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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1222**

**[Document Number AMS-FV-11-0069; PR-A2]**

**RIN 0581-AD21**

**Paper and Paper-Based Packaging Promotion, Research and Information Order**

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This document proposes a Paper and Paper-Based Packaging Promotion, Research and Information Order (Order). The purpose of the program would be to maintain and expand markets for paper and paper-based packaging. The program would be financed by an assessment on paper and paper-based packaging manufacturers (domestic producers) and importers and would be administered by a board of industry members appointed by the Secretary of Agriculture (Secretary). The assessment rate would initially be \$0.35 per short ton. This document also announces that the U.S. Department of Agriculture (USDA) is conducting a referendum among eligible manufacturers and importers to determine whether they favor implementation of the program. The program would be implemented if it is favored by a majority of current U.S. manufacturers and importers voting in the referendum who also represent a majority of the volume of paper

and paper-based packaging represented in the referendum who, during a representative period determined by the Secretary, were engaged in the manufacturing or importation of paper and paper-based packaging into the United States. A separate final rule on referendum procedures is being published in this issue of the **Federal Register**.

**DATES:** The voting period is October 28 through November 8, 2013. To be eligible to vote, current paper and paper-based packaging domestic manufacturers and importers must have domestically manufactured and/or imported 100,000 short tons or more of paper and paper-based packaging during the representative period from January 1 through December 31, 2012. Anyone who believes that they are eligible to vote in the referendum and does not receive a ballot in the mail, may request one from the Referendum Agents by calling the toll free number provided in the "Addresses" section below. Ballots will be mailed to all known domestic manufacturers and importers of paper and paper-based packaging on or before October 21, 2013. Ballots must be received by the referendum agents no later than the close of business 4:30 p.m. (Eastern Standard Time) on November 8, 2013.

**ADDRESSES:** Copies of the proposed Order may be obtained from the Referendum Agents, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue, SW.,

Room 1406-S, Stop 0244, Washington, DC 20250-0244; telephone:  
(202) 720-9915 or (888) 720-9917 (toll free); or facsimile:  
(202) 205-2800; or can be viewed at <http://www.regulations.gov>

**FOR FURTHER INFORMATION CONTACT:** Kimberly Coy, Marketing  
Specialist, Promotion and Economics Division, Fruit and  
Vegetable Program, AMS, USDA, 1400 Independence Avenue, SW.,  
Room 1406-S, Stop 0244, Washington, DC 20250-0244; telephone:  
(202) 720-9915 or (888) 720-9917 (toll free); or facsimile:  
(202) 205-2800; or electronic mail: [Kimberly.Coy@ams.usda.gov](mailto:Kimberly.Coy@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposed 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 January 2, 2013 (78 FR  
188). That rule provided for a 60-day comment period which  
ended on March 4, 2013. Seventy-five comments were received.  
The comments are addressed later in this document.

### **Background**

This document proposes an industry-funded research,  
promotion and information program for paper and paper-based  
packaging. The program would cover four types of paper and  
paper-based packaging - printing, writing and related paper  
(used to make products for printing, writing and other

communication purposes), kraft packaging paper (used for products like grocery bags and sacks), containerboard (used to make corrugated boxes, shipping containers and related products), and paperboard (used for food and beverage packaging, tubes and other miscellaneous products). The program would be financed by an assessment on U.S. manufacturers and importers of paper and paper-based packaging and would be administered by a board of industry members appointed by the Secretary. The assessment rate would initially be \$0.35 per short ton. (One short ton equals 2,000 pounds). Entities that domestically manufacture or import less than 100,000 short tons per marketing year would be exempt from the payment of assessments. The purpose of the program would be to maintain and expand markets for paper and paper-based packaging.

The proposal was submitted to USDA by the Paper and Paper-Based Packaging Panel (Panel). The Panel is a group of 14 industry members that was formed in May 2010 to oversee development of the program. The American Forest & Paper Association (AF&PA), a national trade association, provided technical assistance to the Panel.

#### **Authority in 1996 Act**

The proposed 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. Commodity promotion programs provide a unique opportunity for an industry to inform consumers about their particular commodity and have the ability to provide significant conservation benefits to producers and the public. These programs are designed to strengthen the position of agricultural commodity industries in the marketplace, maintain and expand markets and uses for agricultural commodities, develop new uses for agricultural commodities or assist producers in meeting their conservation objectives. As defined under section 513(1)(D) of the 1996 Act, agricultural commodities include the products of forestry, which includes paper and paper-based packaging.

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**

Paper and paper-based packaging is produced from pulp. Pulp is made by chemically or mechanically separating fibers from wood or by recycling recovered paper and paper-based packaging products. The separated, moist fibers are then pressed together and dried into flexible sheets.

## **U.S. Pulpwood Production**<sup>1</sup>

Wood used to make pulp is known as pulpwood. Total pulpwood production includes roundwood chipped at mills and other primary industry mill residues. Roundwood includes both softwood and hardwood. Roundwood pulpwood continues to be the primary fiber source used in pulp manufacturing in the United States. Wood residues consist primarily of mill residue chips, a byproduct of sawmilling and veneer mill operations.

According to U.S. Forest Service statistics, in 2008, U.S. pulpwood production totaled 89.2 million cords. Of that total, softwood roundwood and residues accounted for 69 percent (61.4 million cords). Hardwood roundwood and residues accounted for 31 percent (27.7 million cords). By region, the South accounted for 76.4 percent of total U.S. pulpwood production (68.1 million cords). The West accounted for 9.9 percent (8.8 million cords), the Midwest accounted for 7.1 percent (6.3 million cords), and the Northeast accounted for 6.6 percent (5.9 million cords) of total U.S. pulpwood production.

## **Manufacturers and Converting Operations**

The U.S. paper industry encompasses two broad segments - primary producers/manufacturers (mills) and converters. Primary

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<sup>1</sup> Johnson, Tony G., Ronald J., Walters, Brian F., Sorenson, Colin, Woodall, Christopher W., Morgan, Todd A., National Pulpwood Production, 2008, USDA, p. 15 ([www.treesearch.fs.fed.us/pubs/37960](http://www.treesearch.fs.fed.us/pubs/37960)).

manufacturers make rolls of paper and paper-based packaging (commonly referred to as roll stock) from pulp produced in the same mill or pulp supplied by another mill. Primary manufacturers would be covered under the program.

Converters turn roll stock into final products such as boxes, corrugated boxes, shipping containers, envelopes, magazines, catalogs, copy paper and bags/sacks. Converting operations can take place in a primary producer mill or off-site. When converting is done in a primary producer mill, the roll produced before it is converted into a final product or sold to an off-site converter would be covered under the program. Converting operations (and thus converted products) would not be covered under the program. An exception is the case of cut-size printing and writing papers (including folio sheets) made by primary producers that are cut prior to leaving the mill.<sup>2</sup> These are classified as primary products (not converted products) under the Harmonized Tariff Schedule of the United States (HTSUS) and would, therefore, be assessed under the program.

### **Types of Paper and Paper-Based Packaging**

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<sup>2</sup> Cut-size office papers are used in office machines and are sold in sheet form typically 8.5" x 11," 8.5" x 14" or 11" x 11." Folio sheets are cut-size papers sold in sheet form in sizes of 17" x 22" or larger. These would be included in the printing, writing and related paper category.

There are six major types of paper and paper-based packaging produced by manufacturers: 1) printing, writing and related paper; 2) kraft packaging paper; 3) containerboard; 4) paperboard; 5) tissue paper; and 6) newsprint. The proposed Order would cover the first four of the six types mentioned above.

Printing, writing and related paper is coated or uncoated paper, including thermal but excluding carbonless paper, which is subsequently converted into products used for printing, writing and other communication purposes, such as file folders, envelopes, catalogues, magazines and brochures. Demand for carbonless paper has declined significantly due to other technologies. Thus, the Panel concluded and the Department concurs that the carbonless segment of the industry would not be able to absorb the cost of a promotion program at this time.

Kraft packaging paper is coarse, unbleached, semi-bleached or fully bleached grades of paper that are subsequently converted into products such as grocery bags, multiwall sacks, waxed paper and other products. "Kraft" refers to a process for transforming wood into a high quality, strong pulp for making paper and paper-based packaging. Bleaching is the chemical processing of pulp to remove the natural brown color and thus make the pulp and pulp products whiter.

Containerboard includes all forms of linerboard, which is used as the facing material in the production of corrugated or solid fiber shipping boxes, and medium, which is used as the inner fluting material in the manufacture of such boxes.

Containerboard is used to manufacture corrugated boxes, shipping containers, point-of-sale displays, pallets and other products.

