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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1217

[Document Number AMS-FV-10-0015; FR]

RIN 0581-AD03

#### Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order). Softwood lumber is used in products like flooring, siding and framing. The program will be financed by an assessment on softwood lumber domestic manufacturers and importers and will be administered by a board of industry members selected by the Secretary of Agriculture (Secretary). The initial assessment rate will be \$0.35 per thousand board feet of softwood lumber shipped within or imported to the United States. The purpose of the program is to strengthen the position of softwood lumber in the marketplace, maintain and expand markets for softwood lumber, and develop new uses for softwood lumber within the United States. The U.S. Department of Agriculture (USDA) conducted a referendum among eligible domestic softwood lumber manufacturers and importers from May 23 through June 10, 2011. Sixty-seven percent of those voting in the referendum representing 80 percent of the volume of softwood lumber represented in the referendum favored implementation of the program.

**DATES:** Effective August 3, 2011. Collection of assessments (§§ 1217.52 and 1217.53) and appropriate reporting and recordkeeping (§§ 1217.70 and 1217.71) will begin January 1, 2012.

#### FOR FURTHER INFORMATION CONTACT:

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

As part of this rulemaking process, a proposed rule was published in the **Federal Register** on October 1, 2010 (75 FR 61002). That rule provided for a 60-day comment period which ended on November 30, 2010. Fifty-five comments were received. The comments were addressed in a second proposed rule and referendum order that was published in the **Federal Register** on April 22, 2011 (78 FR 22757). A final rule prescribing referendum procedures was also published in the **Federal Register** on April 22, 2011 (76 FR 22752).

Domestic manufacturers and importers who manufactured and shipped or imported 15 million board feet or more of softwood lumber during the representative period January 1 through December 31, 2010, were eligible to vote in the referendum held from May 23 through June 10, 2011. Sixty-seven percent of those voting in the referendum representing 80 percent of the volume represented in the referendum approved implementation of the program. The referendum was conducted by mail ballot.

#### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

#### 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 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, 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 rule establishes an industry-funded research, promotion, and information program for softwood lumber. Softwood lumber is used in products like flooring, siding and framing. The program will be financed by an assessment on softwood lumber domestic manufacturers and importers and will be administered by a board of industry members selected by the Secretary. The initial assessment rate is \$0.35 per thousand board feet of softwood lumber shipped within or imported to the United States. Entities that domestically manufacture and ship or import less than 15 million board feet per fiscal year will be exempt from the payment of assessments. Additionally, assessed entities will not pay assessments on the first 15 million board feet of softwood lumber shipped domestically or imported during the year. Exports from the United States will also be exempt from assessments. The purpose of the program is to strengthen the position of softwood lumber in the marketplace, maintain and expand markets for softwood lumber, and develop new uses for softwood lumber within the United States. The proposal was submitted to USDA by the Blue Ribbon Commission (BRC), a committee of 21 chief executive officers and heads of businesses that domestically manufacture and import softwood lumber.

### Authority in 1996 Act

The Order is authorized under the 1996 Act which authorizes USDA to establish agricultural commodity research and promotion orders which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. As defined under section 513(1)(D) of the 1996 Act, agricultural commodities include the products of forestry, which includes softwood lumber.

The 1996 Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the 1996 Act provides permissive terms for orders, and other sections provide for alternatives. For example, section 514 of the 1996 Act provides for orders applicable to (1) producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if imports are subject to assessments). Section 516 states that an order may include an exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports.

In addition, section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. An order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board or council from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

### Industry Background

The softwood lumber industry is comprised of sawmills that make products from softwood trees. Softwoods include the botanical group

of trees that have needle-like or scale-like leaves, or conifers. Softwood lumber includes certain products manufactured from softwoods (or coniferous trees). Softwood lumber is used in products like flooring, siding, and framing.

Softwood lumber sizes are identified by the thickness and width of the board when it is first cut from the log. This is known as "rough cut" when the wood is still green and wet. Once the wood dries, it shrinks. After the wood dries, the surface of the board is smoothed to make the wood a uniform size. This is known as "planing" the wood. Once planed, the wood is considered finished. In the industry, the term nominal is used to describe the size of the rough cut board, prior to finishing. For example, a 2 x 4 board is a nominal size. The actual size of a 2 x 4 board is 1.5 inches in thickness by 3.5 inches in width. The length of the board is typically the actual length. Usually there is a 1/2 inch difference in measurements over 2 inches and 1/4 inch difference in measurements less than 2 inches. For purposes of the Order and the tables in this rule, nominal sizes are used. One nominal board foot is a unit of measurement of softwood lumber represented by a board 12 inches long, 12 inches wide, and 1 inch thick or its cubic equivalent. A board foot calculation for softwood lumber 1 inch or more in thickness is based on its nominal thickness and width by the actual length. Softwood lumber with a nominal thickness of less than 1 inch is calculated as 1 inch.

### Regional U.S. Timber Production<sup>1</sup>

According to USDA's Forest Service, the main species of softwoods in the southern United States are pines that grow fast and can be sold for lumber in 25 to 30 years. Southern pines are often treated with preservatives. About a third of the region's lumber is sold to treaters for further processing (*i.e.*, apply preservatives).<sup>2</sup>

Most of the northern U.S. softwood lumber industry is in Maine where the predominant species are white spruce and balsam fir. These trees are typically used for light framing such as wall

studs. Second growths of red pine planted in the 1930s and later have been harvested by a few firms in the lake states. Red pine is also easy to treat and much of it is processed. White pine trees are also prevalent in the northern United States. They are used for paneling, millwork, and joinery. Millwork includes woodwork that has been made at a mill, and joinery is the trade of constructing articles by joining together pieces of wood.

The bulk of timber production in the western United States is on the coast of the Pacific Northwest. Douglas fir and hemlock trees dominate while farther south in northern California, redwood trees, suitable for outdoor structures like fences, siding and decks, are common. East of these regions, ponderosa pine dominates and is used for millwork and joinery. Northern Idaho and Montana contain lodgepole pine and other species suitable for light framing.

### U.S. Softwood Lumber Output by Region<sup>3</sup>

For 2008–2009 (most recent data available to USDA), total output (production) of softwood lumber by U.S. sawmills averaged about 24.5 billion board feet annually. Of the 24.5 billion board feet, 11.7 billion board feet were from the U.S. South, 11.3 billion board feet were from the U.S. West, and 2.4 billion board feet were from the Northeast and Lake States. Data for the western states is from the Western Wood Products Association<sup>4</sup> and data for the other two regions is from the U.S. Census Bureau.<sup>5</sup>

### Softwood Lumber Markets<sup>6</sup>

The residential market is the largest consumer of softwood lumber in the United States. This includes single and multifamily homes, mobile homes, and remodeling. The residential market accounted for 75 percent of the total U.S. softwood lumber market in 2006 and 63 percent of the market in 2009. Table 1 below shows this data from 2003 through 2009.

<sup>3</sup> Production data was compiled by Henry Spelter of Wood Futures Insight and Forest Economic Advisors.

<sup>4</sup> Western Wood Products Association, 2008 Statistical Yearbook, p. 32.

<sup>5</sup> U.S. Census Bureau, 2009, Construction, <http://www.census.gov/mcd/>.

<sup>6</sup> Spelter, McKeever and Toth, Profile 2009, p. 2–5.

<sup>1</sup> Spelter, H., D. McKeever, D. Toth, Profile 2009: Softwood Sawmills in the United States, USDA, p. 7.

<sup>2</sup> Micklewright, J.T., Wood preservation statistics, American Wood Preservers Association, p. 25.

TABLE 1—U.S. SOFTWOOD LUMBER MARKETS FROM 2003–2009 VOLUME  
[Billion board feet]

	Single family homes	Multi-family homes	Mobile homes	Residential remodeling	Non-residential, buildings	Non-residential, other	Industrial and other	Total U.S.
2003 .....	20.2	1.7	1.1	19.3	3.6	0.6	10.2	56.7
2004 .....	22.2	1.8	1.1	20.3	3.9	0.5	11.1	60.8
2005 .....	24.5	1.9	1.2	20.9	3.8	0.6	11.7	64.6
2006 .....	21.3	1.9	0.9	21.4	3.6	0.6	11.3	61.0
2007 .....	14.9	1.7	0.8	19.7	4.0	0.6	11.4	53.1
2008 .....	8.4	1.4	0.6	17.5	3.9	0.6	9.6	42.0
2009 .....	5.3	0.7	0.4	14.2	3.6	0.6	7.8	32.6
Shares (percent)								
2003 .....	36	3	2	34	6	1	18	.....
2004 .....	36	3	2	33	6	1	18	.....
2005 .....	38	3	2	32	6	1	18	.....
2006 .....	35	3	2	35	6	1	18	.....
2007 .....	28	3	1	37	8	1	21	.....
2008 .....	20	3	1	42	9	1	23	.....
2009 .....	16	2	1	44	11	2	24	.....

