, for use by the grower, under the supervision of the Committee, (1) to fill a subsequent crop year's allotment pursuant to § ----.42; or (2) to fill an increased allotment established pursuant to § ----.42; or (3) to fill a deficit in the allotment of another grower who has made a bona fide effort to produce, harvest, and market bentgrass, but who produced less than his allotment.

INSPECTION AND IDENTIFICATION

§ ----.46 Quality regulation.

Subject to § ----.41 and § ----.42 all bentgrass seed shall meet regulations of Federal and State seed acts prior to sale. The Committee with the approval of the Secretary, may establish requirements which will prohibit the handling of bentgrass seed containing viable quack grass, wild garlic, wild onion seed, or any other

undesirable seed. No quality regulation requiring change in production practices shall become effective prior to at least two crop years following publication. No bentgrass shall be handled unless it meets the quality standards established under this order. The Committee shall have authority to regulate the size of a lot certificated by one certificate in order to control quality.

§ 47 Inspection.

No handler shall handle bentgrass unless prior to or upon handling, such seed has been inspected by such agencies as the Committee, with the approval of the Secretary, may designate and found to meet the requirements of the Committee as approved by the Secretary.

§ 48 Identification.

All bentgrass purchased from growers, or on their behalf, by handlers must be identified as eligible seed, under rules prescribed by the Committee, by stenciling each container with the designated grower number assigned by the Oregon Bentgrass Commission, or by the Committee. Adequate records shall be maintained by each handler of all transactions involving bentgrass seed.

§ 49 Minimum Quantity Exemption.

The Committee, with the approval of the Secretary may establish a minimum quantity of bentgrass which may be handled on behalf of any grower free from regulations issued pursuant to this order.

UNFAIR TRADE PRACTICES

§ 50 Authorization for Prohibition.

(a) Whenever the Secretary finds, upon recommendation of the Committee or other information that continuance of certain unfair practices in trade channels would tend to interfere with the achieving of the objectives of this order, he may prohibit such practices for any period or periods.

(b) Prior to any such practices being prohibited in any period, the Committee shall recommend, for the approval of the Secretary, such rules and procedures and such record keeping requirements as are necessary to administer these prohibitions and obtain compliance therewith.

EXPENSES AND ASSESSMENTS

§ 55 Expenses.

The Committee is authorized to incur such expenses, including maintenance of a reserve fund, as the Secretary finds are reasonable and likely to be incurred by the Committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions hereof. The funds to cover such expenses shall be paid to the Committee by handlers in the manner prescribed in § 56. For the purposes of this section and § 56 and § 57, the expenses and assessments shall cover the same periods as provided in § 29 (d) dealing with the budgets.

§ 56 Assessments.

(a) As his pro rata share of the expenses, including maintenance of a reserve fund, which the Secretary finds are reasonable and likely to be incurred by the Committee during a crop year, each handler shall pay to the Committee at the end of each month assessments on all bentgrass subject to this order which he handles as the first handler thereof during such period. The payment of assessments for the maintenance and functioning of the Committee may be required under this order throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the uniform rate of assessment to be paid by each handler during a crop year in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund not to exceed one crop year's expenses: *Provided*, That such rate of assessment, including any increase thereof, shall not exceed 1 cent per pound of cleaned bentgrass handled. At any time during or after the crop year, the Secretary, upon recommendation of the Committee, may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall apply to all bentgrass handled during the particular crop year. In order to provide funds for the administration of the provisions of this order during the first part of a crop year before sufficient operating income is available from assessments, the committee may accept the payment of assessments in advance and may also borrow money for such purposes.

§ 57 Accounting.

(a) If at the end of a crop year the assessments collected are in excess of expenses incurred, the Committee with the approval of the Secretary may carry over such excess into subsequent crop years as a reserve: *Provided*, That funds already in the reserve do not exceed approximately one crop year's expenses. Such reserve funds may be used (1) to cover any expenses authorized by this order and (2) to cover necessary expenses of liquidation in the event of termination of this order. If any such excess is not retained in a reserve, it shall be refunded proportionately to the handlers from whom assessments were collected. Upon termination of this order, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical such funds shall be returned pro rata to the handlers from whom such funds were collected.

(b) All funds received by the Committee pursuant to the provisions of this order shall be used solely for the purposes specified in this order and shall be accounted for in the manner provided in this order. The Secretary may at any

time require the Committee and its members to account for all receipts and disbursements.

REPORTS AND RECORDS

§ 60 Reports.

(a) *Inventory*. Each handler shall file with the Committee a certified report showing such information as the Committee may specify with respect to any bentgrass held by him on such dates as the Committee may designate.

(b) *Receipts*. Each handler shall upon request of the Committee file with the Committee a certified report showing for each lot of bentgrass received or handled, the identifying marks, species, variety, weight, place of production, and the grower's name and address on such date(s) as the Committee may designate.

(c) *Other reports*. Upon the request of the Committee, with the approval of the Secretary, each handler shall furnish to the Committee such other information as may be necessary to enable it to exercise its powers and perform the duties under this order.

§ 61 Records.