Paperboard is solid bleached kraft board, recycled board and unbleached kraft board, which is converted into products such as folding boxes, tubes, cans and drums. Paperboard is also used to package food, beverages and other nondurable consumer products such as pharmaceuticals, clothing, footwear and cosmetics. Nondurable goods are used immediately or have a lifespan of 3 years or less.

The two types of paper and paper-based packaging that would not be covered under the program are tissue paper and newsprint. With the exception of restroom hand-dryers versus paper towels, tissue paper products are not facing competition from alternative products. The opposite is true for newsprint. Demand for newsprint has drastically declined due to the shift toward digital communications. However, the Panel concluded and the Department concurs that the newsprint segment of the industry would not be able to incur the cost of a promotion program at this time.

### **U.S. Manufacturing by Region**<sup>3</sup>

In 2011, about 68.5 million short tons of U.S. paper and paper-based packaging to be covered under the program were produced. Of the 68.5 million short tons, it is estimated that 63.2 percent was manufactured in the South, 17.1 percent was manufactured in the Midwest, 10.5 percent was manufactured in the Northeast, and 9.2 percent was manufactured in the West. In terms of type, it is estimated that 50.1 percent was containerboard, 29.1 percent was printing, writing and related paper, 18.3 percent was paperboard, and 2.5 percent was kraft packaging paper.

### **Export Markets**

According to U.S. Census data, in 2011, exports of the four types of paper and paper-based packaging to be covered under the proposed Order totaled about 11.5 million short tons, or 17 percent of domestic production. In terms of major export markets in 2011, it is estimated that 18.0 percent went to Western Europe, 16.0 percent each went to Canada and Mexico, 11.0 percent went to the Far East and Oceania, 9.0 percent went to South America and 8.0 percent went to China. Of the 11.5 million short tons, it is estimated that 46.0 percent was containerboard, 26.0 percent was paperboard, 22.0 percent was

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<sup>3</sup> Manufacturing data was compiled by the AF&PA from its 51<sup>st</sup> Annual Survey of Paper, Paperboard and Pulp, 2011.

printing, writing and related paper, and 6.0 percent was kraft packaging paper.

### **Imports**

According to U.S. Customs and Border Protection (Customs) data, in 2011, imports to be covered under the program totaled 7.5 million short tons. Of that total, about 58.6 percent was from Canada, 22.2 percent from Western Europe, 9.8 percent was from China, Japan and the Far East, 2.7 percent was from South America and the remainder was from other countries. In terms of type, about 72.0 percent of the imports were printing, writing and related paper, 13.1 percent was paperboard, 10.1 percent was containerboard and 4.8 percent was kraft packaging paper.

### **Need for a Program**

According to AF&PA data, markets for paper and paper-based packaging that would be covered under the program declined by 15 percent between 2000 and 2010. U.S. shipments of cut-size office papers (one sector of the printing and writing category) grew with employment in white collar-intensive industries between 2000 and 2006. However, between 2006 and 2010, shipments fell 20 percent<sup>4</sup> while employment in white collar-intensive industries declined by 5 percent. Moreover, in 2010, while employment in

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<sup>4</sup> AF&PA's Statistics of Pulp, Paper and Paperboard, p. 7.

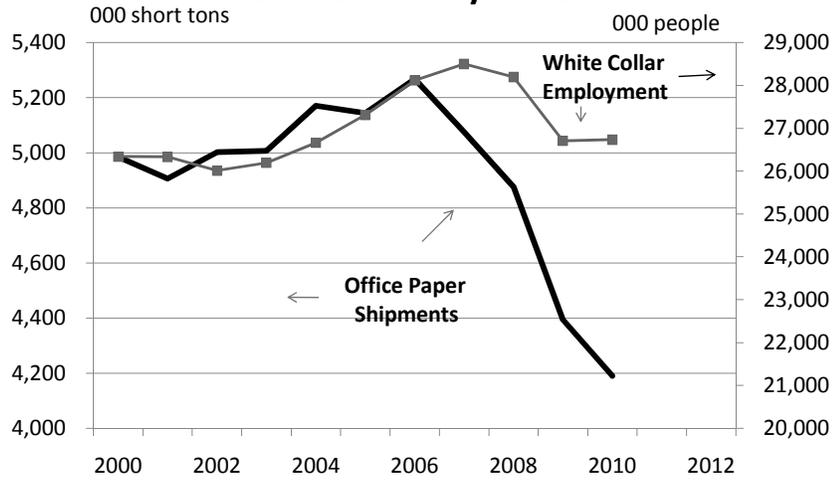
white collar-intensive industries stabilized,<sup>5</sup> office paper shipments declined another 5 percent.<sup>6</sup> This is illustrated in the following chart.

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<sup>5</sup> Employment data was compiled by the AF&PA from the U.S. Bureau of Labor Statistics, <http://www.bls.gov/data>.

<sup>6</sup> AF&PA's Statistics, p. 7.

## U.S. Shipments of Cut-Size Office Papers vs. Employment in White Collar-Intensive Industry Sectors\*



\*Finance, insurance, real estate, professional and business services, membership organizations.

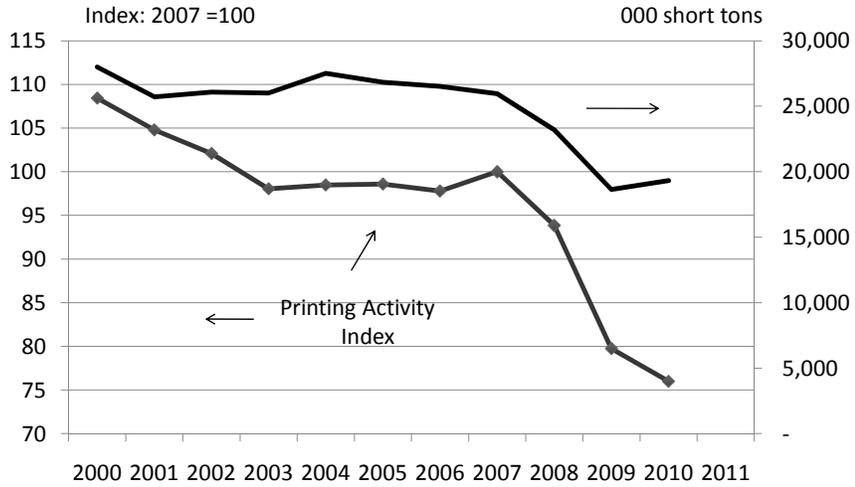
Markets for other printing and writing papers (exclusive of cut-size office papers) declined 27 percent between 2006 and 2010.<sup>7</sup> Digital forms of communication such as Internet advertising and the widespread availability of news, books and other digital information have contributed to this displacement. This is illustrated in the following chart.<sup>8</sup>

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7 AF&PA's Statistics, p. 7 and 12.

8 Printing activity index is from [http://www.federalreserve.gov/releases/q17/ipdisk/ip\\_nsa.txt](http://www.federalreserve.gov/releases/q17/ipdisk/ip_nsa.txt). The Federal Reserve Board reports production of nondurable goods, as well as other items, as indexes rather than in terms of tons, pounds or units. The base year is 2007, which means that if the index reaches 105 in 2008, production has increased 5 percent relative to the 2007 level. If the index falls to 95, it means that production has declined 5 percent relative to the 2007 level.

## Other Printing-Writing Paper Markets\* Vs. Printing Activity



\*Printing-writing paper markets excluding office cut-size paper.

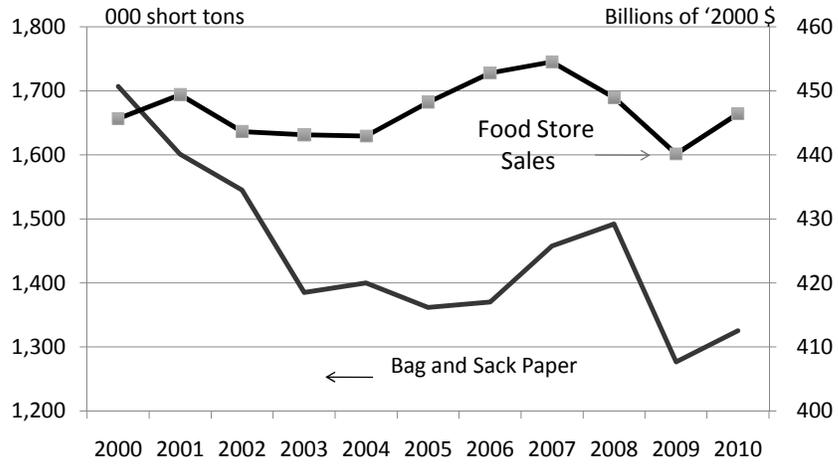
According to AF&PA data, kraft paper markets declined 23 percent between 2000 and 2010,<sup>9</sup> even as food store sales rose by 1 percent.<sup>10</sup> This is illustrated in the following chart.

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<sup>9</sup> AF&PA monthly Kraft Paper Statistical Reports.

