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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Document Number AMS-FV-12-0023]

Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order; Late Payment and Interest Charges on Past Due Assessments

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on prescribing late payment and interest charges on past due assessments under the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order). The Order is administered by the Softwood Lumber Board (Board) 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. Softwood lumber is used in products like flooring, siding and framing. This proposal would implement authority contained in the Order that allows the Board to collect late payment and interest charges on past due assessments. This action would contribute to effective administration of the program.

DATES: Comments must be received by [INSERT DATE 60 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 Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order) (7 CFR part 1217). 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 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action has been designated as a "non-significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has waived the review process.

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 proposed rule 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 proposed rule invites comments on prescribing late payment and interest charges on past due assessments under the

Order. The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from domestic manufacturers and importers and used for projects to promote softwood lumber within the United States. Softwood lumber is used in products like flooring, siding and framing. This proposal would implement authority contained in the Order and the 1996 Act that allows the Board to collect late payment and interest charges on past due assessments. This action was unanimously recommended by the Board and would contribute to effective administration of the program.

Section 1217.52(a) of the Order specifies that the Board's programs and expenses shall be paid by assessments on domestic manufacturers and importers and other income or funds available to the Board. Paragraph (1) of that section specifies further that when a domestic manufacturer or importer fails to pay their assessments within 60 calendar days of when the assessment is due, the Board may impose a late payment charge and interest. The late payment and interest charges must be specified in regulations issued by the Secretary. All late assessments would be subject to the late payment charge and interest.

The softwood lumber program was promulgated in 2011. Assessment collection began in January 2012. Assessments on softwood lumber domestic shipments and imports are due to the

Board 30 calendar days after the end of each quarter. For example, assessments for softwood lumber shipped domestically or imported during the months of January, February and March are due to the Board by April 30. Entities that domestically ship or import less than 15 million board feet annually are exempt from assessment. Additionally, assessed entities do not pay assessments on their first 15 million board feet domestically shipped or imported per year.

Assessment funds are used for promotion activities that are intended to benefit all industry members. Thus, it is important that all assessed entities pay their assessments in a timely manner. Entities who fail to pay their assessments on time would be able to reap the benefits of Board programs at the expense of others. In addition, they would be able to utilize funds for their own use that should otherwise be paid to the Board to finance Board programs.

Board Recommendation

Thus, the Board met on May 8, 2012, and unanimously recommended implementing the Order authority regarding late payment and interest charges. Specifically, the Board recommended that a late payment charge be imposed on any domestic manufacturer or importer who fails to make timely remittance to the Board of the total assessments for which such

domestic manufacturer or importer is liable. Such late payment would be imposed on any assessments not received within 60 calendar days of the date they are due. This would be a one-time late payment charge equal to 10 percent of the assessments due before interest charges have accrued. The Board also recommended that 1½ percent per month interest on the outstanding balance, including any late payment and accrued interest, be added to any accounts for which payment has not been received within 60 calendar days after the assessments are due. Such interest would continue to accrue monthly until the outstanding balance is paid to the Board.

This action is expected to help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities. Accordingly, a new Subpart C would be added to the Order for rules and regulations, and a new section 1217.520 would be added to Subpart C.

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 385 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 \$384 per thousand board feet,¹ a domestic manufacturer who ships less than about 18 million board feet per year would be considered a small entity. Using 2013 data, it is estimated that 210 domestic manufacturers, or 54 percent, ship less than 18 million board feet annually.

Likewise, based on Customs and Board data, it is estimated there are 795 importers of softwood lumber. Using 2013 Customs data, about 710 importers, or about 89 percent, import less than \$7.0 million worth of softwood lumber annually. Thus, for

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).

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 40 billion board feet in 2013, and using an average price of \$384 per thousand board feet, the average annual domestic value for softwood lumber is about \$15.4 billion. According to Customs data, the average annual value for softwood lumber imports for 2013 is about \$4.8 billion.

This proposed rule invites comments on prescribing late payment and interest charges on past due assessments under the Order. The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from domestic manufacturers and importers and used for projects to promote softwood lumber within the United States. Softwood lumber is used in products like flooring, siding and framing. This rule would add a new section 1217.520 that would specify a late payment charge of 10 percent of the assessments due and interest at a rate of 1½ percent per month on the outstanding balance, including any late payment and accrued interest. This section would be included in a new Subpart C - Rules and Regulations. This action was unanimously recommended by the Board and is authorized under section 1217.52(1) of the Order and section 517(e) of the 1996 Act.

Regarding the economic impact of this proposed rule on affected entities, this action would impose no costs on domestic manufacturers and importers who pay their assessments on time. It would merely provide an incentive for entities to remit their assessments in a timely manner. For all entities who are delinquent in paying assessments, both large and small, the charges would be applied the same. As for the impact on the industry as a whole, this action would help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities.

Additionally, as previously mentioned, the Order provides for an exemption for entities that domestically ship or import less than 15 million board feet annually. It is estimated that, of the 385 domestic manufacturers, 200, or 52 percent, ship less than 15 million board feet per year and are thus exempt from paying assessments under the Order. Of the 795 importers, it is estimated that 730, or 92 percent, import less than 15 million board feet per year and are also exempt from paying assessments. Thus, about 185 domestic manufacturers and 65 importers pay assessments under the Order.

Regarding alternatives, one option to the proposed action would be to maintain the status quo and not prescribe late payment and interest charges for past due assessments. However, the Board determined that implementing such charges would help facilitate program administration by encouraging entities to pay their assessments in a timely manner. The Board reviewed rates of late payment and interest charges prescribed in other research and promotion programs and concluded that a 10 percent late payment charge and interest at a rate of 1½ percent per month on the outstanding balance would be appropriate.

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 not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting and recordkeeping burden on domestic manufacturers 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, this action was discussed by the Board at its first meeting held in November 2011 and at six committee meetings held via teleconference during the first six months of 2012. The Board met in May 2012 and unanimously made its recommendation. 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 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 60-day comment period is provided to allow interested persons to respond to this proposal. 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. Subpart C - Rules and Regulations is added to read as follows:

Subpart C - Rules and Regulations

§ 1217.520 Late payment and interest charges for past due assessments.

(1) A late payment charge shall be imposed on any domestic manufacturer or importer who fails to make timely remittance to the Board of the total assessments for which they are liable.

The late payment will be imposed on any assessments not received within 60 calendar days of the date they are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued.

(2) In addition to the late payment charge, 1½ percent per month interest on the outstanding balance, including any late payment and accrued interest, will be added to any accounts for which payment has not been received by the Board within 60 calendar days after the day assessments are due. Interest will continue to accrue monthly until the outstanding balance is paid to the Board.

Dated: May 7, 2014.

Rex A. Barnes,
Deputy Administrator.

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