

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-NEW.

#### Subpart B—[Reserved]

Dated: September 22, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010-24202 Filed 9-30-10; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1217

[Document Number AMS-FV-10-0015; PR-B]

RIN 0581-AD03

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

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on procedures for conducting a referendum to determine whether issuance of a proposed Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order) is favored by domestic manufacturers and importers of softwood lumber. Softwood lumber is used in products like flooring, siding and framing. The procedures would also be used for any subsequent referendum under the Order. The proposed Order is being published separately in this issue of the **Federal Register**. This proposed rule also announces the Agricultural Marketing Service's (AMS) intent to request approval by the Office of Management and Budget (OMB) of new

information collection requirements to implement the program.

**DATES:** Comments must be received by November 30, 2010. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden that would result from this proposal must be received by November 30, 2010.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments may be submitted on the Internet at: <http://www.regulations.gov> or to the Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0632-S, Stop 0244, Washington, DC 20250-0244; facsimile: (202) 205-2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at <http://www.regulations.gov>.

Pursuant to the PRA, comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, should be sent to the above address. In addition, comments concerning the information collection should also be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

#### FOR FURTHER INFORMATION CONTACT:

Maureen T. Pello, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 831, Beavercreek, Oregon 97004; telephone: (503) 632-8848; facsimile (503) 632-8852; or electronic mail: [Maureen.Pello@ams.usda.gov](mailto:Maureen.Pello@ams.usda.gov).

**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).

#### 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 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 the U.S. Department of Agriculture (USDA) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, 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.

This rule invites comments on procedures for conducting a referendum to determine whether domestic manufacturers and importers of softwood lumber favor issuance of a proposed softwood lumber Order. Softwood lumber is used in products like flooring, siding and framing. USDA would conduct the referendum. The program would be implemented if it is favored by a majority of domestic manufacturers and importers of softwood lumber voting in the referendum who also represent a majority of the volume of softwood lumber represented in the referendum. The procedures would also be used for any subsequent referendum under the Order. The proposed Order is being published separately in this issue of the **Federal Register**. This rule also announces AMS's intent to request approval by the OMB of new information collection requirements to implement the program.

The 1996 Act 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 alternatives within the terms of a variety of provisions. Paragraph (e) of Section 518 of the 1996 Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. 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 an order.

USDA received a proposal for a national research and promotion program for softwood lumber from the Blue Ribbon Commission (BRC). The BRC is a committee of 21 chief executive officers and heads of businesses that domestically manufacture and import softwood lumber. Softwood lumber is used in products like flooring, siding and framing. The program would be financed by an assessment on softwood lumber domestic manufacturers and importers and would be administered by a board of industry members selected by the Secretary of Agriculture (Secretary). The initial assessment rate would be \$0.35 per thousand board feet shipped within or imported to the United States and could be increased up to \$0.50 per thousand board feet. Entities that domestically ship or import less than 15 million board feet would be exempt along with shipments exported outside of the United States. No entity would pay assessments on the first 15 million board feet domestically shipped or imported. The purpose of the program would be 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 BRC proposed that a referendum be held among eligible domestic manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. The BRC recommended that the program be implemented if it is favored by a majority of the domestic manufacturers and importers voting in the referendum who also represent a majority of the volume of softwood lumber represented

in the referendum. Domestic manufacturers and importers who domestically ship or import 15 million board feet or more of softwood lumber annually would be eligible to vote in the referendum.

The softwood lumber and softwood lumber products covered under the Order would be the same as those described in section 804(a) within Title VIII (Softwood Lumber Act of 2008 or SLA of 2008) of the Tariff Act of 1930 (19 U.S.C. 1202–1683g), as amended by section 3301 of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246, enacted June 18, 2008). An interim final rule issued by Customs and effective on September 18, 2008 (73 FR 49934; August 25, 2008), prescribed an importer declaration program and entry requirements applicable to such softwood lumber and softwood lumber products. The declaration program and entry requirements were required under section 803 of the SLA of 2008. Section 804 of the SLA of 2008 sets forth the scope of softwood lumber and softwood lumber products covered by that Act. Accordingly, all softwood lumber and softwood lumber products classified under subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 of the Harmonized Tariff Schedule of the United States (HTSUS) are subject to the importer declaration program and entry requirements and would be covered under this Order and are described in the following paragraphs:<sup>1</sup>

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded, or finger-jointed;

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its

edges or faces, whether or not planed, sanded, or finger jointed; and

(5) Coniferous drilled and notched lumber and angle cut lumber.