<sup>10</sup> Retail food and beverage store sales data is from the U.S. Census Bureau (<http://www.census.gov/retail>) and was adjusted for inflation by the AF&PA using U.S. Bureau of Labor Statistics' consumer price index for food and beverages (<http://www.bls.gov/data/#prices>).

## Unbleached Kraft Bag and Sack Papers



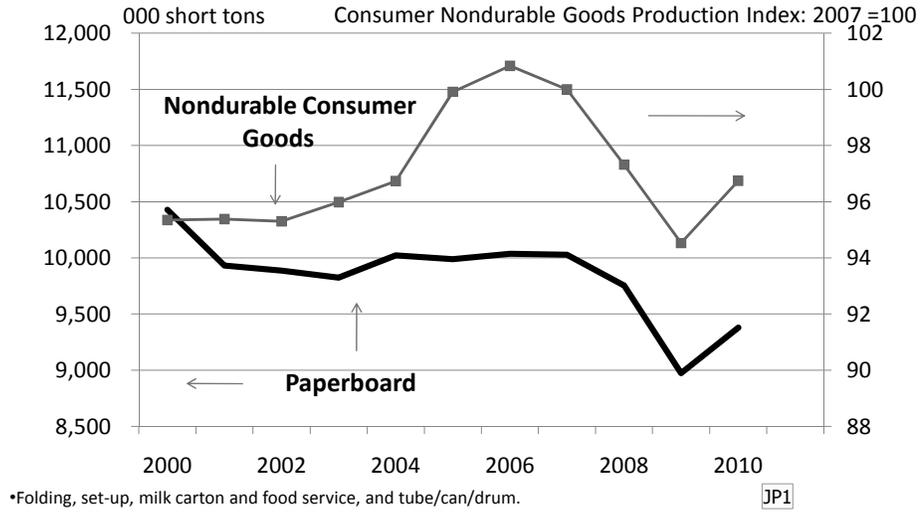
Paperboard markets also have declined over the past decade.<sup>11</sup> Paperboard is mainly facing competition from plastics, but also from foils and, to a lesser extent, glass. Between 2000 and 2010, U.S. paperboard markets contracted 10 percent as compared with a fairly stable demand (i.e., a 1 percent increase) for nondurable consumer goods. Additionally, paperboard markets stagnated when nondurable consumer goods demand grew in the mid-2000s.<sup>12</sup> This is illustrated in the chart below.

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11 AF&PA's Statistics, p. 9.

12 [http://www.federalreserve.gov/releases/g17/ipdisk/ip\\_nsa.txt](http://www.federalreserve.gov/releases/g17/ipdisk/ip_nsa.txt).

## U.S. Paperboard\* Vs. Nondurable Consumer Goods



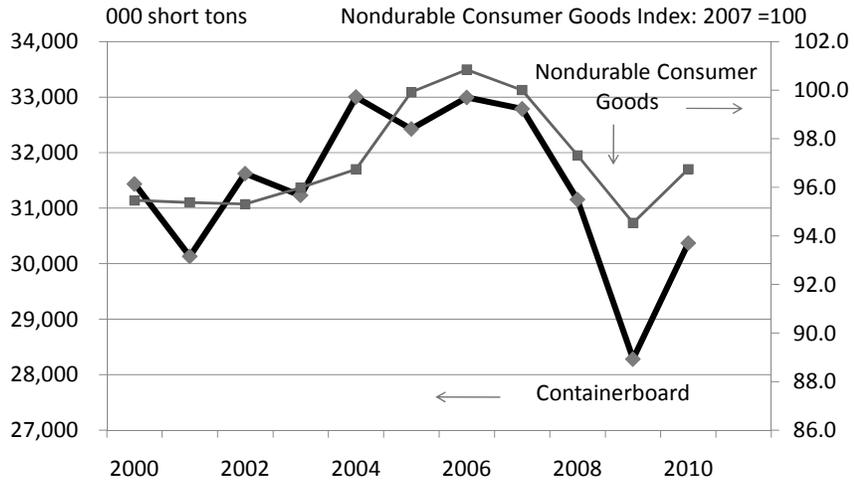
AF&PA data show that containerboard markets have remained fairly steady as compared to the other four types of paper and paper-based packaging to be covered under the program. U.S. containerboard markets declined 2 percent between 2000 and 2010,<sup>13</sup> while demand for nondurable consumer goods, which accounts for most of the demand for corrugated boxes, rose 1 percent. As shown below, from 2000 through 2007, containerboard markets largely kept pace with nondurable consumer goods, with containerboard demand growing 4 percent and nondurable goods up 5 percent.<sup>14</sup> This is illustrated in the following chart.

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<sup>13</sup> AF&PA's Statistics, p. 9 and 20.

<sup>14</sup> [http://www.federalreserve.gov/releases/g17/ipdisk/ip\\_nsa.txt](http://www.federalreserve.gov/releases/g17/ipdisk/ip_nsa.txt).

## U.S. Containerboard Vs. Nondurable Consumer Goods



In light of these market conditions, the Panel was formed in May 2010 to assess the merits of a national promotion program. While there have been a number of ongoing campaigns designed to promote specific sectors of the paper industry, the impact of these programs has been limited due to funding. Additionally, while the programs have been useful, their messages have been tailored to specific segments of the industry. Ultimately, the Panel concluded that a national program that would generate about \$25 million annually with a unified message that crosses all segments would benefit the entire industry.

#### **Provisions of Proposed Program**

##### **Definitions**

Pursuant to section 513 of the 1996 Act, sections 1222.1 through 1222.29 of the proposed Order would define certain terms that would 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 proposed paper and paper-based packaging Order.

Section 1222.1 would define the term "Act" to mean the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411-7425), and any amendments thereto.

Section 1222.2 would define the term "Board" to mean the

Paper and Paper-Based Packaging Board established pursuant to section 1222.40, or such other name as recommended by the Board and approved by the Department.

Section 1222.4 would define the term "converted products" to mean products made from paper and paper-based packaging.

Section 1222.5 would define the term "Customs" or "CBP" to mean the U.S. Customs and Border Protection, an agency of the U.S. Department of Homeland Security.

Section 1222.7 would define the term "fiscal period" and "marketing year" to mean the 12-month period ending on December 31 or such other period as recommended by the Board and approved by the Secretary.

Section 1222.9 would define the term "information" to mean information and programs for consumers, customers and industry, including educational activities, information and programs designed to enhance and broaden the understanding of the use and attributes of paper and paper-based packaging, increase efficiency in manufacturing paper and paper-based packaging, maintain and expand existing markets, and develop new markets and marketing strategies. These include:

(a) Consumer education and information, which means any action taken to provide information to, and broaden the

understanding of, the general public regarding paper and paper-based packaging; and

(b) Industry information, which means information and programs that would enhance the image of the paper and paper-based packaging industry.

Section 1222.12 would define the term "manufacture" or "produce" to mean the process of transforming pulp into paper and paper-based packaging.

Section 1222.13 would define the term "manufacturer" or "producer" to mean any person who manufactures paper and paper-based packaging in the United States.

Section 1222.16 would define the term "Panel" to mean the Paper and Paper-Based Packaging Panel formed to oversee development of a paper and paper-based packaging promotion, research and information program. As specified in section 1222.41, the Panel would conduct the initial nominations for the Board and submit them to the Secretary. This would be the only role of the Panel under the program.

Section 1222.17 would define the term "paper and paper-based packaging" to mean:

(1) Printing, writing and related paper, which is coated or uncoated paper, including thermal but excluding carbonless paper, that is subsequently converted into products used for

printing, writing and other communication purposes, such as file folders, envelopes, catalogues, magazines and brochures;

(2) Kraft packaging paper, which is coarse unbleached, semi-bleached or fully bleached grades of paper that is subsequently converted into products such as grocery bags, multiwall sacks, waxed paper and other products;

(3) Containerboard, which is all forms of linerboard and medium, that is used to manufacture corrugated boxes, shipping containers and related products; and

(4) Paperboard, which is solid bleached kraft board, recycled board and unbleached kraft board that is subsequently converted into a wide variety of end uses, including folding boxes, food and beverage packaging, tubes, cans, and drums, and other miscellaneous products. Paperboard does not include construction-related products such as gypsum wallboard facings and panel board.

As previously mentioned, the Order would cover only the four types of paper and paper-based packaging as defined above, not tissue, newsprint or converted products.

Sections 1222.10, 1222.11, 1222.14 and 1222.22 would define the terms "kraft process," "linerboard," "medium," and "pulp," respectively. These terms are used in the definition of paper and paper-based packaging specified in section 1222.17.

Section 1222.20 would define the term "programs, plans and projects" to mean those research, promotion and information programs, plans or projects established pursuant to the Order.