During normal economic conditions, single family homes comprise the largest share of the softwood lumber market in the United States. Single family home use rose from 20.2 billion board feet in 2003 to 24.5 billion board feet in 2005 and fell to 5.3 billion board feet in 2009. Single family homes comprised 38 percent of the market for softwood lumber in 2005 and 16 percent of the market by 2009.

Home building is cyclical in nature (follows a pattern of highs and lows) as compared to other end uses for softwood lumber. Residential remodeling and other uses experienced downturns between 2006 and 2009, but less severe than the market for single family homes. Softwood lumber used for residential remodeling fell from 21.4 billion board feet in 2006 to 14.2 billion board feet in 2009. As a percentage of softwood lumber market share, residential remodeling rose from 35 percent in 2006 to 44 percent in 2009.

#### Export Markets<sup>7</sup>

Export markets are another outlet for softwood lumber. Two decades ago, U.S. exports were about seven times greater than they were in recent years, but a strong U.S. dollar from the mid-1990s

onward helped to reduce exports. Additionally, different size and grade standards for softwood lumber in export markets complicate production when log sizes have to be converted from imperial units (feet) to metric (meters). Most manufacturers have thus focused on North American sales. However, in slow periods such as in recent years, efforts have been made to supply export markets to the extent possible.

#### Competition<sup>8</sup>

Softwood lumber competes with several alternative products. Steel and concrete dominate larger residential and nonresidential projects. Brick, concrete, and vinyl are often used in low-rise residential and nonresidential buildings. Within the last decade, wood-plastic composite lumber has become popular for outdoor decking, railing, trim, and fencing. Other wood-based products such as laminated veneer are becoming more popular in place of softwood lumber.

#### Imports

According to U.S. Department of Commerce, Census Bureau, Foreign Trade Statistics data (Census)<sup>9</sup>, imports of softwood lumber from 2008 through

2010 averaged about 10.2 billion board feet annually. During those years, imports from Canada averaged 9.6 billion board feet annually, comprising about 94 percent of total imports; imports from western Europe averaged 224 million board feet annually, comprising about 2.2 percent of total imports; and imports from Chile averaged 174 million board feet annually, comprising about 1.8 percent of total imports. Imports from other countries accounted for the remaining 2 percent of total imports for 2008 through 2010.

#### Price and Cost Trends<sup>10</sup>

Prices in the lumber industry can change rapidly in response to shifts in demand or supply. Prices are set competitively with many buyers and sellers bidding in a business that tends to be cyclical in nature. As shown in Table 2 below, revenue for the State of Oregon per thousand board feet was about \$309 in 2003, rose to \$420 in 2004, and fell to \$219 in 2008. In comparison, revenue for the State of Georgia per thousand board feet was about \$323 in 2003, rose to \$418 in 2005, and fell to \$262 in 2008.

TABLE 2—TYPICAL SAWMILL OPERATING COSTS 2003–2008

	Oregon		Georgia	
	Costs (\$ per thousand board feet)	Revenue (\$ per thousand board feet)	Costs (\$ per thousand board feet)	Revenue (\$ per thousand board feet)
2003 .....	295	309	311	323
2004 .....	330	420	335	378
2005 .....	349	370	349	418
2006 .....	335	316	349	330
2007 .....	297	260	300	269

<sup>7</sup> Spelter, McKeever and Toth, Profile 2009, p. 15.

<sup>8</sup> Ibid.

<sup>9</sup> <http://www.fas.usda.gov/gats>; accessed 3/12/11.

<sup>10</sup> Spelter, McKeever and Toth, Profile 2009, p. 5–6.

TABLE 2—TYPICAL SAWMILL OPERATING COSTS 2003–2008—Continued

	Oregon		Georgia	
	Costs (\$ per thousand board feet)	Revenue (\$ per thousand board feet)	Costs (\$ per thousand board feet)	Revenue (\$ per thousand board feet)
2008 .....	238	219	328	262

Several factors contributed to the revenue changes shown in Table 2. Some mills in the interior western United States were forced to close because of constraints on the availability of timber. A dispute with Canada over lumber imports that resulted in a 15 percent export levy for some U.S.-bound shipments and quotas on others after October 2006 impacted supply.

Wood, labor, and operating costs also impact revenue. The cost of wood in the United States is negotiated between buyers and sellers. Companies often enter into long-term supply contracts with timber owners where the price is negotiated quarterly based on sales and market conditions. Labor is the second biggest component of lumber costs. According to the U.S. Department of Labor, U.S. wages have increased about 3 percent per year during this decade.<sup>11</sup> At the same time, labor productivity in sawmilling has increased by a like amount leaving unit labor costs flat. The other main cost for sawmills is energy, but most mills use their own residues to generate heat for their drying needs. This has lessened the impact of rising energy prices on sawmills. As shown in Table 2, total operating costs in Oregon per thousand board feet averaged \$295 in 2003, rose to \$349 in 2005, and fell to \$238 in 2008. In comparison, total operating costs in Georgia per thousand board feet averaged \$311 in 2003, rose to \$349 in 2005 and 2006, and fell to \$328 in 2008.

**Need for a Program**

The softwood lumber industry is experiencing one of the worst markets in history. The collapse of the housing market caused prices to fall from \$404 per thousand board feet in 2004 to \$222 per thousand board feet in 2009. Prices rose slightly in 2010 to \$284 per thousand board feet.<sup>12</sup> Competition from other building products like

cement and vinyl has also helped to reduce demand for softwood lumber.

Additionally, at the request of the U.S. and Canadian governments, the U.S. Endowment for Forestry and Communities (Endowment) and the Binational Softwood Lumber Council (BSLC) were formed in 2006 in accordance with the 2006 Softwood Lumber Agreement. The Endowment is a non-profit organization that works with public and private sectors to advance the interests of the forestry community. The Endowment conducted a study to assess the feasibility of a softwood lumber research and promotion program. In the past, the industry attempted voluntary efforts to promote forest products, but they were sporadic, underfunded, and narrowly targeted. These campaigns did not last long enough to succeed. The Endowment recommended to the industry that Canadian and U.S. companies pursue a shared vision and achieve broad agreement on creating a unified softwood lumber research and promotion program. In 2008, the Endowment held an industry meeting in Seattle, Washington, to discuss the merits of such a program and obtain industry feedback.

As a result of the Endowment's efforts, the BRC was subsequently formed to pursue an industry research and promotion program. The BRC is comprised of 21 members representing the United States and Canada. Funding and support for the BRC's efforts come from the BSLC, a non-profit organization whose mission is to promote increased cooperation between the U.S. and Canadian softwood lumber industries and to strengthen and expand markets for softwood lumber products in both countries. The BRC submitted an initial proposal for a program to USDA in February 2010.

As recommended by the BRC, the program will be financed by an assessment on softwood lumber domestic manufacturers and importers and administered by a board of industry members selected by the Secretary. The initial assessment rate will be \$0.35 per thousand board feet shipped within or imported to the United States and can be increased up to a maximum of \$0.50

per thousand board feet. Entities that domestically ship or import less than 15 million board feet will be exempt along with shipments exported outside of the United States. Assessed entities will not pay assessments on the first 15 million board feet shipped or imported. The purpose of the program is to strengthen the position of softwood lumber in the marketplace, maintain and expand markets for softwood lumber, and develop new uses for softwood lumber within the United States. A referendum was held among eligible domestic manufacturers and importers to determine whether they favored implementation of the program prior to it going into effect. Sixty-seven percent of those voting in the referendum representing 80 percent of the volume represented in the referendum approved implementation of the program. The specific provisions of the program are discussed below.

**Provisions of Program**

Pursuant to the 1996 Act, §§ 1217.1 through 1217.30 of the Order define certain terms that will be used throughout the Order. Several of the terms are common to all research and promotion programs authorized under the 1996 Act while other terms are specific to the softwood lumber Order.

Sections 1217.40 through 1217.47 of the Order detail the establishment and membership of the Softwood Lumber Board, nominations and appointments, the term of office, removal and vacancies, procedure, reimbursement and attendance, powers and duties, and prohibited activities.

