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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Document Number AMS-FV-13-0038]

Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order; Changes to the Membership of the Softwood Lumber Board

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on changes to the membership of the Softwood Lumber Board (Board) established under the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order). The Board administers the Order with oversight by the U.S. Department of Agriculture (USDA). Under the Order, assessments are collected from U.S. manufacturers (domestic) and importers and used for projects to promote softwood lumber within the United States. This proposal would revise the Board's membership to reflect the diversity of the industry in terms of size of operation; allow companies that operate in multiple geographic regions to seek representation in any region in which they operate (U.S. or import); add flexibility for the Board to nominate eligible persons to fill vacancies that occur during a term; and re-designate the States

of Virginia and West Virginia to the U.S. South Region. These changes would help facilitate program operations.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments may be submitted on the Internet at: <http://www.regulations.gov> or to the Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; facsimile: (202) 205-2800. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, P.O. Box 831, Beavercreek, Oregon, 97004; telephone: (503) 632-8848; facsimile (503) 632-8852; or electronic mail: Maureen.Pello@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under the Order. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

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

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in

connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This proposal invites comments on changes to the Board's membership provisions under the Order. The Board administers the Order with oversight by USDA. Under the Order, assessments are collected from U.S. manufacturers and importers and used for projects to promote softwood lumber within the United States. This proposal would revise the Board's membership to reflect the diversity of the industry in terms of size of operation; allow companies that operate in multiple regions to seek representation in any region in which they operate (U.S. or import); add flexibility for the Board to nominate eligible persons to fill vacancies that occur during a term; and re-designate the States of Virginia and West Virginia to the U.S. South Region. These changes would help facilitate program operations and were unanimously recommended by the Board in July 2013.

Pursuant to section 1217.40(b), the Board is composed of 18 or 19 members, depending upon whether an additional importer member is appointed to the Board. Twelve members are domestic manufacturers and six members are importers of softwood lumber from Canada. Of the 12 domestic manufacturers, 6 represent the U.S. South, 5 represent the U.S. West and 1 represents the Northeast and Lake States. Of the six Canadian importers, four represent Canada West and two represent Canada East. An additional importer member may be appointed to represent all other importing countries besides Canada. Section 1217.40(c)(2) provides authority for the Board to recommend changes to its membership and nomination process.

The Board met on May 7 and 8, 2013, and reviewed program operations, including the Board's structure and nomination process. The Board reviewed these issues further and made the following four recommendations in July 2013.

Board Diversity and Size of Operation

The Board recommended that its regional membership be revised to reflect the diversity of the industry in terms of size of operation. About 8 percent of the companies covered under the Order account for the top two-thirds of the total annual volume of assessable softwood lumber (both domestic and imports). These companies are considered large by the industry in terms of size of operation. Some of these companies operate in multiple regions and some are both a domestic manufacturer and an importer

of softwood lumber. Ninety-two percent of the companies covered under the Order account for the remaining one-third of the total annual volume of assessable softwood lumber. These are considered small by the industry in terms of size of operation.

The Board wants to ensure that this diversity is reflected within each region. The Board analyzed each region's volume of assessable softwood lumber in relation to the region's volume attributed to small and large companies. Table 1 below shows this analysis based on 3-year average data (2010-2012).

Table 1. Regional analysis of assessable softwood lumber by size of operation.

Region	Assessable volume (billion board feet)	Large Companies	Small Companies
		Regional volume (billion board feet)	Regional volume (billion board feet)
U.S. South	10.436	5.951 (57%)	4.485 (43%)
U.S. West	10.548	8.017 (76%)	2.511 (24%)
NE. and Lake States	0.749	0.229 (31%)	0.520 (69%)
Region	Assessable volume (billion board feet)	Large Companies	Small Companies
		Regional volume (billion board feet)	Regional volume (billion board feet)
Canada West	4.983	3.919 (79%)	1.064 (21%)
Canada East	2.379	1.315 (55%)	1.064 (45%)

*These figures are an average of data from 2010-2012. 2012 is actual Board assessment data from its first year of operation. 2010 and 2011 Canadian data is from U.S. Customs and Border Protection. 2010 and 2011 U.S data is from Forest Economic Advisors.

It is noted that for the U.S. South, while the majority of the volume of assessable softwood lumber is attributed to large

companies, almost 90 percent of the number of companies operating in this region are small. The Board considered this in its recommended distribution of Board seats as shown in Table 2 below.

Table 2. Allocation of Board seats based on size of operation.