In addition, any product classified under subheading 4409.10.05 of the HTSUS that is continually shaped along its end and or side edges, and unless excepted or excluded from the importer declaration requirement, softwood lumber products that are stringers, radius cut box-spring frame components, fence pickets, truss components, pallet components, and door and window frame parts classified under subheading 4418.90.46.95, 4421.90.70.40, or 4421.90.97.40 of the HTSUS are covered under the SLA of 2008 and would be covered under the Order.

The following are not subject to the importer declaration program under section 803 of the SLA of 2008 (see section 804(b)) because they are defined as excluded from the program and would thus not be covered under the Order:

(1) Trusses and truss kits, properly classified under subheading 4418.90 of the HTSUS;

(2) I-Joist beams;

(3) Assembled box-spring frames;

(4) Pallets and pallet kits, properly classified under subheading 4415.20 of the HTSUS;

(5) Garage doors;

(6) Edge-glued wood, properly classified under subheading 4421.90.97.40 of the HTSUS;

(7) Complete door frames;

(8) Complete window frames;

(9) Furniture;

(10) Articles brought into the United States temporarily and for which an exemption from duty is claimed under subchapter XIII of chapter 98 of the HTSUS; and

(11) Household and personal effects.

Also, the following products are not subject to the importer declaration program established under section 803 of the SLA of 2008 (see section 804(c)) because they are defined as excepted from the program:

(1) Stringers (pallet components used for runners), if the stringers have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, and properly classified under subheading 4421.90.97.40 of the HTSUS;

(2) Box-spring frame kits, if the kits contain two wooden side rails, two wooden end (or top) rails; and varying numbers of wooden slats; and the side rails and the end rails are radius-cut at both ends. Box spring frame kits must be individually packaged, and contain

<sup>1</sup> The HTS numbers referred to in this discussion are as of January 1, 2008.

the exact number of wooden components needed to make the box-spring frame described on the entry documents, with no further processing required. None of the components contained in the package may exceed 1 inch in actual thickness or 83 inches in length.

(3) Radius-cut box-spring-frame components, not exceeding 1 inch in actual thickness or 83 inches in length, ready for assembly without further processing, if radius cuts are present on both ends of the boards and are substantial cuts so as to completely round one corner.

(4) Fence pickets requiring no further processing and properly classified under subheading 4421.90.70 of the HTSUS, 1 inch or less in actual thickness, up to 8 inches wide, and 6 feet or less in length, and having finials or decorative cuttings that clearly identify them as fence pickets (in the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring  $\frac{3}{4}$  of an inch or more).

(5) Softwood lumber originating in the United States that is exported to another country for minor processing and imported into the United States if the processing occurring in another country is limited to kiln drying, planing to create smooth-to-size board, and sanding; and the importer establishes to Customs' satisfaction upon entry that the softwood lumber originated in the United States.

(6) Any softwood lumber or softwood lumber product that originated in the United States, if the importer, exporter, foreign manufacturer or original domestic manufacturer establishes to Customs' satisfaction upon entry that the softwood lumber entered and documented as originating in the United States was first manufactured in the United States.

(7) Softwood lumber or softwood lumber products contained in a single family home package or kit, regardless of classification under the HTSUS, if the importer declares that the following requirements have been met: (i) The package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint; (ii) The package or kit contains all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, and connectors, and if included in the purchase contract, the decking, trim,

drywall and roof shingles specified in the plan, design or blueprint; (iii) Prior to importation, the package or kit is sold to a United States retailer that sells complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and the contract is signed by a customer not affiliated with the importer; and (iv) Softwood lumber products entered as part of the package or kit, whether in a single entry or multiple entries on multiple days, and are to be used solely for the construction of the single family home specified by the home design plan, or blueprint matching the Customs import entry.

For each entry of softwood lumber products contained in a single family home package for which the importer declares that these four requirements are met, the importer must retain and make available to Customs upon request the following documentation:

(1) A copy of the appropriate home design plan, or blueprint matching the Customs entry in the United States;

(2) A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

(3) A listing of all parts in the package or kit being entered into the United States that conforms to the home design package being imported; and

(4) If a single contract involves multiple entries, an identification of all of the items required to be listed under item (3) that are included in each individual shipment.