Sections 1217.50 through 1217.53 of the Order detail requirements regarding the Board's budget and expenses, financial statements, assessments, and exemption from assessments. The Board's programs and expenses shall be funded through assessments on manufacturers for the U.S. market, other income, and other funds available to the Board. The Order provides for an initial assessment rate of \$0.35 per thousand board feet. Domestic manufacturers will pay assessments based on the volume of softwood lumber shipped within the United States and importers will pay assessments based on the volume of

<sup>11</sup> U.S. Department of Labor, Bureau of Labor Statistics, 2009, Employment cost index, Washington, DC, <http://data.bls.gov/PDQ/outside.jsp?survey=ci>, accessed 3/27/09.

<sup>12</sup> 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 (<http://www.randomlengths.com>).

softwood lumber imported to the United States.

Two years after the Order becomes effective and periodically thereafter, the Board shall review the assessment rate and, if appropriate, recommend a change in the rate. At least two-thirds of the Board members must favor a change in the assessment rate. The assessment rate can be no less than \$0.35 per thousand board feet and no more than \$0.50 per thousand board feet. Any change in the assessment rate within this range is subject to rulemaking by the Secretary.

Domestic manufacturers must pay their assessments owed to the Board by the 30th calendar day of the month following the end of the quarter in which the softwood lumber was shipped. Importer assessments will be collected through Customs.

The Order provides authority for the Board to impose a late payment charge and interest for assessments overdue to the Board by 60 calendar days. The late payment charge and rate of interest shall be prescribed in the Order's regulations issued by the Secretary.

The Order provides for four exemptions. First, manufacturers for the U.S. market who domestically ship or import less than 15 million board feet during a fiscal year are exempt from paying assessments. Domestic manufacturers and importers must apply to the Board for an exemption prior to the start of the fiscal year. The Board will issue, if deemed appropriate, a certificate of exemption to the eligible manufacturer for the U.S. market. Once approved, domestic manufacturers will not have to pay assessments to the Board for the applicable fiscal year. Approved importers must retain a copy of the certificate of exemption and may be requested to submit the certificate to Customs. USDA is working to develop a process whereby approved importers could submit a copy the exemption certificate to Customs so that Customs would not collect the assessment. However, the only available alternative at this time is for Customs to collect the assessment, and for the Board to refund such importers their assessments no later than 60 calendar days after receipt of such assessment by the Board.

Section 1217.53(a)(2) in this final rule was modified to clarify that importers may be requested to submit a copy of the certificate of exemption to Customs.

The second exemption under the Order is for manufacturers for the U.S. market who domestically ship or import more than 15 million board feet of softwood lumber annually. Domestic manufacturers will not pay assessments on their first 15 million board feet of

softwood lumber shipped during the applicable fiscal year. Importers will receive a refund from the Board for the applicable assessments collected by Customs no later than 60 calendar days after receipt of such assessments by the Board.

The third exemption under the Order is for exports of softwood lumber, and the fourth exemption is for organic lumber.

Sections 1217.60 through 1217.62 of the Order details requirements regarding promotion, research and information programs, plans and projects authorized under the Order.

Sections 1217.70 through 1217.72 specify the reporting and recordkeeping requirements under the Order as well as requirements regarding confidentiality of information.

Section 1217.81(a) of the Order specifies that the program will not go into effect unless it is approved by a majority of domestic manufacturers and importers voting in a referendum who also represent a majority of the volume of softwood lumber represented in the referendum who, during a representative period determined by the Secretary, were engaged in the domestic manufacturing or importation of softwood lumber into the United States. As previously mentioned, in a referendum held from May 23 through June 10, 2011, 67 percent of those voting in the referendum representing 80 percent of the volume of softwood lumber represented in the referendum favored implementation of the program.

Section 1217.81(b) of the Order specifies criteria for subsequent referenda. Under the Order, a referendum may be held to ascertain whether the program should continue, be amended, or be terminated.

Section 1217.80 and §§ 1217.82 through 1217.88 describe the rights of the Secretary; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after termination; address personal liability, separability, and amendments; and provide OMB control numbers. These provisions are common to all research and promotion program authorized under the 1996 Act.

#### 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 this rule on small entities. Accordingly, AMS has prepared this regulatory flexibility analysis.

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 USDA's Forest Service, it is estimated that, between 2007 and 2009, there were an average of 595 domestic manufacturers of softwood lumber in the United States annually.<sup>13</sup> This number represents separate business entities; one business entity may include multiple sawmills. Using an average price of \$280 per thousand board feet, a domestic manufacturer who ships less than 25 million board feet per year would be considered a small entity. It is estimated that, between 2007 and 2009, about 363 domestic manufacturers, or about 61 percent,<sup>14</sup> shipped less than 25 million board feet annually.

Likewise, according to Customs data, it is estimated that, between 2007 and 2009, there were about 883 importers of softwood lumber annually. About 798 importers, or about 90 percent, imported less than \$7.0 million worth of softwood lumber annually. Thus, the majority of domestic manufacturers and importers of softwood lumber may be considered small entities.

Regarding value of the commodity, with domestic production averaging 24.5 billion board feet (2008 and 2009), and using an average price for those years of \$237 per thousand board feet,<sup>15</sup> the average annual value for softwood lumber is about \$5.8 billion. According to Customs data, the average annual value for softwood lumber imports for 2008 and 2009 is about \$3.1 billion.

This rule establishes an industry-funded research, promotion, and information program for softwood lumber. Softwood lumber is used in products like flooring, siding and framing. The program will be financed by an assessment on softwood lumber domestic manufacturers and importers and administered by a board of industry members selected by the Secretary. The initial assessment rate will be \$0.35 per thousand board feet shipped within or imported to the United States and may

<sup>13</sup> Spelter, McKeever and Toth, Profile 2009, p. 15.

<sup>14</sup> Percentages were obtained from the American Lumber Standard Committee, Inc. (ALSC). The ALSC administers an accreditation program for the grademarking of lumber produced under the American Softwood Lumber Standard (Voluntary Product Standard 20).

<sup>15</sup> Spelter, McKeever and Toth, Profile 2009, p. 2–5.

be increased to \$0.50 per thousand board feet. Entities that domestically ship or import less than 15 million board feet are exempt along with shipments exported outside of the United States. No entity will pay assessments on the first 15 million board feet domestically shipped or imported. The purpose of the program is to strengthen the position of softwood lumber in the marketplace, maintain and expand markets for softwood lumber, and develop new uses for softwood lumber within the United States. A referendum was held May 23 through June 10, 2011, among eligible domestic manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. Sixty-seven percent of those voting in the referendum, representing 80 percent of the volume of softwood lumber represented in the referendum, favored implementation of the program. The program is authorized under the 1996 Act.

Regarding the economic impact of the Order on affected entities, softwood lumber domestic manufacturers and importers will pay assessments to the Board. As previously mentioned, the

initial assessment rate is \$0.35 per thousand board feet shipped within or imported to the United States and may be increased to no more than \$0.50 per thousand board feet.

The Order provides for an exemption for domestic manufacturers and importers who domestically ship or import less than 15 million board feet annually. Of the 595 domestic manufacturers, it is estimated that about 232, or 39 percent, ship less than 15 million board feet per year and will thus be exempt from paying assessments under the Order. Of the 883 importers, it is estimated that about 780, or 88 percent, import less than 15 million board feet per year and will also be exempt from paying assessments. Thus, about 363 domestic manufacturers and 103 importers will pay assessments under the Order. It is estimated that if \$17.5 million were collected in assessments (\$0.35 per thousand board feet assessment rate with 50 billion board feet assessed), 25 percent, or about \$4 million, will be paid by importers and 75 percent, or about \$13 million, will be paid by domestic manufacturers.

Regarding the impact on the industry as a whole, the program is expected to

grow markets for softwood lumber by stopping the erosion of market share in single family residential market, increasing the market share in multi-family residential construction, significantly increasing the use of softwood lumber in non-residential markets, and rebuilding softwood lumber's share in the outdoor living market. The BRC estimates the long-term market growth opportunity in the non-residential market and the raised wood segment of the residential market is between 10 and 12 billion board feet. USDA's Forest Service in a 2007 study estimated a more conservative potential growth at around 8 billion board feet.<sup>16</sup> While the benefits of the program are difficult to quantify, the benefits are expected to outweigh the program's costs.

Regarding alternatives, the BRC considered various options in assessment rate and exemption levels. The BRC believes that \$20 million in assessment income is an ideal threshold for an effective program that will help to improve the market for softwood lumber. Table 3 below shows the range in assessments projected at various industry shipment levels per year.

