



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Document Number AMS-SC-20-0031]

Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order; Change to the Board Membership Eligibility Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the eligibility requirements for nominees representing domestic manufacturers on the Softwood Lumber Board (Board) under the Agricultural Marketing Service's (AMS) regulations regarding a national research and promotion program for softwood lumber. This change will help facilitate program operations.

DATES: Effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: This rule affecting 7 CFR part 1217 (herein the "Order") is authorized by the Commodity Promotion,

Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

Executive Orders 12866, 13563, and 13771

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 falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

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 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.

Section 519 of the 1996 Act (7 U.S.C. 7418) provides that a person subject to an order may file a written petition with U.S. Department of Agriculture (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, must 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 rule changes the eligibility requirements for nominees representing domestic manufacturers on the Board. The Board administers the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order) with oversight by the USDA. Pursuant to the Order, assessments are collected from domestic manufacturers and importers, and are used for research and promotion projects designed to strengthen the position of softwood lumber in the marketplace. This change was recommended to the Secretary by the Board at its February 26, 2020, meeting, and will contribute to the effective administration of the program.

Section 1217.40 provides for the establishment of the Board. The Board is comprised 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. In November 2018, the Board recommended revising the Board composition from 19 to 14 members over a three-year period. The Board took into consideration the consolidation of the softwood lumber industry since the

inception of the program, along with the number of companies eligible to be represented on the Board. Additionally, the Board recommended that U.S. Board members reside in the region they represent. This was intended to ensure that entities from outside the U.S. that own softwood lumber entities within the U.S. could only represent a U.S. region on the Board if the individual seeking nomination resided in the respective region. The recommendation was finalized in a rule that was published in the *Federal Register* on September 25, 2019 (84 FR 50294). The 2021 Board and each subsequent Board shall be comprised of 14 members, 10 of whom shall represent domestic manufacturers and four of whom shall represent importers. Domestic manufacturer Board members represent three regions: U.S. South Region; U.S. West Region; and Northeast and Lake States Region. The Order prescribes that domestic manufacturer representatives reside in the region they represent.

Board Recommendation

The Board met on February 26, 2020, and recommended the Order be revised to allow a domestic manufacturer's representative to seek nomination in any of the regions where the manufacturer they represent has manufacturing operations. The current Order limits manufacturer representatives to seek nomination only in the region where he or she resides. The Board conducted nominations under the newly implemented provisions and

found that clarification in the Order was needed to reflect the multi-regional nature of manufacturers rather than the individual nominee. Several domestic manufacturers have operations in multiple U.S. regions. Revising the Order to allow a person to seek nomination in one of the regions where the manufacturer they represent has operations will provide flexibility to the Order, while maintaining the intent that Board members representing domestic manufacturers reside in the U.S. This change will help facilitate program operations. Therefore, §1217.40 (b) (1), (b) (1) (i), (b) (1) (ii), and (b) (1) (iii) will be revised accordingly.

Final Regulatory Flexibility Act Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural service firms (domestic softwood lumber

manufacturers and importers) as those having annual receipts of no more than \$8 million.¹

The Random Lengths Publications, Inc.'s yearly average framing lumber composite price was \$356 per thousand board feet (mbf) in 2019. Dividing the \$8 million threshold that defines an agricultural service firm as small by this price results in a maximum threshold of 22.5 million board feet (mmbf) of softwood lumber per year that a domestic manufacturer or importer may ship to be considered a small entity for purposes of the RFA. Table 1 shows the number of entities and the amount of volume they represent that may be categorized as small or large based on the SBA definition.

	Domestic manufacturers		Importers		Totals	
	Entities	Volume (MMBF)	Entities	Volume (MMBF)	Entities	Volume (MMBF)
Small	226	1,991	774	1,257	1,000	3,248
Large	290	32,229	106	32,582	396	64,811
Total	516	34,220	880	33,839	1,396	68,059

Sources: Forest Economic Advisors; Customs and Border Protection.

As shown in Table 1, there are a total of 1,396 domestic manufacturers and importers of softwood lumber based on 2019 data. Of these, 1,000 entities, or 72 percent, shipped or imported less than 22.5 mmbf and would be considered small based

¹ SBA does have a small business size standard for "Sawmills" of 500 employees (see https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%202019%2C%202019_Rev.pdf). Based on USDA's understanding of the lumber industry, using this criterion would be impractical as sawmills often use contractors rather than employees to operate and, therefore, many mills would fall under this criterion while being, in reality, a large business. Therefore, USDA used "agricultural service firm" as a more appropriate criterion for this analysis.

on the SBA definition. These 1,000 entities domestically manufactured or imported 3.25 billion board feet (bbf) in 2019, less than 5 percent of total volume. The revision to the Board eligibility requirements will not disproportionately burden small domestic manufacturers and importers of softwood lumber.

This rule revises § 1217.40 (b) (1), (b) (1) (i), (b) (1) (ii), and (b) (1) (iii) to allow domestic softwood lumber manufacturer representatives to seek nomination in any of the regions where the manufacturer they represent has manufacturing operations. The Order is administered by the Board with oversight by the USDA. In accordance with the program requirements, assessments are collected from domestic manufacturers and importers, and are used for research and promotion projects designed to strengthen the position of softwood lumber in the marketplace. Revising the Order to allow a person to seek nomination in one of the regions where the softwood lumber manufacturer has operations will provide flexibility to the Order, while maintaining the intent that Board members representing domestic manufacturers reside in the U.S.

Regarding alternatives, the Board considered not changing the nominee eligibility requirements; however, the entire Board determined that making this change will better align the Order provisions with industry practices and will help facilitate Board operations. This change was discussed at the Industry

Relations and Governance Committee meeting on February 18, 2020, and at the Board meeting on February 26, 2020.

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 0581-0093. This rule will not result in a change to the information collection and recordkeeping requirements previously approved and will 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. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this 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.

A proposed rule concerning this action was published in the *Federal Register* on May 11, 2020 (85 FR 27690). A 30-day comment period ending June 10, 2020, was provided to allow interested persons to submit comments.

Analysis of Comments

Two comments were received in response to the proposed rule. One commenter supported the change stating that it will give the board more flexibility in seeking the best qualified people to serve on the Board. The other comment was outside the scope of this action.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board, the comment received, and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

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 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. In § 1217.40, paragraphs (b) (1), (b) (1) (i), (b) (1) (ii), and (b) (1) (iii), are revised to read as follows:

§ 1217.40 Establishment and membership.

* * * * *

(b) * * *

(1) *Domestic manufacturers.* Domestic manufacturers must reside in the United States. For the 2020 Board, 11 members shall represent domestic manufacturers and for the 2021 Board and each subsequent Board, ten members shall represent domestic manufacturers who reside in the following three regions:

(i) Five members shall represent manufacturers of softwood lumber in 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. For the 2020 Board, of these five members, two must represent large and three must represent small domestic manufacturers. For the 2021 Board and each subsequent Board of these five members, two must represent large, two must represent small, and one may represent domestic manufacturers of any size;

(ii) Five members shall represent manufacturers of softwood lumber in the U.S. West Region for the 2020 Board, and for the 2021 Board and each subsequent Board, four members shall manufacture softwood lumber in 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. For the 2020 Board, of these five members, four must represent large and one must represent small domestic manufacturers. For the 2021 Board and each subsequent Board, of the four members, two must represent large, one must represent small, and one may represent domestic manufacturers of any size; and

(iii) One member shall represent a manufacturer of softwood lumber in 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 paragraph (b) (1) (i), (ii), or (iii) of this section. This member may represent domestic manufacturers of any size.

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