Section 1222.21 would define the term "promotion" to mean any action, including paid advertising and the dissemination of information, utilizing public relations or other means, to enhance and broaden the understanding of the use and attributes of paper and paper-based packaging for the purpose of maintaining and expanding markets for paper and paper-based packaging.

Section 1222.23 would define the term "research" to mean any type of test, study, or analysis designed to enhance the image, desirability, use, marketability, manufacturing, recyclability, reusability or quality of paper and paper-based packaging, including research directed to product characteristics and product development, including new uses of existing products, new products or improved technology in the manufacturing of paper and paper-based packaging.

Section 1222.25 would define the term "short ton" or "ton" to mean a measure of weight equal to 2,000 pounds.

Sections 1222.3, 1222.6, 1222.8, 1222.15, 1222.19, 1222.24, 1222.26, 1222.27, 1222.28 and 1222.29 would define the terms "conflict of interest," "Department or USDA," "importer,"

"Order," "person," "Secretary," "State," "suspend," "terminate," and "United States," respectively. The definitions are the same as those specified in section 513 of the Act.

#### **Establishment of the Board**

Pursuant to section 515 of the 1996 Act, sections 1222.40 through 1222.47 of the proposed Order would detail the establishment and membership of the proposed Paper and Paper-Based Packaging Board, nominations and appointments, the term of office, removal and vacancies, procedure, reimbursement and attendance, powers and duties, and prohibited activities.

Section 1222.40 would specify the Board establishment and membership. The Board would be composed of domestic manufacturers and importers who manufacture or import to the United States 100,000 short tons or more of paper and paper-based packaging during a fiscal period. Seats on the Board would be apportioned based on the geographic distribution of the quantity of paper and paper-based packaging manufactured in the United States and the quantity of paper and paper-based packaging imported to the United States.

The Board would be composed of 12 members. Eleven members would be manufacturers and 1 member would be an importer. Of the 11 domestic manufacturers, 10 would be allocated to four regions within the United States based on the quantity of paper

and paper-based packaging manufactured within the respective region. Of the 10 members, 6 would be from the South, two would be from the Midwest, and one each would be from the Northeast and the West. Specific areas within each domestic region would be specified in section 1222.40(b)(1). One manufacturer representative may be from any region ("at large") and must produce at least 100,000 short tons but no more than 250,000 short tons of paper and paper-based packaging annually. This is to help ensure that the views of smaller entities that are subject to assessments are represented on the Board. If there are no eligible nominees, this seat would be allocated to the largest producing region.

The Panel also opted to have no alternate Board members. It wants to ensure that industry members who seek representation and serve on the Board are committed to their service and participate in all Board meetings.

Every 5 years, but no more often than once every 3 years, the Board must review the geographical distribution of the quantity of paper and paper-based packaging manufactured within the United States and the quantity of paper and paper-based packaging imported to the United States. If warranted, the Board would recommend to the Secretary that the Board membership be reapportioned appropriately to reflect such changes, which could include an

increase in the number of importer seats. The distribution of quantities between domestic regions would also be considered as well as changes in the size of the Board. Any changes in Board composition would be implemented by the Secretary through rulemaking.

Section 1222.41 of the proposed Order would specify Board nominations and appointments. The initial nominations would be submitted to the Secretary by the Panel. The Panel would publicize the nomination process, using trade press or other means it deems appropriate, and outreach to all known manufacturers and importers who manufacture or import 100,000 short tons or more of paper and paper-based packaging in a marketing year. The Panel would use regional caucuses, mail or other methods to solicit potential nominees and would work with USDA to help ensure that all interested persons are apprised of the nomination process. The Panel would submit the nominations to the Secretary and recommend two nominees for each Board position. The Secretary would select the members of the Board from the nominations submitted by the Panel.

Regarding subsequent nominations, the Board would solicit nominations as described in the preceding paragraph. Eligible persons may nominate themselves or other eligible candidates. Nominees would have the opportunity to provide the Board a short

background statement outlining their qualifications to serve on the Board. Nominees must domestically produce or import 100,000 short tons or more of paper and paper-based packaging annually. Entities that are both a domestic manufacturer and an importer could seek nomination to the Board as either a domestic manufacturer or an importer, but not both.

For the domestic seats allocated by region, manufacturers must produce paper and paper-based packaging in the region for which they seek nomination. Domestic manufacturers who manufacture paper and paper-based packaging in more than one region could seek nomination in only one region of their choice. The names of domestic manufacturer nominees would be placed on a ballot by region. The ballots along with the background statements would be mailed to manufacturers who produce 100,000 short tons or more annually for a vote. Manufacturers may vote in each region in which they manufacture paper and paper-based packaging. The votes would 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 would be submitted to the Secretary.

The names of nominees for the "at large" domestic manufacturer seat would also be placed on a ballot. The ballots along with the background statements would be mailed to all

manufacturers who manufacture 100,000 short tons or more of paper and paper-based packaging annually. The votes would be tabulated and the nominees receiving the highest number of votes would be placed at the top of the list in descending order by vote. The top two candidates would be submitted to the Secretary.

The names of importer nominees would also be placed on a ballot. The ballots along with the background statements would be mailed to importers who import 100,000 short tons or more annually for a vote. The votes would be tabulated 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 would then be submitted to the Secretary.

The Board would submit nominations to the Secretary at least 6 months before the new Board term begins. The Secretary would select the members of the Board from the nominations submitted by the Board.

The Panel also recommended that no two Board members be employed by a single corporation, company, partnership or any other legal entity. This is to help ensure that representation on the Board is balanced.

In order to provide the Board flexibility, the Board could recommend to the Secretary modifications to its nomination

procedures. Any such modifications would be implemented through rulemaking by the Secretary.

Section 1222.42 of the proposed Order would specify the term of office. With the exception of the initial Board, each Board member would serve a three-year term or until the Secretary appointed his or her successor. Each term of office would begin on January 1 and end on December 31. No member could serve more than two consecutive terms, excluding any term of office less than three years. For the initial board, the terms of Board members would be staggered for two, three and four years and would be recommended to the Secretary by the Panel.

Section 1222.43 of the proposed Order would specify criteria for the removal of members and for filling vacancies. If a Board member ceased to work for or be affiliated with a domestic manufacturer or importer or ceased to do business in the region he or she represented, such position would become vacant. Additionally, the Board could recommend to the Secretary that a member be removed from office if the member consistently refused to perform his or her duties or engaged in dishonest acts or willful misconduct. The Secretary could remove the member if he or she finds that the Board's recommendation shows adequate cause. The Secretary could also

remove a member due to adequate cause absent a Board recommendation. If a position became vacant, nominations to fill the vacancy would be conducted using the nominations process as proposed in section 1222.41 of the Order. A vacancy would not be required to be filled if the unexpired term is less than six months.

Section 1222.44 of the proposed Order would specify procedures of the Board. A majority of the Board members would constitute a quorum. Thus, for the 12-member Board, 7 members would constitute a quorum. If the Board had two vacancies and consisted of only 10 members, 6 members would constitute a quorum. A motion would carry if supported by a majority of Board members, except for recommendations to change the assessment rate or to adopt a budget, both of which would require affirmation by at least two-thirds of the Board members. Thus, for a 12-member Board, 8 members would have to vote in favor of a budget for it to pass. For a 10-member Board (two vacancies), 7 members would have to vote in favor of a budget for it to pass. Proxy voting would not be permitted.

The proposed Order would also provide for the Board to take action by mail, telephone, electronic mail, facsimile, or any other electronic means when the chairperson believes it is necessary. Actions taken under these procedures would be valid

only if all members and the Secretary were notified of the meeting and all members were provided the opportunity to vote and at least a majority of Board members voted in favor of the action (unless two-thirds vote were required under the Order). Additionally, all votes would have to be confirmed in writing and recorded in Board minutes.

The proposed Order would specify that Board members would serve without compensation. However, Board members would be reimbursed for reasonable travel expenses, as approved by the Board, incurred when performing Board business. Similarly, persons who serve on subcommittees or other committees who may not be Board members would also be reimbursed for reasonable travel expenses, as approved by the Board, incurred when performing Board business.

Section 1222.46 of the proposed Order would specify powers and duties of the Board. These are similar in promotion programs authorized under the 1996 Act. They include, among other things, to administer the Order and collect assessments; to develop bylaws and recommend regulations necessary to administer the Order; to select a chairperson and other Board officers; to form committees and subcommittees as necessary; to hire staff or contractors; to provide appropriate notice of meetings to the industry and USDA and keep minutes of such

meetings; to develop programs and enter into contracts to implement programs; to submit fiscal year budgets to USDA in accordance with section 1222.50; to borrow funds necessary to cover startup costs of the Order; to invest Board funds appropriately; to recommend changes in the assessment rate as appropriate and within the limits of the Order; to have its books audited by an outside certified public accountant at the end of each fiscal period and at other times as requested by the Secretary; to report and make public reports of its program activities; to make public an accounting of funds received and expended at least once each fiscal year; to receive, investigate and report to the Secretary complaints of violations of the Order; to recommend amendments to the Order as appropriate; and to work to achieve an effective, continuous and coordinated program of promotion, research and information and to carry out programs, plans and projects designed to provide maximum benefits to the paper and paper-based packaging industry.