Accordingly, this rule would add subpart B to part 1217 that would establish procedures for conducting the referendum. The procedures would cover definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information. The procedures would be applicable for the initial referendum and future referenda.

#### Initial Regulatory Flexibility Act Analysis

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

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

small agricultural service firms (domestic manufacturers and importers) as those having annual receipts of no more than \$7.0 million.

According to 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>2</sup> 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 498 domestic manufacturers, or about 61 percent, shipped less than 25 million board feet annually.<sup>3</sup>

According to U.S. Customs and Border Protection data, it is estimated that, between 2007 and 2009, there were about 833 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 would be considered small entities.

It is estimated that, for 2007–2008, total output (production) of softwood lumber by U.S. sawmills averaged about 29.5 billion board feet annually. Of the 29.5 billion board feet, 12.6 billion board feet were from the southern states, 14.4 billion board feet were from the western states, and 2.5 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>.)

According to U.S. Department of Commerce, Census Bureau, Foreign Trade Statistics data,<sup>6</sup> imports of softwood lumber from 2007 through 2009 averaged about 13 billion board feet annually. During those years, imports from Canada averaged 12 billion board feet annually, comprising about 92 percent of total imports; imports from western Europe averaged 434 million board feet annually, comprising about 3 percent of total imports; and imports from Chile averaged 255 million board feet

<sup>2</sup> Spelter, H., D. McKeever, D. Toth, Profile 2009: Softwood Sawmills in the United States, USDA, p. 15.

<sup>3</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>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> <http://www.fas.usda.gov/gats/>; Accessed 5/1/10.

annually, comprising about 2 percent of total imports. Imports from other countries accounted for the remaining 3 percent of total imports for 2007 through 2009.

This rule invites comments on procedures for conducting a referendum to determine whether domestic manufacturers and importers of softwood lumber favor issuance of a proposed softwood lumber Order. Softwood lumber is used in products like flooring, siding and framing. USDA would conduct the referendum. The program would be implemented if it is favored by a majority of domestic manufacturers and importers of softwood lumber voting in a referendum who also represent a majority of softwood lumber represented in the referendum. The procedures would also be used for any subsequent referendum under the Order. The procedures are authorized under paragraph (e) of Section 518 the 1996 Act.

Regarding the economic impact of this rule on affected entities, eligible softwood lumber domestic manufacturers and importers would have the opportunity to participate in the referendum. The Order would exempt domestic manufacturers and importers who ship or import less than 15 million board feet annually from the payment of assessments. Exempt domestic manufacturers and importers would not be eligible to participate in the referendum. Of the 595 domestic manufacturers and 883 importers, it is estimated that about 363 domestic manufacturers and 103 importers would pay assessments under the Order and thus be eligible to vote in the referendum. 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, would be paid by importers and 75 percent, or about \$13 million, would be paid by domestic manufacturers. Voting in the referendum is optional. If domestic manufacturers and importers chose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

Regarding alternatives, USDA considered requiring eligible voters to vote in person at various USDA offices across the country. USDA also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would be more cost effective and reliable. USDA would provide easy access to

information for potential voters through a toll free telephone line.

This action would impose an additional reporting burden on eligible domestic manufacturers and importers of softwood lumber. Eligible domestic manufacturers and importers would have the opportunity to complete and submit a ballot to USDA indicating whether or not they favor implementation of the proposed Order. The specific burden for the ballot is 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, USDA would keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA would also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

USDA has performed this initial RFA analysis regarding the impact of this proposed rule on small businesses.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

*Title:* Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order.

*OMB Number:* 0581-NEW.

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

*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 proposal received by USDA for a national research and promotion

program for softwood lumber. The program would be financed by an assessment on softwood lumber domestic manufacturers and importers and would be administered by a board of industry members selected by the Secretary. The program would provide for an exemption for the first 15 million board feet of lumber shipped by domestic manufacturers within the United States or imported into the United States during the year. Exports of softwood lumber from the United States would also be exempt from assessments. A referendum would be held among eligible domestic manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. The purpose of the program would be to help build the market for softwood lumber.

The information collection requirements in this rule concern the referendum that would be held to determine whether the program is favored by the industry. Domestic manufacturers and importers of 15 million or more board feet annually would be eligible to vote in the referendum. The ballot would be completed by eligible domestic manufacturers and importers who want to indicate whether or not they support implementation of the program.