TABLE 3—PROJECTED INCOME GENERATED AT VARIOUS ASSESSMENT RATES AND SHIPMENT LEVELS <sup>1</sup>

Assessment options (per thousand board feet)	Annual shipment levels (billion board feet)		
	40	50	60
\$0.25 .....	\$10 million .....	\$12.5 million .....	\$15 million.
\$0.35 .....	\$14 million .....	\$17.5 million .....	\$21 million.
\$0.50 .....	\$20 million .....	\$25 million .....	\$30 million.

<sup>1</sup> Assumes no exemption.

Regarding exemption levels, the BRC explored projected assessment income at exemption levels of 15, 20, and 30 million board feet. With a 15 million

board foot exemption, the BRC projected a deduction of 11.3 percent in assessment income. Table 4 below shows the BRC's projected income

levels at various assessment options in light of the 15 million board foot exemption.

TABLE 4—PROJECTED INCOME GENERATED AT VARIOUS ASSESSMENT RATES AND SHIPMENT LEVELS <sup>1</sup>

Assessment options (per thousand board feet)	Annual shipment levels (billion board feet)		
	40	50	60
\$0.25 .....	\$8.9 million .....	\$11.1 million .....	\$13.3 million.
\$0.35 .....	\$12.4 million .....	\$15.5 million .....	\$18.9 million.
\$0.50 .....	\$17.7 million .....	\$22.2 million .....	\$26.6 million

<sup>1</sup> Assumes 15 million board foot exemption.

Ultimately the BRC concluded that an assessment rate range of \$0.35 to a maximum of \$0.50 per thousand board

feet with an exemption threshold of 15 million board feet was appropriate and would generate sufficient income to

support an effective promotion program for softwood lumber. At an initial assessment rate of \$0.35 per thousand

<sup>16</sup> Spelter, H.D. McKeever, M. Alderman, Profile 2007: Softwood Sawmills in the United States and Canada, USDA, p. 10.

board feet, the BRC projects assessment income between \$12.4 million and almost \$19 million with shipment levels ranging from 40 to 60 billion board feet, respectively.

The industry explored the merits of a voluntary promotion program. Over the years, the industry organized various public outreach, education and promotion campaigns funded through voluntary assessments. Although some were partially effective, none fully accomplished their objectives and the gains either disappeared quickly or eroded over time.

This action imposes additional reporting and recordkeeping burden on domestic manufacturer and importers of softwood lumber. Domestic manufacturers and importers interested in serving on the Board must submit a nomination form to the Board indicating their desire to serve or nominating another industry member to serve on the Board. Interested persons may also submit a background statement outlining their qualifications to serve on the Board. Except for the initial Board nominations, domestic manufacturers and importers will have the opportunity to cast a ballot and vote for candidates to serve on the Board. Domestic manufacturer and importer nominees to the Board must submit a background form to the Secretary to ensure they are qualified to serve on the Board.

Additionally, domestic manufacturers and importers who domestically ship or import less than 15 million board feet annually may submit a request to the Board for an exemption from paying assessments on this volume. Domestic manufacturers and importers will also be asked to submit a report regarding their shipments/imports that will accompany their assessments paid to the Board. Domestic manufacturers and importers who qualify as 100 percent organic under the NOP and are not a split operation may submit a request to the Board for an exemption from assessments. Importers may also request a refund of any assessments paid to Customs.

Finally, domestic manufacturers and importer who participated in the referendum to vote on whether the Order should become effective completed a ballot for submission to the Secretary. These forms were submitted to the OMB and approved under OMB Control No. 0581-0265. Specific burdens for the forms are detailed later in this document in the section titled Paperwork Reduction Act. 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 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, as previously mentioned, the Endowment conducted a study to assess the feasibility of a softwood lumber research and promotion program. According to the BRC, at the beginning of the study (early 2008), in-depth interviews were conducted among North American softwood lumber industry leaders to explore the level of interest in a generic promotion program to help grow the market for softwood lumber. The Endowment interviewed 35 companies, which included a cross section of various levels of size and ownership types within the softwood lumber industry. Of the 35 companies surveyed, 86 percent by number representing 54 percent of the volume favored exploring a mandatory promotion program for softwood lumber.

In early 2009, the BRC was formed and began a comprehensive process to develop a program. According to the BRC, its membership is diverse and represents 44 percent of softwood lumber shipments within the U.S. market. Efforts were made to inform various associations throughout the country through presentations at their meetings. Articles and notices were also published in various newspapers and newsletters about the program.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), AMS requested approval of a new information collection and recordkeeping requirements for the softwood lumber program.

*Title:* Advisory Committee or Research and Promotion Background Information.

*OMB Number for background form AD-755:* (Approved under OMB No. 0505-0001).

*Expiration Date of Approval:* July 31, 2012.

*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB Number:* 0581-0265.

*Expiration Date of Approval:* 3 years from approval date.

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

*Abstract:* The information collection requirements in the request are essential to carry out the intent of the 1996 Act. The information collection concerns a new, national research and promotion program for the softwood lumber industry. The program will be financed by an assessment on softwood lumber domestic manufacturers and importers and administered by a board of industry members selected by the Secretary. The program provides for an exemption for the first 15 million board feet of softwood lumber shipped by domestic manufacturers within the United States or imported into the United States during the year. A referendum was held May 23 through June 10, 2011, among eligible domestic manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. Sixty-seven percent of those voting in the referendum, representing 80 percent of the volume represented in the referendum, favored implementation of the program. The purpose of the program is to help build the market for softwood lumber.

In summary, the information collection requirements under the program concern Board nominations, the collection of assessments, and referenda. For Board nominations, domestic manufacturers and importers interested in serving on the Board must submit a "Nomination Form" to the Board indicating their desire to serve or to nominate another industry member to serve on the Board. Interested persons may also submit a background statement outlining qualifications to serve on the Board. Except for the initial Board nominations, domestic manufacturers and importers will have the opportunity to submit a "Nomination Ballot" to the Board where they will vote for candidates to serve on the Board. Nominees must also submit a background information form, "AD-755," to the Secretary to ensure they are qualified to serve on the Board.

Regarding assessments, domestic manufacturers and importers who ship or import less than 15 million board feet annually may submit a request, "Application for Exemption from Assessments," to the Board for an exemption from paying assessments. Domestic manufacturers and importers must submit a "Shipment/Import Report" that will accompany their assessments paid to the Board and report the quantity of softwood lumber shipped domestically or imported during the applicable period, the quantity exported from the United States, the quantity for which assessments were paid, and the country

of export (for imports). Domestic manufacturers who ship less than 15 million board feet annually and are exempt from paying assessments do not have to submit this report. Additionally, only importers who pay their assessments directly to the Board must submit this report. As previously mentioned, the majority of importer assessments will be collected by Customs. Customs will remit the funds to the Board and the other information will be available from Customs (*i.e.*, country of export, quantity of softwood lumber imported). Finally, domestic manufacturers and importers who qualify as 100 percent organic under the NOP and are not a split operation may submit an "Organic Exemption Form" to the Board and request an exemption from assessments. Importers may also request a refund of any assessments paid to Customs.

There will also be an additional burden on domestic manufacturers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, was addressed in a final rule on referendum procedures which was published in the **Federal Register** on April 22, 2011 (76 FR 22752).

Information collection requirements that are included in this rule include:

*(1) Nomination Form*

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

*Respondents:* Domestic manufacturers and importers.

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 12.5 hours.

*(2) Background Statement*

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

*Respondents:* Domestic manufacturers and importers.

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 12.5 hours.

*(3) Nomination Ballot*

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

*Respondents:* Domestic manufacturers and importers.

*Estimated Number of Respondents:* 300.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 75 hours.

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

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 0.5 hour per response for each Board nominee.

*Respondents:* Domestic manufacturers and importers.

*Estimated number of Respondents:* 13 (38 for initial nominations to the Board, 0 for the second year, and up to 13 annually thereafter).

*Estimated number of Responses per Respondent:* 1 every 3 years. (0.3)

*Estimated Total Annual Burden on Respondents:* 19 hours for the initial nominations to the Board, 0 hours for the second year of operation, and up to 6.5 hours annually thereafter.

*(5) Application for Exemption From Assessments*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hour per domestic manufacturer or importer reporting on softwood lumber shipped domestically or imported. Upon approval of an application, domestic manufacturers and importers will receive exemption certification.

*Respondents:* Domestic manufacturers (232) and importers (780) who ship domestically or import less than 15 million board feet of softwood lumber annually.

*Estimated number of Respondents:* 1,012.

*Estimated number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 253 hours.

*(6) Shipment/Import Report*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hour per domestic manufacturer or importer.