Section 1222.47 of the proposed Order would specify prohibited activities that are common to all promotion programs authorized under the 1996 Act. In summary, neither the Board nor its employees and agents could engage in actions that would be a conflict of interest; use Board funds to lobby (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 engage in any advertising or activities that may be false, misleading or disparaging to another agricultural commodity. Additionally, paper and paper-based packaging from all origins would be treated equally.

### **Expenses and Assessments**

Pursuant to sections 516 and 517 of the 1996 Act, sections 1222.50 through 1222.53 of the proposed Order detail requirements regarding the Board's budget and expenses, financial statements, assessments, and exemption from assessments. At least 60 calendar days before the start of the fiscal period, and as necessary during the year, the Board would submit a budget to USDA covering its projected expenses. The budget must include a summary of anticipated revenue and expenses for each program along with a breakdown of staff and administrative expenses. Except for the initial budget, the Board's budgets should include comparative data for at least one preceding fiscal period.

Each budget must provide for adequate funds to cover the Board's anticipated expenses. Any amendment or addition to an approved budget must be approved by USDA, including shifting of funds from one program, plan or project to another. Shifts of

funds that do not result in an increase in the Board's approved budget would not have to have prior approval from USDA. For example, if the Board's approved budget provided for \$1 million in consumer advertising and \$500,000 in research projects, a shift of \$50,000 from consumer advertising to research would require USDA approval. However, a shift within the \$1 million consumer advertising line item would not require prior USDA approval.

The Board would be authorized to incur reasonable expenses for its maintenance and functioning. During its first year of operation, the Board could borrow funds for startup costs and capital outlay. Any borrowed funds would be subject to the same fiscal, budget and audit controls as other funds of the Board.

The Board could also accept voluntary contributions. Any contributions received by the Board would be free from encumbrances by the donor and the Board would retain control over use of the funds. The Board would also be required to reimburse USDA for costs incurred by USDA in overseeing the Order's operations, including all costs associated with referenda.

The Board would be limited to spending no more than 15 percent of its available funds for administration, maintenance, and the functioning of the Board. This limitation would begin

three fiscal years after the Board's first meeting. As an example, if the Board received \$20 million in assessments during fiscal year 5, and had available \$1 million in reserve funds, the Board's available funds would be \$21 million. In this scenario, the Board would be limited to spending no more than \$3.2 million (.15 x \$21 million) on administrative costs. Reimbursements to USDA would not be considered administrative costs.

The Board could also maintain a monetary reserve and carry over excess funds from one fiscal period to the next. However, such reserve funds could not exceed one fiscal year's budgeted expenses. For example, if the Board's budgeted expenses for a fiscal year were \$20 million, it could carry over no more than \$20 million in reserve. With approval of the Secretary, reserve funds could be used to pay expenses.

The Board could invest its revenue collected under the Order in the following: 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; and 4) Obligations fully guaranteed as to principal interest by the United States.

The Board would be required to submit to USDA financial statements on a quarterly basis, or at any other time as requested by the Secretary. Financial statements should include, at a minimum, a balance sheet, an income statement and an expense budget.

### **Assessments**

The Board's programs and expenses would be funded through assessments on U.S. manufacturers and importers, other income, and other funds available to the Board. The Order would provide for an initial assessment rate of \$0.35 per short ton of paper and paper-based packaging domestically manufactured or imported. Domestic manufacturers would pay assessments based on the quantity of paper and paper-based packaging manufactured or produced; the assessment would be on the rollstock. An exception previously mentioned is the case of cut-size printing and writing papers (including folio sheets) in which case the assessment would be on the cut-size paper. Importers would pay assessments based on the quantity of paper and paper-based packaging imported to the United States.

Two years after the Order becomes effective and periodically thereafter, the Board would review the assessment rate and, if appropriate, recommend a change in the rate. At least two-thirds of the Board members would have to favor a

change in the assessment rate. Any change in the assessment rate would be subject to rulemaking by the Secretary.

Anticipated income generated at the \$0.35 per short ton assessment rate is addressed in the section titled "Regulatory Flexibility Act Analysis."

Domestic manufacturers would be required to pay their assessments owed to the Board by the 30<sup>th</sup> calendar day of the month following the end of the quarter in which the paper and paper-based packaging was manufactured. Thus, the January to December fiscal year would have four quarters ending the last day of March, June, September, and December, respectively. Assessments would be due April 30<sup>th</sup>, July 30<sup>th</sup>, October 30<sup>th</sup> and January 30<sup>th</sup>. As an example, assessments for paper and paper-based packaging produced in January, February or March would be due to the Board by April 30<sup>th</sup>.

Importer assessments would be collected through Customs. If Customs did not collect the assessment from an importer, then the importer would be responsible for paying the assessment directly to the Board within 30 calendar days after the end of the quarter in which the paper and paper-based packaging was imported. Imported paper and paper-based packaging identified by the numbers of the HTSUS listed in sections 1222.52(e) would be covered under the Order. The majority of the paper and

paper-based packaging imports are in kilograms. One kilogram is equal to 2.20462262 pounds and one short ton is equal to 2,000 pounds. Thus, the \$0.35 per short ton assessment rate is equal to a rate of \$.000386 per kilogram ( $\$0.35/2,000$  pounds times 2.20462262 pounds/kilogram).

The Order would provide 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 would be prescribed in the Order's regulations issued by the Secretary.

### **Exemptions**

The Order would provide for two exemptions. First, U.S. manufacturers and importers who domestically produce or import less than 100,000 short tons during a marketing year would be exempt from paying assessments. If an entity is a U.S. manufacturer and an importer, such entity's combined quantity of paper and paper-based packaging manufactured and imported annually would count towards the 100,000 short ton exemption.

Manufacturers would apply to the Board for an exemption prior to the start of the fiscal year. This would be an annual exemption; manufacturers would have to reapply each year. They would have to certify that they expect to domestically manufacture less than 100,000 short tons for the applicable

fiscal year. The Board could request past production data to support the exemption request. The Board would then issue, if deemed appropriate, a certificate of exemption to the eligible manufacturer. Once approved, domestic manufacturers would not have to pay assessments to the Board for the applicable fiscal year.

Importers that imported less than 100,000 short tons of paper and paper-based packaging during the prior marketing year would automatically be considered exempt for the fiscal year that assessments are due, and would not be required to apply to the Board for a certificate of exemption. Customs data would be reviewed to determine applicable importers.

Importers that imported more than 100,000 short tons of paper and paper-based packaging during the prior marketing year, but believe and can document that they will import less than 100,000 short tons during the current year could apply to the Board for a certificate of exemption. The Board would then issue, if deemed appropriate, a certificate of exemption to the eligible importer.

Importers which are exempt would have their assessments as collected by Customs refunded by the Board within 60 calendar days after receipt of such assessments by the Board. No

interest would be paid on the assessments collected by Customs or the Board.

Manufacturers who did not apply to the Board for an exemption and domestically manufactured less than 100,000 short tons during the fiscal year would receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year. The Board would determine the assessments paid and refund the manufacturer accordingly.

Importers who did not apply to the Board for an exemption, imported more than 100,000 short tons of paper and paper-based packaging during the prior marketing year, and imported less than 100,000 short tons during the fiscal year for which assessments are due, would receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year. The Board would determine the assessments paid and refund the manufacturer accordingly.

On the other hand, manufacturers and importers who receive an exemption certificate or an automatic exemption but domestically manufacture or import 100,000 short tons or more of paper and paper-based packaging during the fiscal year would have to pay the Board the applicable assessments owed within 30 calendar days after the end of the fiscal year and submit any necessary reports to the Board.

The Board could recommend additional procedures to administer the exemption as appropriate. Any procedures would be implemented through rulemaking by the Secretary.

The exemption procedures in this proposed rule were modified to reduce the paperwork burden on importers that historically import less than 100,000 short tons of paper and paper-based packaging during the marketing year. Accordingly, modifications were made to section 1222.53(a) regarding the exemption procedures.

The second exemption under the proposed Order would be for organic paper and paper-based packaging. A domestic manufacturer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, only manufactures paper and paper-based packaging that is eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, would be exempt from the payment of assessments. Likewise, an importer who imports only paper and paper-based packaging that is eligible to be labeled as 100 percent organic under the NOP, is not a split operation, and who does not import any nonorganic paper and paper-based packaging would be exempt from the payment of assessments.