Size of Operation	Number of Seats					
	U.S. South	U.S. West	NE. and Lake States	Canada East	Canada West	Non-Canadian Importer
Large companies	2	4	N/A	1	3	N/A
Small companies	4	1		1	1	
	6	5	1	2	4	1

*The Northeast and Lake States member and non-Canadian importer member could represent companies of any size.

Additionally, if there were no eligible nominees for a large or small seat within a region, that seat could be filled by a nominee representing a company of any size. Should a company's size change during a member's term of office, that member could serve for the remainder of the term to which they were appointed.

Section 1217.40(b) would be revised accordingly.

Further, section 1217.40(c) requires the Board to periodically review the geographic distribution of the volume of softwood lumber manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. This section would be revised to require the Board to also periodically review the distribution of seats based on size of operation and recommend changes as necessary. Section 1217.40(c) would be revised accordingly.

Entities That Operate in Multiple Regions (U.S. and/or import)

Section 1217.41(b)(3) provides that nominees that are both a domestic manufacturer and importer may seek nomination to the Board as either a domestic manufacturer or an importer, but not both. Nominees who domestically manufacture the majority of their softwood lumber must seek representation as a domestic manufacturer and nominees who import the majority of their softwood lumber must seek representation as an importer. Section 1217.41(b)(4) provides that domestic manufacturers who manufacture and domestically ship from more than one U.S. region must seek representation in the region of the majority of their softwood lumber. Further, section 1217.41(b)(5) provides that importers who import from more than one Canadian region must seek representation in the region from which they import the majority of their softwood lumber.

As previously mentioned some entities in the softwood lumber industry are both domestic manufacturers and importers and operate in multiple regions under the Order. Industry members would like the flexibility to choose which region they represent and whether they seek a position as a domestic manufacturer or an importer on the Board. Thus, the Board recommended revising the Order so that entities that are U.S. manufacturers and importers and who may operate in multiple regions have the ability to seek representation in any region in which they operate. This would add flexibility to the nomination process by allowing companies to seek representation in their region of choice. Paragraphs

(3), (4) and (5) of section 1217.41(b) would be revised accordingly.

Vacancies That Occur Mid-Term

Section 1217.43(c) currently specifies that if a position becomes vacant, nominations to fill the vacancy be conducted using the nomination process set forth in the Order (section 1217.41(b)) whereby the Board solicits the names of eligible nominees and then conducts regional elections. The process is lengthy and can result in a seat remaining vacant for an extended period of time. Thus, the Board recommended revising the Order to allow the Board the flexibility to nominate eligible persons to fill vacancies that occur during a term. This would facilitate program operations by helping to ensure that vacancies are filled in a timely manner. Section 1217.43(c) would be revised accordingly.

Virginia and West Virginia

Section 1217.40(b)(1)(iii) specifies that the States of Virginia and West Virginia are included as part of the Northeast and Lake States Region under the Order. However, softwood lumber from Virginia and West Virginia is predominately pine, a much different species from the white spruce and red pine in the Northeast and Lake States, respectively. Thus, the Board recommended that the Order be revised to re-designate the States of Virginia and West Virginia as part of the U.S. South. The

volume of softwood lumber from Virginia and West Virginia is relatively small (284 million board feet in 2012), so this change would have no impact on the regional distribution of seats on the Board. This change would align Virginia and West Virginia with the region in which they have more in common. Section 1217.40(b)(1)(iii) would be revised accordingly.

This proposal would also make two minor changes to the Order. In paragraph (b) of section 1217.70 on reports, the last sentence would be modified to specify that importers who pay their assessments directly to the Board must submit their report that accompanies the payment of collected assessments within 30 calendar days after the end of the quarter in which the softwood lumber was imported as opposed to 30 calendar days after importation. This language was inadvertently omitted from the final rule that implemented the Order (76 FR 46185; August 2, 2012) and would bring the Order in line with current industry practices. This proposal would also change the OMB control number in section 1217.108 from 0581-NEW to 0581-0264, the control number assigned by the OMB.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (domestic manufacturers and importers) as those having annual receipts of no more than \$7.0 million.

According to the Board, it is estimated that there are currently about 446 domestic manufacturers of softwood lumber in the United States. This number represents separate business entities; one business entity may include multiple sawmills. Using an average price of \$322 per thousand board feet,¹ a domestic manufacturer who ships less than about 25 million board feet per year would be considered a small entity. Using 2012 data, it is estimated that about 270 domestic manufacturers, or about 60 percent², ship less than 25 million board feet annually.

Likewise, based on data from U.S. Customs and Border Protection (Customs) and the Board, it is estimated there are currently about 767 importers of softwood lumber. Using 2012 Customs data, about 699 importers, or about 91 percent, import

¹ Price data was obtained from Random Lengths Publications, Inc., and is a framing composite price that is designed as a broad measure of price movement in the lumber market (www.randomlengths.com).