*Respondents:* Domestic manufacturers who ship 15 million board feet or more annually (363) and importers who remit their assessments directly to the Board (assume 5 percent of 103 importers, or 5).

*Estimated number of Respondents:* 368.

*Estimated number of Responses per Respondent:* 4.

*Estimated Total Annual Burden on Respondents:* 736 hours.

*(7) Organic Exemption Form*

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

*Respondents:* Organic domestic manufacturers and importers.

*Estimated Number of Respondents:* 1.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 0.5 hour.

*(8) Refund of Assessments Paid on Organic Softwood Lumber*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hour.

*Respondents:* Organic importers.

*Estimated Number of Respondents:* 1.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 0.25 hour.

*(9) A Requirement to Maintain Records Sufficient To Verify Reports Submitted Under the Order*

*Estimate of Burden:* Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per record keeper maintaining such records.

*Recordkeepers:* Domestic manufacturers (595) and importers (883).

*Estimated number of recordkeepers:* 1,478.

*Estimated total recordkeeping hours:* 739 hours.

As noted above, under the program, domestic manufacturers and importers will be required to pay assessments and file reports with and submit assessments to the Board (importers through Customs). While the Order imposes certain recordkeeping requirements on domestic manufacturers and importers, information required under the Order can be compiled from records currently maintained. Such records shall be retained for at least two years beyond the fiscal year of their applicability.

An estimated 1,478 respondents will provide information to the Board (595 domestic manufacturers and 883 importers). The estimated cost of providing the information to the Board by respondents is \$24,387. This total has been estimated by multiplying 739 total hours required for reporting and recordkeeping by \$33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The Order's provisions have been carefully reviewed, and every effort has

been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other programs administered by USDA and other state programs.

The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the 1996 Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms are simple, easy to understand, and place as small a burden as possible on the person required to file the information.

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

In the October 1, 2010, proposed rule, comments were also invited on the information collection requirements prescribed in the Paperwork Reduction Act section of this rule. Specifically, comments were solicited on: (a) Whether the collection of information is necessary for the proper performance of functions of the Order and USDA's oversight of the Order, including whether the information would have practical utility; (b) the accuracy of USDA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) the accuracy of USDA's estimate of the principal manufacturing areas in the United States for softwood lumber; (d) the accuracy of USDA's estimate of the number of domestic manufacturers and importers of softwood lumber that will be covered under the program; (e) ways to enhance the quality, utility, and clarity of the information to be collected; and (f) ways to minimize the burden of the collection of information on those who are to respond, including

the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. No comments were received regarding information collection.

As previously mentioned, the Department conducted a referendum among domestic manufacturers and importers of softwood lumber from May 23 through June 10, 2011, to determine whether the program would become effective. The representative period for establishing voter eligibility was January 1 through December 31, 2010. Domestic manufacturers and importers currently engaged in the business who manufactured and shipped within the United States/or imported to the United States 15 million board feet or more of softwood lumber during the representative period were eligible to vote. Sixty-seven percent of those voting in the referendum representing 80 percent of the volume of softwood lumber represented in the referendum favored implementation of the program.

After consideration of all relevant material presented, including the initial proposal, comments received, and the referendum results, it is found that the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order is consistent with and effectuates the purposes of the 1996 Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule was approved in a referendum of domestic manufacturers and importers and needs to be in effect as soon as possible so that USDA can conduct nominations to seat the first Board prior to January 1, 2012, the date when the collection of assessments begins on the program.

#### 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, Title 7, Chapter XI of the Code of Federal Regulations is amended by adding part 1217 to read as follows:

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

### Subpart A—Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order

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**Subpart B—[Reserved]**

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

**Subpart A—Softwood Lumber Research, Promotion, Consumer Education, and Industry Information Order**

**Definitions**

**§ 1217.1 Act.**

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

**§ 1217.2 Blue Ribbon Commission or BRC.**

*Blue Ribbon Commission* or *BRC* means the 21-member committee representing businesses that manufacture softwood lumber in the United States or import softwood lumber to the United States formed to pursue an industry research, promotion, and information program.

**§ 1217.3 Board or Softwood Lumber Board.**

*Board* or *Softwood Lumber Board* means the administrative body established pursuant to § 1217.40, or such other name as recommended by the Board and approved by the Department.

**§ 1217.4 Board foot.**

*Board foot* or *BF* means a unit of measurement of softwood lumber represented by a board 12-inches long, 12-inches wide, and 1-inch thick or its cubic equivalent. A board foot calculation for softwood lumber 1 inch or more in thickness is based on its nominal thickness and width and the actual length. Softwood lumber with a nominal thickness of less than 1 inch is calculated as 1 inch.

**§ 1217.5 Conflict of interest.**

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

**§ 1217.6 Customs or CBP.**

*Customs* or *CBP* means Customs and Border Protection, an agency of the United States Department of Homeland Security.

**§ 1217.7 Department or USDA.**

*Department* or *USDA* means the U.S. Department of Agriculture, or any

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

**§ 1217.8 Domestic manufacturer.**

*Domestic manufacturer* means any person who is a first handler and is engaged in the manufacturing, sale and shipment of softwood lumber in the United States during a fiscal period and who owns, or shares in the ownership and risk of loss of manufacturing of softwood lumber or a person who is engaged in the business of manufacturing, or causes to be manufactured, sold and shipped such softwood lumber in the United States beyond personal use. This term does not include any person who re-manufactures softwood lumber that has already been subject to assessment under this Order.

**§ 1217.9 Export.**

*Export* means to manufacture and ship softwood lumber from within the United States to locations outside of the United States.

**§ 1217.10 Fiscal period or year.**

*Fiscal period or year* means a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Secretary.

**§ 1217.11 Importer.**

*Importer* means any person who imports softwood lumber from outside the United States for sale in the United States as a principal or as an agent, broker, or consignee of any person who manufactures softwood lumber outside the United States for sale in the United States, and who is listed in the import records as the importer of record for such softwood lumber.

**§ 1217.12 Information.**

*Information* means activities or programs designed to disseminate the results of research, new and existing marketing programs, new and existing marketing strategies, new and existing uses and applications, and to enhance the image of softwood lumber and the forests from which it comes. These include:

(a) Consumer education, which means any action taken to provide information to, and broaden the understanding of, the general public regarding softwood lumber; and

(b) Industry information, which means information and programs that would enhance the image of the softwood lumber industry.

**§ 1217.13 Manufacture.**

*Manufacture* means the process of transforming softwood logs into softwood lumber.

**§ 1217.14 Manufacturer for the U.S. market.**

*Manufacturer for the U.S. market* means domestic manufacturers and importers of softwood lumber as defined in this Order.

**§ 1217.15 Marketing.**

*Marketing* means the sale or other disposition of softwood lumber in interstate, foreign, or intrastate commerce.

**§ 1217.16 Nominal size.**

*Nominal size* means the size by which softwood lumber is known and sold in the marketplace that differs from actual size and is based on the thickness and width of a board when it is first cut from a log, or rough cut, prior to drying and planing.

**§ 1217.17 Order.**

*Order* means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

**§ 1217.18 Part and subpart.**

*Part* means the Softwood Lumber Research, Promotion, Consumer Education, and Industry Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a *subpart* of such part.

**§ 1217.19 Person.**

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

**§ 1217.20 Planing.**

*Planing* means the act of smoothing the surface of a board to make the wood a uniform size.

**§ 1217.21 Programs, plans, and projects.**

*Programs, plans and projects* mean those research, promotion and information programs, plans, or projects established pursuant to this Order.

**§ 1217.22 Promotion.**

*Promotion* means any action taken, including paid advertising, public relations and other communications, and promoting the results of research, that presents a favorable image of softwood lumber to the public and to any and all consumers and those who influence consumption of softwood

lumber with the intent of improving the perception, markets and competitive position of softwood lumber and stimulating sales of softwood lumber.

**§ 1217.23 Research.**

*Research* means any activity that advances the position of softwood lumber in the marketplace that includes any type of test, study, or analysis designed to advance the image, desirability, use, marketability, sales, product development, or quality of softwood lumber; new applications; improving softwood lumber's position in building and fire codes; softwood lumber product testing and safety; and evaluating the effectiveness of market development and promotion efforts including life cycle studies, forestry, sustainable forest management, environmental preferability, competitiveness, efficiency, pest and disease control, water quality and other management aspects of forestry and the forests from which softwood lumber originates.

**§ 1217.24 Secretary.**

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

**§ 1217.25 Softwood.**

*Softwood* means one of the botanical groups of trees that have needle-like or scale-like leaves, or conifers.