**Promotion, Research and Information**

Pursuant to section 516 of the 1996 Act, sections 1222.60 through 1222.62 of the proposed Order would detail requirements regarding promotion, research and information programs, plans and projects authorized under the Order. The Board would develop and submit to the Secretary for approval programs, plans and projects regarding promotion, research, education and other activities, including consumer and industry information and advertising. The Board would be required to evaluate each plan and program to ensure that it contributes to an effective promotion program. The Order would also require that, at least once every five years, the Board fund an independent evaluation of the effectiveness of the Order and programs conducted by the Board. The Secretary has authority at any time to suspend or terminate the Order if he or she determines that it obstructs or does not tend to effectuate the purpose of the Act.

Finally, the Order would specify that any patents, copyrights, trademarks, inventions, product formulations and publications developed through the use of funds received by the Board would be the property of the U.S. Government, as represented by the Board. These along with any rents, royalties and the like from their use would be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and could be licensed with approval of the Secretary.

## **Reports, Books and Records**

Pursuant to section 515 of the 1996 Act, sections 1222.70 through 1222.72 would specify the reporting and recordkeeping requirements under the proposed Order as well as requirements regarding confidentiality of information.

Manufacturers and importers would be required to submit periodically to the Board certain information as the Board may request. Specifically, domestic manufacturers would submit a report to the Board that would include, but not be limited to, the manufacturer's name, address, and telephone number; and the quantity of paper and paper-based packaging manufactured by type. Manufacturers would submit this report by the 30<sup>th</sup> calendar day of the month following the end of the quarter in which the paper and paper-based packaging was manufactured. The report would accompany the payment of assessments as specified in section 1222.52. Manufacturers who received a certificate of exemption from the Board would not have to submit such a report to the Board. However, exempt manufacturers who produced 100,000 short tons or more during the fiscal year would have to submit such reports to the Board as specified in section 1222.53(a)(6).

Likewise, importers who pay their assessments directly to the Board would be required to submit a report to the Board that

would include, but not be limited to, the importer's name, address, and telephone number; the quantity of paper and paper-based packaging imported to the United States by type; and country of export for such paper and paper-based packaging. Importers would submit this report at the same time they remit their assessments to the Board. Importers who paid their assessments through Customs would not have to submit such reports to the Board because Customs would collect this information upon entry.

Additionally, domestic manufacturers and importers, including those who were exempt, would be required to maintain books and records needed to verify any required reports. Such books and records must be made available during normal business hours for inspection by the Board's or USDA's employees or agents. Manufacturers and importers would be required to maintain such books and records for two years beyond the applicable fiscal period.

The Order would also require that all information obtained from persons subject to the Order as a result of proposed recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of the Board and USDA. Such information could only be disclosed if the Secretary considered it relevant, and the information were

revealed 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 USDA were a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to the Order, if the statements did not identify the information furnished by any person, or the publication, by direction of the Secretary, of the name of any person violating the Order and a statement of the particular provisions of the Order violated.

#### **Miscellaneous Provisions**

##### **Referenda**

Pursuant to section 518 of the 1996 Act, section 1222.81(a) of the proposed Order specifies that the program would not go into effect unless it is approved by a majority of current U.S. manufacturers and importers voting in a referendum who also represent a majority of the volume of paper and paper-based packaging represented in the referendum who, during a representative period determined by the Secretary, were engaged in the manufacturing or importation of paper and paper-based packaging into the United States. For example, if 50 U.S. manufacturers and importers representing 50 million short tons

of paper and paper-based packaging voted in a referendum, 26 manufacturers and importers representing over 26 million short tons would have to vote in favor of the Order for it to pass in the referendum.

Section 1222.81(b) of the proposed Order specifies criteria for subsequent referenda. Under the Order, a referendum would be held to ascertain whether the program should continue, be amended, or be terminated. This section specifies that a referendum would be held 7 years after the Order becomes effective, and every 7 years thereafter, to determine whether manufacturers and importers favor continuation of the Order. The Order would continue if favored by a majority of manufacturers and importers voting in the referendum that also represented a majority of the volume of paper and paper-based packaging represented in the referendum.

Additionally, a referendum could be conducted at the request of the Board. A referendum could also be conducted at the request of 10 percent or more of the number of persons eligible to vote in a referendum under the Order. Finally, a referendum could be conducted at any time as determined by the Secretary.

#### **Other Miscellaneous Provisions**

Sections 1222.80 and sections 1222.82 through 1222.88 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 programs authorized under the 1996 Act.

**Executive Order 12866 and Executive Order 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be minimal. The program is intended to include broad, fact-based messages highlighting the renewability, recyclability and reusability of

paper and paper-based packaging. Paper produced in the United States relies on fiber from sustainably managed forests and fiber recovered for recycling as its raw material. Broad messages about the recyclability of paper should enhance recovery efforts. Increasing paper recovering for recycling would increase the amount of paper diverted from landfills. Messaging to encourage the use of renewable and recyclable paper and paper-based packaging could help increase the use of bio-based products; paper and paper-based packaging are considered bio-based products because they are composed of wood fiber.

The industry could also educate the public about the sustainability of paper and paper-based packaging. In the United States, more trees are grown than harvested. Between 1953 and 2006, the standing inventory of trees (i.e., the volume of growing trees) in U.S. forests increased by 49 percent and has increased by more than 20 percent since 1970.<sup>15</sup>

Additionally, many paper products are manufactured using renewable energy. In 2008, an estimated 65 percent of the energy needed to operate U.S. pulp and paper mills was generated from renewable fuels derived largely from biomass.<sup>16</sup> Broad

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15 National Report of Sustainable Forests (2010), Page II-112, U.S. Forest Service [www.fs.fed.us/research/sustain/](http://www.fs.fed.us/research/sustain/).

16 This is based on a 2008 survey of AF&PA member companies that produced pulp, paper and paperboard.

campaigns to educate consumers about these factors should help all segments of the industry.

The program would also help the forest products industry maintain 870,000 jobs across the nation and begin to create new jobs.<sup>17</sup> In addition to these jobs, numerous other jobs in related sectors are dependent upon the economic health of this industry.

The proposed program would be funded by industry through an assessment. The program would collect approximately \$25 million in assessments from the top producing U.S. manufacturers and importers to conduct marketing and educate consumers about a variety of paper products, thus, benefiting all paper manufacturers and importers, including many small operations that would be exempt from the assessment. While the benefits of the program are difficult to quantify, they are expected to outweigh program costs. If the new program preserves just 0.24 percent of the paper and allied products industry sales by slowing demand declines for some grades and/or increasing demand growth for other grades, the economy could experience 3,360 additional jobs.<sup>18</sup> For example, the Cotton Board has seen a

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17 Forest products industry employment was calculated by summing March 2012 Bureau of Labor Statistics employment data for the following categories: paper and paper products, logging, wood products, wood kitchen cabinets and countertops.

18 This is an AF&PA estimate and was computed as follow. The paper and paper products industry currently employs 395,000 people, according to the Bureau of Labor Statistics. The grades of paper and paper-based packaging to be covered by the proposed program accounted for about

Benefit-Cost Ratio for producers and the government of \$8.80 return for each dollar invested; and since 1990, the Benefit-Cost Ratio for importers is a \$14.80 return for each dollar invested. Other research and promotion programs have seen similar benefits.

The assessments collected from U.S. manufacturers and importers are expected to be relatively small compared to U.S. manufacturer revenue and the value of paper and paper-based packaging imports. Many businesses make the decision to not pass these costs to consumers and instead keep it as a cost to do business because the costs are so small compared to the total revenue. To calculate the percentage of revenue represented by the assessment rate, the \$0.35 per short ton assessment rate is divided by the average price, and that number is multiplied by 100. For domestic manufacturers, using a 2011 average price of \$760 per short ton,<sup>19</sup> the percentage of revenue represented by the assessment rate would be .046 percent. For importers, using

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83.3 percent of total paper and paper-based packaging in 2011. Hence, an estimated 329,000 direct jobs (83.3 percent of 395,000) are associated with grades that would be covered by the program. Multipliers compiled by the Economic Policy Institute indicate that 100 jobs in the paper industry support an additional 325 jobs outside the industry (supplier industries, government entities and schools, and local communities where paper industry employees spend their wages). Thus, 329,000 paper industry jobs support 1.4 million jobs throughout the economy ((329,000 jobs) + (329,000 jobs x 3.25)). If the proposed program preserves just 0.24 percent of the paper and allied products industry sales by slowing demand declines for some grades and/or increasing demand growth for other grades, the economy will have 3,360 additional jobs (0.24 percent x 1.4 million).