² Percentages were obtained from the American Lumber Standard Committee, Inc. (ALSC). The ALSC administers an accreditation program for the grade marking of lumber produced under the American Softwood Lumber Standard (Voluntary Product Standard 20).

less than \$7.0 million worth of softwood lumber annually. Thus, for purposes of the RFA, the majority of domestic manufacturers and importers of softwood lumber would be considered small entities.

Regarding value of the commodity, with domestic production averaging about 28.5 billion board feet in 2012, and using an average price of \$322 per thousand board feet, the average annual domestic value for softwood lumber is about \$9.2 billion. According to Customs data, the average annual value for softwood lumber imports for 2012 is about \$3.5 billion.

This proposal invites comments on four changes to the Order regarding the Board's membership. Paragraphs (1) and (2) of section 1217.40(b) would be revised to reflect the diversity of the industry in terms of size of operation; paragraph 1217.40(c) would be revised to require the Board to periodically review this distribution. Paragraphs (3), (4) and (5) of section 1217.41(b) would be revised to allow companies that operate in multiple regions to seek representation in any region in which they operate. Section 1217.43(c) would be revised to add flexibility for the Board to nominate eligible persons to fill vacancies that occur during a term. Section 1217.40(b)(1)(iii) would be revised to re-designate the States of Virginia and West Virginia to the U.S. South Region. These changes were unanimously recommended by the Board and are authorized under section 1217.40(c)(2) of the Order and section 515(b)(3) of the 1996 Act.

Regarding the economic impact of this proposed rule on affected entities, these changes are administrative in nature and would have no economic impact on entities covered under the program. These changes would help maintain the Board's balance in terms of size of operation by geographic region; add flexibility so that multi-region companies could choose which region they represent on the Board; help ensure that mid-term vacancies are filled in a timely manner; and better align the States of Virginia and West Virginia.

Regarding alternatives, the Board explored various options regarding the diversity of size of operation. The Board considered establishing a separate region for multi-region companies and companies that are both a domestic manufacturer and an importer. The Board also considered establishing some "at large" seats for multi-region companies. The Board considered weighting an entity's vote in a regional election by volume. The Board also considered maintaining the status quo and not changing the Order in this regard. After much deliberation, the Board opted to recommend allocating regional seats based on an analysis of the volume of softwood lumber within each region and the volume of assessable softwood lumber covered under the Order.

The Board considered maintaining the status quo regarding multi-region companies who may also be a domestic manufacturer and importer, filling mid-term vacancies and the regional designation for the States of Virginia and West Virginia. The

Board ultimately recommended modifications to these Order provisions.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581-0264. This proposed rule would impose no additional reporting and recordkeeping burden on domestic manufacturer and importers of softwood lumber.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

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

Regarding outreach efforts, these actions were discussed by the Board at meetings on May 7 and 8, 2013. The Board's Executive Committee discussed these issues on January 7, June 3 and 10, and July 1, 2013. All of the Board's meetings, including meetings held via teleconference, are open to the public and interested persons are invited to participate and express their views.

We have performed this initial RFA analysis regarding the impact of this proposed action on small entities and we invite comments concerning potential effects of this action on small businesses.

While this proposed rule set forth below has not received the approval of USDA, it has been determined that it is consistent with and would effectuate the purposes of the 1996 Act.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this action needs to be in place no later than February 2014 to allow sufficient time for the election process and appointments for the term of office beginning January 1, 2015. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Softwood Lumber promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1217 is proposed to be amended as follows:

PART 1217—SOFTWOOD LUMBER RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

1. The authority citation for 7 CFR part 1217 continues to read as follows:

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

2. Amend § 1217.40 by:

a. Revising paragraph (a);

b. Revising paragraphs (b)(1), (b)(2) introductory text, (b)(2)(i), and (b)(2)(ii);

b. Revising the introductory text to paragraph (c) and paragraphs (c)(2) and (c)(3)

The changes to read as follows:

§ 1217.40 Establishment and membership.

(a) Establishment of the Board. There is hereby established a Softwood Lumber Board to administer the terms and provisions of this Order and promote the use of softwood lumber. The Board shall be composed of manufacturers for the U.S. market who manufacture and domestically ship or import 15 million board feet or more of softwood lumber in the United States during a fiscal period. Seats on the Board shall be apportioned based on the volume of softwood lumber manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. Seats on the Board shall also be apportioned based on size of operation within each geographic region, as specified in paragraphs (b)(1)(i), (b)(1)(ii), (b)(2)(i), and (b)(2)(ii) of this section. For

purposes of this section, large means manufacturers for the U.S. market who account for the top two-thirds of the total annual volume of assessable softwood lumber and small means those who account for the remaining one-third of the total annual volume of assessable softwood lumber. If there are no eligible nominees for a large or small seat within a region, that seat may be filled by a nominee representing an eligible manufacturer for the U.S. market of any size. Should the size of a manufacturer for the U.S. market change during a member's term of office, that member could serve for the remainder of the term.