**§ 1217.26 Softwood lumber.**

*Softwood lumber* means and includes softwood lumber and products manufactured from softwood as described in section 804(a) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202–1683g), and as assessed under § 1217.52.

**§ 1217.27 State.**

*State* means any of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

**§ 1217.28 Suspend.**

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

**§ 1217.29 Terminate.**

*Terminate* means to issue a rule under section 553 of title 5 U.S.C. to cancel permanently the operation of an order

or part thereof beginning on a date certain specified in the rule.

**§ 1217.30 United States.**

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

**Softwood Lumber Board**

**§ 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.

(b) The Board shall be composed of 18 or 19 members, depending upon whether an additional importer member is appointed to the Board, pursuant to paragraph (b)(2)(iii) of this section. The Board shall be established as follows:

(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, and Texas;

(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; 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, Virginia, Vermont, West Virginia, 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 and import the majority of their

softwood lumber from the respective region:

(i) Four members shall import softwood lumber from the Canadian West Region, which consists of the provinces of British Columbia and Alberta; 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.

(iii) If the Secretary, at the request of the Board or on his or her own, determines that it would be consistent with the provisions of the Act, the Secretary may appoint an additional importer to the Board to represent a region not otherwise specified in paragraphs (b)(2)(i) and (ii) of this section. Nominees would be solicited as prescribed in § 1217.41(b), or in the case of the Secretary acting on his or her own will be handled by the Secretary, and all the names of eligible candidates would be submitted to the Secretary for consideration. Such nominees must certify that the majority of their softwood lumber is imported from such region. In addition, representation for the region not otherwise specified in paragraphs (b)(2)(i) and (ii) of this section would be subject to the Board review and reapportionment provided for in paragraph (c) of this section.

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

(1) Review, based on a three-year average, 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; and

(2) 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 also shall be considered. The number of Board members may also be changed. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

**§ 1217.41 Nominations and appointments.**

(a) Initial nominations will be submitted to the Secretary by the Blue

Ribbon Commission. Before considering any nominations, the BRC shall publicize the nomination process, using trade press or other means it deems appropriate, and shall outreach to all known manufacturers for the U.S. market who domestically manufacture and/or import 15 million board feet or more of softwood lumber per fiscal year in order to generate nominees that reflect the different operations within the softwood lumber industry. The BRC may use regional caucuses, mail or other methods to elicit potential nominees. The BRC shall submit the nominations to the Secretary and recommend two nominees for each Board position specified in paragraphs (b)(1), (b)(2)(i) and (b)(2)(ii) of § 1217.40. All nominees solicited pursuant to § 1217.40(b)(2)(iii) shall be submitted to the Secretary through the BRC. From the nominations submitted by the BRC, the Secretary shall select the members of the Board.

(b) Subsequent nominations shall be conducted as follows:

(1) The Board shall 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: *Provided*, That, such nominees who domestically manufacture the majority of their softwood lumber may seek nomination and vote as a domestic manufacturer, and such nominees who import the majority of their softwood lumber may seek nomination and vote as an importer. Such nominees must domestically manufacture and import 15 million board feet or more of softwood lumber per fiscal year;

(4) Domestic manufacturers who manufacture softwood lumber in more than one region may seek nomination only in the region in which they manufacture the majority of their softwood lumber. 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 only vote in the region in which they manufacture the majority of their softwood lumber. 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) Importer nominees shall certify that the majority of their softwood lumber is imported from the respective region for which they are seeking to represent on the Board and shall provide documentation to verify this if requested by the Board. 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 only vote in the region from which they import the majority of their softwood lumber. 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.

(6) The Board must submit nominations to the Secretary at least six months before the new Board term begins. From the nominations submitted by the Board, the Secretary shall select the members of the Board;

(7) No two members shall be employed by a single corporation, company, partnership, or any other legal entity; and

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

#### § 1217.42 Term of office.

(a) With the exception of the initial Board, each Board member will serve a three-year term or until the Secretary selects his or her successor. Each term of office shall begin on January 1 and end on December 31. No member may serve more than two consecutive terms, excluding any term of office less than three years.

(b) For the initial board, the terms of Board members shall be staggered for two, three, and four years. Determination of which of the initial members shall serve a term of two, three, or four years shall be recommended to the Secretary by the Blue Ribbon Commission.

#### § 1217.43 Removal and vacancies.

(a) In the event that any member of the Board ceases to work for or be affiliated with a domestic manufacturer or importer or ceases to do business in the region he or she represents, such position shall become vacant.

(b) The Board may recommend to the Secretary that a member be removed from office if the member consistently refuses to perform his or her duties or engages in dishonest acts or willful misconduct. The Secretary may remove the member if he or she finds that the Board's recommendation shows adequate cause. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

(c) If a position becomes vacant, nominations to fill the vacancy will be conducted using the nominations process set forth in this Order. A vacancy will not be required to be filled if the unexpired term is less than six months.

#### § 1217.44 Procedure.

(a) A majority of the Board members (10) will constitute a quorum so long as at least three of the members present are importer members and six of the members present are domestic manufacturers. If participation by telephone or other means is permitted, members participating by such means shall count as present in determining quorum or other voting requirements set forth in this section.

(b) All votes at meetings of the Board and executive committee will be cast in person or by electronic voting or other means as the Board and Secretary deem appropriate to allow members participating by telephone or other electronic means to cast votes. Voting by proxy will not be allowed.

(c) Each member of the Board will be entitled to one vote on any matter put to the Board and the motion will carry if supported by 10 Board members, except for recommendations to change the assessment rate or to adopt a budget, both of which require affirmation by at least two-thirds (12 members for an 18 member Board and 13 members for a 19 member Board) of the Board members. If a Board has vacant positions, recommendations to change the assessment rate or to adopt a budget must pass by an affirmative vote of at

least two-thirds of the Board members, exclusive of the vacant seats.

(d) The Board must give members and the Secretary timely notice of all Board, executive and committee meetings.

(e) In lieu of voting at a properly convened meeting, and when, in the opinion of the Board's chairperson, such action is considered necessary, the Board may take action by mail, telephone, electronic mail, facsimile, or any other means of communication. Any action taken under this procedure is valid only if:

(1) All members and the Secretary are notified and the members are provided the opportunity to vote;

(2) Ten (10) Board members vote in favor of the action (unless two-thirds vote of the Board members is required under the Order); and

(3) All votes are promptly confirmed in writing and recorded in the Board minutes.

#### **§ 1217.45 Reimbursement and attendance.**

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

#### **§ 1217.46 Powers and duties.**

The Board shall have the following powers and duties:

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

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board and such rules, regulations as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among its members a chairperson and, such other officers as may be necessary;

(d) To create an executive committee of five members of the Board comprised of the chairperson and four other members elected by the Board. The duties of the executive committee shall be specified in bylaws that are recommended by the Board and approved by the Secretary;

(e) To create other committees or subcommittees, which may include individuals other than Board members, as the Board deems necessary from its membership and other representatives it deems appropriate;

(f) To employ or contract with such persons, other than the members, as it may deem necessary to assist the Board in carrying out its duties, and to determine the compensation and define the duties of each;

(g) To notify manufacturers for the U.S. market of all Board meetings through press releases or other means and to give the Secretary the same notice of Board meetings, executive committee, and subcommittee meetings that is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting to the Secretary;

(h) To develop and administer programs, plans, and projects and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for promotion, research, and information, including consumer and industry information, research and advertising designed to strengthen the softwood lumber industry's position in the marketplace and to maintain, develop, and expand markets for softwood lumber. The payment of costs for such activities shall be with funds collected pursuant to the Order, including funds collected pursuant to § 1217.50(f). Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget that specifies the cost to be incurred to carry out the activity;

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

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

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

(i) To prepare and submit to the Secretary for approval 60 calendar days in advance of the beginning of a fiscal period, rates of assessment and a budget of the anticipated expenses to be incurred in the administration of the Order, including the probable cost of each promotion, research, and information activity proposed to be developed or carried out by the Board;

(j) To borrow funds necessary for startup expenses of the Order;

(k) To invest assessments collected and other funds received pursuant to the Order and use earnings from invested assessments to pay for activities carried out pursuant to the Order;

(l) To recommend changes to the assessment rates as provided in this part;

(m) To cause its books to be audited by a certified public accountant at the end of each fiscal period and at such other times as the Secretary may request, and to submit a report of each audit directly to the Secretary;

(n) To periodically prepare and make public and to make available to manufacturers for the U.S. market reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended;

(o) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and to submit to the Secretary such information pertaining to this part or subpart as he or she may request;

(p) To act as an intermediary between the Secretary and any manufacturer for the U.S. market;

(q) To receive, investigate and report to the Secretary complaints of violations of the Order; and

(r) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans or activities to effectuate the purposes of the Act.