<sup>19</sup> Industry sources do not publish information on average price for paper and paper-based packaging. A reasonable estimate for average price of paper and paper-based packaging is the value per ton of paper and paper-based packaging exports. According to U.S. Census data, the average value of paper and paper-based packaging exports in 2011 was approximately \$760 per short ton.

an average price of \$824 per short ton (\$6.2 billion in 2011 imports divided by 7.5 million short tons of imports x 100)<sup>20</sup>, the percentage revenue represented by the assessment rate would be .042 percent. Thus, for both domestic manufacturers and importers covered under the proposed program, the percentage revenue represented by the assessment rate would be well under 1 percent (just under 5/100ths of a percent) of the average value per ton produced or imported.

### **Regulatory Flexibility Act Analysis**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), Agricultural Marketing Service's (AMS) is required to examine the impact of the proposed rule on small entities. Accordingly, AMS 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 (manufacturers and importers) as those having annual receipts of no more than \$7.0 million.

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<sup>20</sup> U.S. Customs and Border Protection data.

According to the AF&PA, in 2011, there were 84 manufacturers in the United States that produced one or more of the four types of paper and paper-based packaging to be covered under the proposed Order. Using an average price of \$760 per short ton, a manufacturer who produced less than 9,210 short tons of paper and paper-based packaging per year would be considered a small entity. It is estimated that no more than four manufacturers produced less than 9,210 short tons in 2011. Thus, the majority of manufacturers would not be considered small businesses.

According to Customs data, it is estimated that, in 2011, there were about 2,612 importers of paper and paper-based packaging. Eighty-five importers, or about 3.2 percent, imported more than \$7.0 million worth of paper and paper-based packaging. Thus, the majority of importers would be considered small entities. However, no importer who imported 100,000 short tons or more (the Order's proposed exemption threshold) imported less than \$7.0 million worth of paper and paper-based packaging (19 importers). Therefore, none of the 19 importers to be covered under the proposed Order would be considered small businesses.

Regarding value of the commodity, with domestic production at about 68.5 million short tons in 2011, and using an average

price of \$760 per short ton, the value of domestic paper and paper-based packaging in 2011 was about \$52 billion. According to Customs data, the value of imported paper and paper-based packaging imports for 2011 was about \$6.2 billion.

This document proposes an industry-funded research, promotion, and information program for paper and paper-based packaging. The program would be financed by an assessment on domestic manufacturers and importers and would be administered by a board of industry members appointed by the Secretary. The initial assessment rate would be \$0.35 per short ton. Entities that domestically manufacture or import less than 100,000 short tons per marketing year would be exempt from the payment of assessments. In addition domestic manufacturers and importers who would qualify as 100 percent organic under the NOP could submit an "Organic Exemption Form" to the Board and request an exemption from assessments. The purpose of the program would be to maintain and expand markets for paper and paper-based packaging. A referendum will be held among eligible manufacturers and importers to determine whether they favor implementation of the program prior to it going into effect. A majority of entities voting the in the referendum by both number, and by volume represented in the referendum, would have

to support the program for it to be implemented. The program is authorized under the 1996 Act.

The Order would provide for two exemptions. First, domestic manufacturers and importers who would qualify as 100 percent organic under the NOP could submit an "Organic Exemption Form" to the Board and request an exemption from assessments. Second, U.S. manufacturers and importers who domestically produce or import less than 100,000 short tons during a marketing year would be exempt from paying assessments. Of the 84 domestic manufacturers in 2011, it is estimated that about 33 to 39 percent, produced less than 100,000 short tons per year and would thus be exempt from paying assessments under the proposed Order. Of the 2,612 importers in 2011, it is estimated that about 2,593, or 99 percent, imported less than 100,000 short tons per year and would also be exempt from paying assessments. Thus, about 51 domestic manufacturers and 19 importers would pay assessments under the Order. Using 2011 data and deducting exempt tonnage, it is estimated that if 72.5 million short tons of paper and paper-based packaging (67.2 million short tons domestic and 5.3 million short tons imported) were assessed at a rate of \$0.35 per short ton, about \$25.4 million would be collected in assessments. Of that \$25.4 million, 92.5 percent (\$23.5 million) would be paid by domestic

manufacturers and 7.5 percent (\$1.9 million) would be paid by importers.

Regarding alternatives, the Panel considered various options to the program's coverage, the proposed assessment rate and exemption threshold. The Panel considered the merits of assessing all U.S. production of the four types of paper and paper-based packaging to be covered under the program, whether imports should be included, and different assessment rates to generate a range in income from \$10 million to \$30 million. The Panel also considered the merits of a 25,000 short ton versus a 100,000 short ton exemption. The table below details various rates of assessment and approximate income generated using 2011 data and the 100,000 short ton-exemption threshold.

**Approximate Assessment Income at Various Assessment Rates**

<b>Approximate Assessment Income</b>	<b>U.S. production and imports with a 100,000 short ton-exemption (72.5 million short tons)</b>
\$10.0 million	\$0.138
\$20.0 million	\$0.276
\$25.4 million	\$0.350
\$30.0 million	\$0.413

After much consideration, the Panel concluded and the Department concurs that an exemption threshold of 100,000 short tons would be appropriate with imports covered under the program as well. The Panel concluded and the Department concurs that this exemption level would help reduce the financial and

reporting burden on smaller entities but provide the Board sufficient income to administer the program and conduct research and promotion activities.

This action would impose additional reporting and recordkeeping burdens on manufacturers and importers of paper and paper-based packaging. Manufacturers and importers interested in serving on the Board would be asked to submit a nomination form to the Board indicating their desire to serve or nominating another industry member to serve on the Board. Interested persons could also submit a background statement outlining their qualifications to serve on the Board. Except for the initial Board nominations, manufacturers and importers would have the opportunity to cast a ballot and vote for candidates to serve on the Board. Manufacturer and importer nominees to the Board would have to submit a background form to the Secretary to ensure they are qualified to serve on the Board.

Additionally, manufacturers and importers who manufacture or import less than 100,000 short tons annually could submit a request to the Board for an exemption from paying assessments on this volume. Manufacturers and importers would also be asked to submit a report to the Board regarding their production/imports. Manufacturers and importers who would qualify as 100 percent

organic under the NOP could submit a request to the Board for an exemption from assessments. Importers could also request a refund of any assessments paid to Customs.

Finally, manufacturers and importer who want to participate in a referendum to vote on whether the Order should become effective would have to complete a ballot for submission to the Secretary. These forms have been submitted to the OMB for approval under OMB Control No. 0581-0281. 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, the Panel represents a broad cross-section of manufacturers and importers that would be covered under the program. Of the 14 Panel members, 11 are

AF&PA members and 3 are non-AF&PA members. According to the Panel, Panel and AF&PA members represent about 81 percent of the domestic industry that would be covered by the program. Panel members representing 69 percent of the domestic production have signed forms indicating their support for the program. Over the past year, the Panel, and AF&PA staff and industry company employees, on behalf of the Panel, have made presentations on the proposed Order to all three major associations representing paper-based packaging and many of the associations representing the printing and writing paper segment of the industry. In September 2011, the Panel mailed information regarding the program to all Panel-known companies that would pay assessments under the program. This included manufacturers and importers and both AF&PA members and non-members. The Panel also mailed a letter to other parties in the supply chain to continue to educate them about the program. The AF&PA continues to communicate to its members and non-members about the program. Panel members plan to continue outreach to the CEOs of their industry peers to explain the program and help garner support.

Finally, the numbers used in the RFA analysis herein represent the total universe of domestic manufacturers and importers known to USDA and not those who may be eligible to vote in the referendum.

## **Civil Rights Impact Analysis**

Consideration has been given to the potential civil rights implications of this proposed rule on affected parties to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status or protected genetic information. Although detailed information is not available on the domestic manufacturers and importers who would be subject to the program or the users of paper and paper-based packaging, broad consideration was given to the employees of such entities and those individuals who wish to use information collected under this mandatory program. This proposed rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Moreover, the program would not exclude from participation any persons or groups, deny any persons or groups the benefits of the program, or subject any persons or groups to discrimination.

## **Executive Order 13175**

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

effects on Tribal governments and would not have significant Tribal implications.

#### **Executive Order 12988**

This action 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.

### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS has requested approval of a new information collection and recordkeeping requirements for the proposed paper and paper-based packaging 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: May 31, 2015.

Title: Paper and Paper-Based Packaging Promotion, Research and Information Order.

OMB Number: 0581-0281.

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 proposal received by USDA for a national research and promotion program for the paper and paper-based packaging industry. The program would be financed

by an assessment on domestic manufacturers and importers and would be administered by a board of industry members appointed by the Secretary. The program would provide for an exemption for manufacturers and importers who manufacture or import less than 100,000 short tons of paper and paper-based packaging during the year. A referendum will be held among eligible 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 maintain and expand markets for paper and paper-based packaging.