Each handler shall maintain such records pertaining to all bentgrass acquired from, or handled on behalf of all growers as will substantiate the required reports and such others as may be prescribed by the Committee. All such records shall be maintained for not less than two years after the termination of the crop year to which such records relate.

§ 62 Verification of reports and records.

For the purpose of assuring compliance with record keeping requirements and verifying reports filed by handlers, the Secretary and the Committee through its duly authorized employees shall have access to any premises where applicable records are maintained, where bentgrass is received or held, and at any time during reasonable hours shall be permitted to inspect such handler premises and any and all records of such handlers with respect to matters within the purview of this order.

§ 63 Confidential information.

All reports and records furnished or submitted by growers and handlers to or obtained by the employees of the Committee which contain data or information constituting a trade secret or disclose the trade position, financial condition, or business operation of the particular grower or handler from whom received shall be treated as confidential, and the reports and all information obtained from records shall at all times be kept in the custody and under control of one or more employees of the Committee who shall not disclose such information to any member of the Committee nor to any person other than the Secretary.

MISCELLANEOUS PROVISIONS

§ 70 Compliance.

Except as provided in this order;
(a) No handler may handle bentgrass, the handling of which has been pro-

hibited under the provisions of this order, and no handler shall handle bentgrass except in conformity with the provisions of this order.

(b) No handler may purchase from or otherwise handle on behalf of a grower any amount of bentgrass that, together with all other marketings of such grower during the crop year, would exceed the allotment of such grower.

§ ----.71 Right of the Secretary.

The members of the Committee (including successors and alternates), and any agent or employee appointed or employed by the Committee, shall be subject on just cause to removal or suspension at any time by the Secretary. Each and every order, regulation, decision, determination or other act of said Committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval the disapproved action of the said Committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ ----.72 Effective time.

The provisions of this order shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in § ----.73.

§ ----.73 Termination or suspension.

(a) The Secretary shall, whenever he finds that any or all provisions of this order obstruct or do not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this order or such provision thereof.

(b) The Secretary shall terminate the provisions of this order at the end of the then current crop year whenever he finds that such termination is favored by a majority of growers who, during a representative period determined by the Secretary, have been engaged in the production of bentgrass seed for market in the production area; *Provided*, That such majority have, during such representative period, produced for market more than 50 percent of the volume of such bentgrass seed produced or sold in the production area, but such termination shall be effective only if announced at least 30 days prior to the end of the then crop year.

(c) The provisions of this order shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ ----.74 Proceedings after termination.

(a) Upon the termination of the provisions of this order, the members of the Committee then functioning shall continue as joint trustees for the purpose of settling the affairs of the Committee by liquidating all funds and property then in the possession of or under their control, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the trustees.

(b) The trustees shall continue in such capacity until discharged by the Secretary and shall from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Committee and trustees, to such person as the Secretary may direct, and shall upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Committee or the joint trustees pursuant to this order.

§ ----.75 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this order or any regulation issued pursuant hereto as the issuance of any amendments 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 order or any regulation issued under this order, or (b) release or extinguish any violation of this order or of any regulation issued under this order or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ ----.76 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this order shall cease upon termination of this order, except with respect to acts done under and during the existence of this order.

§ ----.77 Agents.

The Secretary may by designation in writing name any person, including any officer or employee of the Government or any agency in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this order.

§ ----.78 Derogation.

Nothing contained in this order is or shall be construed to be in derogation or modification of the rights of the Secretary to exercise any powers granted by the Act or otherwise in accordance with such powers to act in the premises whenever such action is deemed advisable.

§ ----.79 Personal liability.

No member or alternate of the Committee nor any employee or agent thereof may be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent except for acts of dishonesty.

§ ----.80 Separability.

If any provision of this order is declared invalid, or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the re-

mainder of this order or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ ----.81 Amendments.

Amendments to this order may be proposed, from time to time, by the Committee or by the Secretary.

§ ----.82 Counterparts.

This agreement may be executed in multiple counterparts and, when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ ----.83 Additional parties.

After the effective date hereof, any handler who has not previously executed this agreement may become a party hereto if a counterpart hereof is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to show new contracting party.

§ ----.84 Order with marketing agreement.

Each signatory handler favors and approves the issuance of an order by the Secretary regulating the handling of bentgrass in the same manner as is provided for in this agreement; and each signatory handler hereby requests the Secretary to issue, pursuant to the Act such an order.

Copies of this notice may be procured from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington, D.C. 20250; or James W. Coddington, Grain Division, USDA, AMS, 6525 Belcrest Road, Hyattsville, Maryland 20782.

Signed at Washington, D.C. on May 20, 1974.

JOHN C. BLUM,
Associate Administrator.

[FR Doc. 74-11928 Filed 5-22-74; 8:45 am]

[7 CFR Part 927]

[Docket No. AO-99-A3]

CERTAIN VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON AND CALIFORNIA

Decision and Referendum Order Regarding Proposed Further Amendment of Marketing Agreement and Order

This decision and referendum order, issued pursuant to the rules of practice and procedure governing the proceedings to formulate marketing agreements and orders (7 CFR Part 900), relates to evidence presented at a public hearing in Portland, Oregon, on February 26, 1974.

¹ Applicable only to the proposed marketing agreement.