#### **§ 1217.47 Prohibited activities.**

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

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

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

(c) No program, plan or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Softwood lumber of all geographic origins shall be treated equally.

#### **Expenses and Assessments**

##### **§ 1217.50 Budget and expenses.**

(a) At least 60 calendar days prior to the beginning of each fiscal period, and as may be necessary thereafter, the Board shall prepare and submit to the Department a budget for the fiscal period covering its anticipated expenses and disbursements in administering this part. The budget for research, promotion

or information may not be implemented prior to approval by the Secretary. Each such budget shall include:

- (1) A statement of objectives and strategy for each program, plan, or project;
- (2) A summary of anticipated revenue, with comparative data for at least one preceding fiscal year, except for the initial budget;
- (3) A summary of proposed expenditures for each program, plan, or project; and
- (4) Staff and administrative expense breakdowns, with comparative data for at least one preceding fiscal year, except for the initial budget.

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

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan, or project to another.

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

(e) With approval of the Department, the Board may borrow money for the payment of startup expenses subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed shall be expended only for startup costs and capital outlays and are limited to the first year of operation by the Board.

(f) The Board may accept voluntary contributions, and is encouraged to seek other appropriate funding sources to carry out activities authorized by the Order. Such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use. The Board may receive funds from outside sources (*i.e.*, Federal or State grants, Foreign Agricultural Service funds), with approval of the Secretary, for specific authorized projects.

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

(h) For fiscal years beginning two years after the date of the first Board meeting, the Board may not expend for

administration, maintenance, and the functioning of the Board an amount that is greater than 8 percent of the assessment and other income received by and available to the Board for the fiscal year. For purposes of this limitation, reimbursements to the Secretary shall not be considered administrative costs.

(i) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided*, That, the funds in the reserve do not exceed one fiscal period's budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this subpart.

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

- (1) Obligations of the United States or any agency of the United States;
- (2) General obligations of any State or any political subdivision of a State;
- (3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System;
- (4) Obligations fully guaranteed as to principal interest by the United States; or
- (5) Other investments as authorized by the Secretary.

#### **§ 1217.51 Financial statements.**

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

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

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

#### **§ 1217.52 Assessments.**

(a) The Board's programs and expenses shall be paid by assessments on manufacturers for the U.S. market, other income of the Board, and other funds available to the Board.

(b) Subject to the exemptions specified in § 1217.53, each

manufacturer for the U.S. market shall pay an assessment to the Board at the rate of \$0.35 per thousand board feet of softwood lumber except that no person shall pay an assessment on the first 15 million board feet of softwood lumber otherwise subject to assessment in a fiscal year. Domestic manufacturers shall pay assessments based on the volume of softwood lumber shipped within the United States and importers shall pay assessments based on the volume of softwood lumber imported to the United States.

(c) At least 24 months after the Order becomes effective and periodically thereafter, the Board shall review and may recommend to the Secretary, upon an affirmative vote by at least two-thirds of the Board members, a change in the assessment rate. In no event may the rate be less than \$0.35 per thousand board feet nor more than \$0.50 per thousand board feet. A change in the assessment rate is subject to rulemaking by the Secretary.

(d) Domestic manufacturers shall remit to the Board the amount due no later than the 30th calendar day of the month following the end of the quarter in which the softwood lumber was shipped.

(e) Domestic product that cannot be categorized in the Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in paragraph (h) of this section if it were an import is not covered under this Order.

(f) Softwood lumber originating in the United States that is exported to another country and shipped back to the United States is covered under this Order, provided that it can be categorized in the HTSUS numbers listed in paragraph (h) of this section.

(g) Each importer of softwood lumber shall pay through Customs to the Board an assessment on softwood lumber imported into the United States as described in section 804(a) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202-1683g), provided that it can be categorized in the HTSUS numbers listed in paragraph (h) of this section.

(h) The HTSUS categories and assessment rates on imported softwood lumber are listed in the table below. A factor shall be used to determine the equivalent volume of softwood lumber in thousand board feet. The factor used to convert one cubic meter to one thousand board feet is 0.423776001. Accordingly, the assessment rate per cubic meter is as follows.

Softwood lumber	Assessment \$/cubic meter
4407.10.01 .....	\$0.1483
4409.10.05 .....	0.1483
4409.10.10 .....	0.1483
4409.10.20 .....	0.1483
4409.10.90 .....	0.1483
4418.90.25 .....	0.1483

(i) In the event that any HTSUS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of the softwood lumber involved, assessments will continue to be collected based on the new number.

(j) If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment directly to the Board no later than the 30th calendar day of the month following the end of the quarter in which the softwood lumber was imported.

(k) Articles brought into the United States temporarily and for which an exemption is claimed under subchapter XIII of chapter 98 of the HTSUS are not covered under this Order. If assessments are collected by Customs for these products, the importer may apply to the Board for a refund of assessments.

(l) When a domestic manufacturer or importer fails to pay the assessment within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest. The late payment charge and rate of interest shall be prescribed in regulations issued by the Secretary. All late assessments shall be subject to the specified late payment charge and interest. Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

(m) The Board may accept advance payment of assessments from any manufacturer for the U.S. market that will be credited toward any amount for which that person may become liable. The Board may not pay interest on any advance payment.

(n) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall receive assessments and shall pay such assessments and any interest earned to the Board when it is formed.

#### **§ 1217.53 Exemption from assessment.**

(a) *Manufacturers for the U.S. market who domestically ship and/or import less than 15 million board feet annually.*

(1) Domestic manufacturers who ship less than 15 million board feet of softwood lumber within the United States in a fiscal year are exempt from

paying assessments. Such manufacturers must apply to the Board, on a form provided by the Board, for a certificate of exemption prior to the start of the fiscal year. This is an annual exemption and domestic manufacturers must reapply each year. Such manufacturers shall certify that they will ship less than 15 million board feet of softwood lumber during the fiscal year for which the exemption is claimed. Upon receipt of an application for exemption, the Board shall determine whether an exemption may be granted. The Board may request past shipment data to support the exemption request. The Board will then issue, if deemed appropriate, a certificate of exemption to the eligible domestic manufacturer. It is the responsibility of the domestic manufacturer to retain a copy of the certificate of exemption.

(2) Importers who import into the United States less than 15 million board feet of softwood lumber in a fiscal year are exempt from paying assessments. Such importers must apply to the Board, on a form provided by the Board, for a certificate of exemption prior to the start of the fiscal year. This is an annual exemption and importers must reapply each year. Such importers shall certify that they will import less than 15 million board feet of softwood lumber during the fiscal year for which the exemption is claimed. Upon receipt of an application for exemption, the Board shall determine whether an exemption is granted. The Board may request past import data to support the exemption request. The Board will then issue, if deemed appropriate, a certificate of exemption to the eligible importer. It is the responsibility of the importer to retain a copy of the certificate of exemption. The importer may be requested to submit a copy of the certificate to Customs. If Customs collects the assessment, the Board shall refund such importers their assessments no later than 60 calendar days after receipt of such assessments by the Board. No interest shall be paid on the assessments collected by Customs.

(3) Domestic manufacturers who did not apply to the Board for an exemption and shipped less than 15 million board feet of softwood lumber within the United States during the fiscal year shall receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year. Board staff shall determine the assessments paid and refund the amount due to the domestic manufacturer accordingly.

(4) Importers who did not apply to the Board for an exemption and imported less than 15 million board feet of

softwood lumber during the fiscal year shall receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year.

(5) If an entity is both a domestic manufacturer and an importer, the sum of such entity's domestic shipments and imports during a fiscal year shall count towards the 15 million board feet exemption.

(6) Domestic manufacturers and importers who received an exemption certificate from the Board but domestically shipped or imported 15 million board feet or more of softwood lumber during the fiscal year shall pay the Board the applicable assessments owed on the domestic shipments or imports over the 15 million board foot-exemption threshold within 30 calendar days after the end of the fiscal year and submit any necessary reports to the Board pursuant to § 1217.70.

(7) The Board may develop additional procedures to administer this exemption as appropriate. Such procedures shall be implemented through rulemaking by the Secretary.

(b) *Manufacturers for the U.S. market who domestically ship and/or import 15 million board feet or more annually.* (1) Domestic manufacturers who domestically ship 15 million board feet or more per fiscal year shall not pay assessments on their first 15 million board feet of softwood lumber shipped during the applicable fiscal year.