(b) * * *

(1) Domestic manufacturers. Twelve members shall be domestic manufacturers from the following three regions:

(i) Six members shall be from the U.S. South Region, which consists of the states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia. Of these six members, two must be large and four must be small;

(ii) Five members shall be from the U.S. West Region, which consists of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. Of these five members, four must be large and one must be small; and

(iii) One member shall be from the Northeast and Lake States Region, which consists of the states of Connecticut, Delaware,

Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Wisconsin and all other parts of the United States not listed in paragraphs (b) (1) (i), (b) (1) (ii), or (b) (1) (iii) of this section.

(2) Importers. Six members shall be importers who represent the following regions:

(i) Four members shall import softwood lumber from the Canadian West Region, which consists of the provinces of British Columbia and Alberta. Of these four members, three must be large and one must be small; and

(ii) Two members shall import softwood lumber from the Canadian East Region, which consists of the Canadian territories and all other Canadian provinces not listed in paragraph (b) (2) (i) of this section that import softwood lumber into the United States. Of these two members, one must be large and one must be small.

(iii) * * *

(c) In each five-year period, but not more frequently than once in each three-year period, the Board shall:

(1) * * *

(2) Review, based on a three-year average, the distribution of the size of operations within each region; and

(3) If warranted, recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographical distribution of the volume of softwood lumber manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. The destination of volumes between regions and the distribution of the size of operations within regions shall also be considered. The number of Board members may also be changed. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

3. Amend § 1217.41 by

a. Revising the introductory text to paragraph (b);

b. Revising paragraphs (b) (1), (b) (2), (b) (3), (b) (4), and (b) (5).

The changes to read as follows:

§ 1217.41 Nominations and appointments.

(a) * * * * *

(b) Subsequent nominations shall be conducted as follows:

(1) The Board shall conduct outreach to all segments of the softwood lumber industry. Softwood lumber domestic manufacturers and importers may submit nominations to the Board. Subsequent nominees must domestically manufacture and/or import 15 million board feet or more of softwood lumber per fiscal year;

(2) Domestic manufacturers and importer nominees may provide the Board a short background statement outlining their qualifications to serve on the Board;

(3) Nominees that are both a domestic manufacturer and an importer may seek nomination to the Board and vote in the nomination process as either a domestic manufacturer or an importer, but not both. Such nominees must domestically manufacture and import 15 million board feet or more of softwood lumber per fiscal year;

(4) The names of domestic manufacturer nominees shall be placed on a ballot by region. The ballots along with the background statements shall be mailed to domestic manufacturers in each respective region for a vote. Domestic manufacturers who manufacture softwood lumber in more than one region may seek nomination and vote in one region of their choice. The votes shall be tabulated for each region with the nominee receiving the highest number of votes at the top of the list in descending order by vote. The top two candidates for each position shall be submitted to the Secretary;

(5) The names of importer nominees shall be placed on a ballot by region. The ballots along with the background statements shall be mailed to importers in each respective region for a vote. Importers who import softwood lumber from more than one region may seek nomination and vote in one region of their choice. The votes shall be tabulated for each region with the

nominee receiving the highest number of votes at the top of the list in descending order by vote. The top two candidates for each position shall be submitted to the Secretary.

* * * * *

4. Amend § 1217.43 by revising paragraph (c) to read as follows:

§ 1217.43 Removal and vacancies.

(a) * * * * *

(b) * * * * *

(c) If a position becomes vacant, nominations to fill the vacancy may be conducted using the nominations process set forth in § 1217.41(b) or the Board may nominate eligible persons. A vacancy will not be required to be filled if the unexpired term is less than six months.

5. Amend § 1217.70 by revising paragraph (b) to read as follows:

§ 1217.70 Reports.

* * * * *

(b)) For domestic manufacturers, such information shall accompany the collected payment of assessments on a quarterly basis specified in §1217.52. For importers who pay their assessments directly to the Board, such information shall accompany the payment of collected assessments within 30 calendar

days after the end of the quarter in which the softwood lumber was imported.

6. Section 1217.108 is revised to read as follows:

§ 1217.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 4 U.S.C. is OMB control number 0581-0264.

Dated: September 17, 2013

Rex A. Barnes
Associate Administrator

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