#### *Referendum 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:* 464 (363 domestic manufacturers and 103 importers).

*Estimated Number of Responses per Respondent:* 1 every 5 years (0.2).

*Estimated Total Annual Burden on Respondents:* 23.20 hours.

The ballot would be added to the other information collections approved under OMB No. 0581-NEW.

An estimated 464 respondents would provide information to the Board (363 domestic manufacturers and 103 importers). The estimated cost of providing the information to the Board by respondents would be \$765.60. This total has been estimated by multiplying 23.20 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 proposed 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.

#### Request for Public Comment Under the Paperwork Reduction Act

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of functions of the proposed Order and USDA's oversight of the proposed Order, including whether the information would have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed 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 would 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.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581-NEW. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the same addresses referenced in the **ADDRESSES** section of this rule.

A 60-day comment period is provided to allow interested persons to comment on this proposed information collection. All written comments received will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

#### 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, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations, as proposed to be amended elsewhere in this issue of the **Federal Register**, be further amended as follows:

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

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

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

2. Subpart B of 7 CFR part 1217 is added to read as follows:

#### Subpart B—Referendum Procedures

Sec.

1217.100	General.
1217.101	Definitions.
1217.102	Voting.
1217.103	Instructions.
1217.104	Subagents.
1217.105	Ballots.
1217.106	Referendum report.
1217.107	Confidential information.
1217.108	OMB Control number.

#### Subpart B—Referendum Procedures

##### § 1217.100 General.

Referenda to determine whether eligible domestic manufacturers and importers favor the issuance, continuance, amendment, suspension, or termination of the Softwood Lumber Research, Promotion, Consumer Education, and Industry Information Order shall be conducted in accordance with this subpart.

##### § 1217.101 Definitions.

For the purposes of this subpart:

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Customs* means the U.S. Customs and Border Protection or U.S. Customs Service, an agency of the U.S. Department of Homeland Security.

(c) *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.

(d) *Eligible domestic manufacturer* means any person who manufactured and shipped 15 million board feet or more of softwood lumber in the United States during the representative period.

(e) *Eligible importer* means any person who imported 15 million board feet or more of softwood lumber into the United States during the representative period as a principal or as an agent, broker, or consignee of any person who

manufactured softwood lumber outside of the United States for sale in the United States, and who is listed as the importer of record for such softwood lumber. Importation occurs when softwood lumber manufactured outside of the United States is released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-manufactured softwood lumber immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of softwood lumber from Customs when such softwood lumber is entered or withdrawn for use in the United States.

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

(g) *Order* means the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order.

(h) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a softwood lumber manufacturing entity as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land, facilities, capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the domestic manufacturing or importation of softwood lumber and the authority to transfer title to the softwood lumber so manufactured or imported.

(i) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(j) *Representative period* means the period designated by the Department.

(k) *Softwood lumber* means all softwood lumber and softwood lumber products described in section 804(a) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202–1683g). This definition does not include those products excluded or excepted under sections 804(b) and (c) of that Act.

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

(m) *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.

**§ 1217.102 Voting.**

(a) Each eligible domestic manufacturer and importer of softwood lumber shall be entitled to cast only one ballot in the referendum. However, each domestic manufacturer in a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to manufacture softwood lumber, in which more than one of the parties is a domestic manufacturer or importer, shall be entitled to cast one ballot in the referendum covering only such domestic manufacturer or importer's share of ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate domestic manufacturer or importer, or an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) A single entity who domestically manufactures and imports softwood lumber may cast one vote in the referendum.

(d) All ballots are to be cast by mail or other means, as instructed by the Department.

**§ 1217.103 Instructions.**

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, consistent with the provisions of this subpart, to govern the procedure to be

followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast;

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(c) Give reasonable public notice of the referendum:

(1) By using available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible domestic manufacturers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot;

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process;

(f) Prepare a report on the referendum; and

(g) Announce the results to the public.

**§ 1217.104 Subagents.**

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such

appointment, shall be performed by the agent.

**§ 1217.105 Ballots.**

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

**§ 1217.106 Referendum report.**

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

**§ 1217.107 Confidential information.**

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

**§ 1217.108 OMB control number.**

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. is OMB control number 0581-NEW.

Dated: September 22, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

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