(2) Importers who import 15 million board feet or more per fiscal year shall be exempt from paying assessments on their first 15 million board feet of softwood lumber imported during the applicable fiscal year. Such importers shall receive a refund from the Board for the applicable assessments collected by Customs. The Board shall refund such importers their assessments no later than 60 calendar days after receipt by the Board.

(c) *Export.* Shipments of softwood lumber by domestic manufacturers to locations outside of the United States are exempt from assessment. The Board shall establish procedures for approval by the Secretary for refunding assessments that may be paid on such shipments and establish any necessary safeguards as deemed appropriate. Safeguard procedures shall be implemented by the Secretary through rulemaking. The Board may also recommend to the Secretary that such shipments be assessed if it deems appropriate. Such action shall be implemented by the Secretary through rulemaking.

(d) *Organic.* (1) Organic Act means section 2103 of the Organic Foods

Production Act of 1990 (7 U.S.C. 6501–6522).

(2) A domestic manufacturer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, only manufactures and ships softwood lumber that is eligible to be labeled as 100 percent organic under the NOP and is not a split operation shall be exempt from payment of assessments. To obtain an organic exemption, an eligible domestic manufacturer shall submit a request for exemption to the Board, on a form provided by the Board, at any time initially and annually thereafter on or before the start of the fiscal year as long as such manufacturer continues to be eligible for the exemption. The request shall include the following: The manufacturer's name and address; a copy of the organic operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary. The Board shall have 30 calendar days to approve the exemption request. If the exemption is not granted, the Board will notify the applicant and provide reasons for the denial within the same time frame.

(3) An importer who imports only softwood lumber that is eligible to be labeled as 100 percent organic under the NOP and is not a split operation shall be exempt from the payment of assessments. To obtain an organic exemption, an eligible importer must submit documentation to the Board and request an exemption from assessment on 100 percent of organic softwood lumber, on a form provided by the Board, at any time initially and annually thereafter on or before the beginning of the fiscal year as long as the importer continues to be eligible for the exemption. This documentation shall include the same information as required by domestic manufacturers in paragraph (d)(2) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer to Customs at entry summary. Any line item entry of 100 percent organic softwood lumber bearing this alphanumeric number assigned by the Board will not be subject to assessments.

(4) Importers who are exempt from assessment in paragraph (d)(3) of this section shall also be eligible for reimbursement of assessments collected by Customs and may apply to the Board for a reimbursement. The importer would be required to submit satisfactory proof to the Board that the importer paid the assessment on exempt organic products.

(5) The exemption will apply immediately following the issuance of the exemption certificate.

#### Promotion, Research, and Information

##### § 1217.60 Programs, plans, and projects.

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

(1) Maintain, develop, expand and grow markets for softwood lumber;

(2) Enhance and strengthen the image, reputation and public acceptance of softwood lumber and the forests from which it comes;

(3) Develop new markets and marketing strategies for softwood lumber;

(4) Expand the knowledge and understanding of the strength, safety and technical applications and encourage innovation in the use of softwood lumber;

(5) Transfer and disseminate the knowledge and understanding of the strength, safety, environmental and sustainable benefits and technical applications of softwood lumber; and

(6) Develop, expand and grow existing and new opportunities and applications for softwood lumber.

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

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

##### § 1217.61 Independent evaluation.

At least once every five years, the Board shall authorize and fund from

funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and the programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

##### § 1217.62 Patents, copyrights, trademarks, inventions, product formulations, and publications.

Any patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government, as represented by the Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, inventions, publications, or product formulations, inure to the benefit of the Board, shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1217.83 shall apply to determine disposition of all such property.

#### Reports, Books, and Records

##### § 1217.70 Reports.

(a) Each manufacturer for the U.S. market will be required to provide periodically to the Board such information as the Board, with the approval of the Secretary, may require. Such information may include, but not be limited to:

(1) For domestic manufacturers:

(i) The name, address and telephone number of the domestic manufacturer;

(ii) The board feet of softwood lumber shipped within the United States;

(iii) The board feet of softwood lumber for which assessments were paid; and

(iv) The board feet of softwood lumber that was exported.

(2) For importers:

(i) The name, address and telephone number of the importer;

(ii) The board feet of softwood lumber imported;

(iii) The board feet of softwood lumber for which assessments were paid; and

(iv) The country of export.

(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 importation specified in § 1217.52.

**§ 1217.71 Books and records.**

Each manufacturer for the U.S. market, including those exempt under § 1217.53, shall maintain any books and records necessary to carry out the provisions of this subpart and regulations issued thereunder, including such records as are necessary to verify any required reports. Domestic manufacturers who only export softwood lumber shall also retain such books and records. Such books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. A manufacturer for the U.S. market must maintain the books and records for two years beyond the fiscal period to which they apply.

**§ 1217.72 Confidential treatment.**

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

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

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

**Miscellaneous**

**§ 1217.80 Right of the Secretary.**

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

**§ 1217.81 Referenda.**

(a) *Initial referendum.* The Order shall not become effective unless the Order is approved by a majority of domestic manufacturers and importers voting in the referendum who also represent a majority of the volume of softwood lumber represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the domestic manufacturing or importation of softwood lumber. A single entity who domestically manufactures and imports softwood lumber may cast one vote in the referendum.

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

(1) For the purpose of ascertaining whether manufacturers for the U.S. market favor the amendment, continuation, suspension, or termination of the Order;

(2) Five years after this Order becomes effective and every five years thereafter, to determine whether softwood lumber manufacturers for the U.S. market favor the continuation of the Order. The Order shall continue if it is favored by a majority of domestic manufacturers and importers voting in the referendum who also represent a majority of the volume of softwood lumber represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the domestic manufacturing or importation of softwood lumber;

(3) At the request of the Board established in this Order;

(4) At the request of 10 percent or more of the number of persons eligible to vote in a referendum as set forth under the Order; or

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

**§ 1217.82 Suspension or termination.**

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof, if the Secretary finds that this part or subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal period whenever the Secretary determines that its suspension or termination is favored by a majority of domestic manufacturers and importers voting in the referendum who also represent a majority of the volume represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the domestic manufacturing or importation of softwood lumber.

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

(1) Not later than one hundred and eighty (180) calendar days after making the determination, suspend or terminate, as the case may be, the collection of assessments under this subpart.

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

**§ 1217.83 Proceedings after termination.**

(a) Upon termination of this subpart, the Board shall recommend to the Secretary up to nine of its members, representing all regions specified in § 1217.40(b), three of whom shall be importers and six of whom shall be domestic manufacturers, to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other existing claim at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and trustees, to such person or person as the Secretary directs; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such persons title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to the Order shall be subject to the same

obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to one or more softwood lumber industry organizations in the United States whose mission is generic softwood lumber promotion, research, and information programs.

**§ 1217.84 Effect of termination or amendment.**

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

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

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

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

**§ 1217.85 Personal liability.**

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

**§ 1217.86 Separability.**

If any provision of this subpart is declared invalid or the applicability of it to any person or circumstances is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

**§ 1217.87 Amendments.**

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

**§ 1217.88 OMB control numbers.**

The control numbers assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, are OMB control number 0505-0001 (Board nominee background statement) and OMB control number 0581-0265.

**Subpart B—[Reserved]**

Dated: July 28, 2011.

**David R. Shipman,**  
*Acting Administrator.*

[FR Doc. 2011-19491 Filed 8-1-11; 8:45 am]

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**DEPARTMENT OF ENERGY**

**10 CFR Parts 429 and 430**

[Docket No. EERE-2010-BT-CE-0014]

**RIN 1904-AC23**

**Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment; Correction**

*Correction*

In rule document 2011-10401 appearing on pages 24762-24782 in the issue of May 2, 2011, make the following correction:

**§ 429.54 [Corrected]**

On page 14780, the formula for § 429.54(a)(2)(i)(B) should read:

$$LCL = \bar{x} - t_{0.99} \left( \frac{s}{\sqrt{n}} \right)$$

And  $\bar{x}$  is the sample mean;  $s$  is the sample standard deviation;  $n$  is the number of samples; and  $t_{0.99}$  is the  $t$  statistic for a 99% two-tailed confidence interval with  $n-1$  degrees of freedom (from Appendix A).

[FR Doc. C1-2011-10401 Filed 8-1-11; 8:45 am]

**BILLING CODE 1505-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 95**

[Docket No. 30794; Amdt. No. 495]

**IFR Altitudes; Miscellaneous Amendments**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace

System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**DATES:** *Effective Date:* 0901 UTC, August 25, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Harry Hodges, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

**The Rule**

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a