In summary, the information collection requirements under the program concern Board nominations, the collection of assessments, and referenda. For Board nominations, manufacturers and importers interested in serving on the Board would be asked to 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 could also submit a background statement outlining qualifications to serve on the Board. Except for the initial Board nominations, manufacturers and importers would have the opportunity to submit a "Nomination Ballot" to the Board where they would vote for candidates to serve on the Board. Nominees would also have to

submit a background information form, "AD-755," to the Secretary to ensure they are qualified to serve on the Board.

Regarding assessments, manufacturers and importers who manufacture or import less than 100,000 short tons annually could submit a request, "Application for Exemption from Assessments," to the Board for an exemption from paying assessments. Manufacturers and importers would be asked to submit a "Production/Import Report" that would be submitted to the Board on a quarterly basis that would specify the quantity of paper and paper-based packaging manufactured or imported during the applicable period and the country of export (for imports). Manufacturers who manufacture less than 100,000 short tons annually would be exempt from paying assessments and would not be required to submit this report. Additionally, only importers who pay their assessments directly to the Board would be required to submit this report. If the importer assessments are collected by Customs, Customs would remit the funds to the Board and the other information would be available from Customs (i.e., country of export, quantity imported). Finally, domestic manufacturers and importers who would qualify as 100 percent organic under the NOP could submit an "Organic Exemption Form" to the Board and request an exemption from assessments.

There would also be an additional burden on manufacturers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a final rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Information collection requirements that are included in this proposal 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: Manufacturers and importers.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 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: Manufacturers and importers.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 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: 75 (56 manufacturers and 19 importers who manufacture/import 100,000 short tons or more annually).

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 18.75 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: Manufacturers and importers.

Estimated Number of Respondents: 12 (24 for initial nominations to the Board, 0 for the second year, and up to 8 annually thereafter).

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

Estimated Total Annual Burden on Respondents: 12 hours for the initial nominations to the Board, 0 hours for the second year of operation, and up to 4 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 manufacturer or importer reporting on paper and paper-based packaging manufactured or imported. Upon approval of an application, manufacturers and importers would receive exemption certification.

Respondents: Domestic manufacturers (33) and importers (2,593) who manufacture or import less than 100,000 short tons of paper and paper-based packaging annually.

Estimated number of Respondents: 2,626.

Estimated number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 656.50 hours.

**(6) PRODUCTION/IMPORT REPORT**

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

Respondents: Manufacturers who manufacture 100,000 short tons or more annually (51) and importers who remit their assessments directly to the Board (computation is based on the

scenario where all 19 importers pay their assessments to the Board).

Estimated number of Respondents: 70.

Estimated number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 140 hours.

**(7) REFUND OF ASSESSMENTS**

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

Respondents: Manufacturers and importers.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.5 hours.

**(8) 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 manufacturers and importers.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 0.5 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: Manufacturers (84) and importers (2,612).

Estimated number of recordkeepers: 2,696.

Estimated total recordkeeping hours: 1,348 hours.

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

An estimated 2,696 respondents would provide information to the Board (84 domestic manufacturers and 2,612 importers). The estimated cost of providing the information to the Board by respondents would be \$72,204. This total has been estimated by multiplying 2,188 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, Bureau 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.

The proposed forms would 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 would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information quarterly would coincide 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 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.

### **Analysis of Comments**

The previously proposed rule concerning this action published in the **Federal Register** on January 2, 2013. Copies of that rule were mailed by USDA to all known domestic manufacturers and importers. The rule was also made available through the Internet by USDA and published in the Federal Register. The rule provided a 60-day comment period ending March 4, 2013. Seventy-five comments were received. Of the 75 comments, 5 were duplicates. Of the remaining 70 comments, 62 supported the proposed Order, 6 were opposed, and 2 commented without taking a position on the program. Of the 62 comments in support, 60 supported the rule with no changes, 1 requested clarification on a component of the Order, and 1 recommended a change. In addition, the two commenters that did not take a position also recommended changes to the program. The comments are addressed in the following paragraphs.

### ***Comments in Full Support***

The 60 comments which supported the Order with no changes noted the difficult economic conditions that the paper and paper based packaging industry is experiencing. Several commenters stated that the pressures faced from loss of manufacturing jobs has significantly affected, and has the possibility of affecting even more jobs in the industry. Many of the commenters mentioned that the industry supplies numerous jobs in rural areas. They believe that without the Order, many plants across the Country would be forced to close, adversely affecting the families in the rural communities. Many commenters stated that the industry has faced declining markets due to digital competition. They stated that educating the consumer is key to facing this competition. The common theme among all positive comments was the need to provide fact-based messaging to highlight the renewability, reusability, and recyclability of paper and paper based package to aid the public in better understating paper products and change the misconceptions and attitudes about paper.

***Comments in Support, with Modification or Requesting***

***Clarification***

Two commenters who supported the Order reiterated their comments in full support. However, one of the commenters

requested clarification on the exemption process, and one recommended a change to the composition of the Board.

The commenter that requested clarification on the de minimis exemption requested details regarding the exemption approval process and requested information on any factors other than production or import volumes that may be considered in making the determination of who receives an exemption. In addition, the commenter requested specific details regarding the process for resolving disputes.

Section 1222.53(a) of the Order provides for an exemption from assessments for U.S. manufacturers and importers who domestically produce or import less than 100,000 short tons during a marketing year. If an entity is a U.S. manufacturer and an importer, such entity's combined quantity of paper and paper-based packaging manufactured and imported annually would count towards the 100,000 short ton exemption.

Manufacturers would apply to the Board for an exemption prior to the start of the fiscal year. This would be an annual exemption; manufacturers would have to reapply each year. They would have to certify that they expect to domestically manufacture less than 100,000 short tons for the applicable fiscal year. Manufacturers may be asked to provide to the Board

past production data to verify they produced under the threshold in the prior year.

Importers exempt from assessments in the prior fiscal year would automatically be considered exempt for the fiscal year that assessments are due. Customs data would be reviewed to verify applicable importers. Importers that imported over the threshold in the prior year but believe and can document that they will import less than 100,000 short tons during the current year may apply to the Board for an exemption certificate. Documentation provided to the Board may include multiple past years of import data to support their exemption request.

Once approved, domestic manufacturers would not have to pay assessments to the Board for the applicable fiscal year. Importers which are exempt would have their assessments as collected by Customs refunded by the Board within 60 calendar days after receipt of such assessments by the Board. No interest would be paid on the assessments collected by Customs or the Board.

Manufacturers and importers that received an exemption certificate or an automatic exemption from the Board but manufactured or imported 100,000 short tons or more of paper and paper-based packaging during the marketing year shall pay the Board the applicable assessments owed on the quantity

manufactured or imported within 30 calendar days after the end of the marketing year and submit any necessary reports to the Board pursuant to section 1222.70 of the Order.

If there is a dispute, the Board could request additional past production or import data to support the exemption request. Manufacturers and importers could provide other information if appropriate. For example, if a company's production was reduced because of an event like a fire in a plant, the company could provide supporting data to the Board. The Board would then issue, if deemed appropriate, a certificate of exemption to the eligible manufacturer or importer. The Board could also recommend additional procedures to administer the exemption as appropriate. Any procedures would be implemented through rulemaking by the Secretary. Additional details about the exemption are in section 1222.53(a) of this Order.

One commenter that supported the Order suggested that the number of Board seats for importers be increased from one to two, and that one of the members of the Board should be European.

Section 1222.40 of the proposed Order provides for a Board composed of 12 members. Eleven members would be manufacturers and 1 member would be an importer.

Using this distribution, manufacturer members on the Board would account for 92 percent of Board membership, while importer members would account for 8 percent of Board membership. In 2011, approximately 68.5 million short tons of U.S. paper and paper-based packaging to be covered under the program were produced. According to Customs data, in 2011, imports to be covered under the program totaled 7.5 million short tons. Therefore, in 2011 a total of 76 million short tons would have been covered under the program of which, 90 percent was from domestic manufacturing and nine percent was from imports. Taking into account the amount of domestic and imported product, the composition of the Board as proposed is reasonable since it reflects the volume of imports and domestic production. Furthermore, every 5 years, but no more often than once every 3 years, the Board must review the geographical distribution of the quantity of paper and paper-based packaging manufactured within the United States and the quantity of paper and paper-based packaging imported to the United States. If warranted, the Board would recommend to the Secretary that the Board membership be reapportioned appropriately to reflect such changes, which could include an increase in the number of importer seats. The distribution of quantities between domestic regions would also be considered as well as changes in the size of the Board. Any changes in Board composition would be implemented by the Secretary

through rulemaking. Accordingly, the Department is not making any changes to the proposed Order based on this comment.

### ***Comments Opposed***

Six comments received were opposed to the proposed program. The six commenters touched on six major themes including: 1) likening the assessment to a tax, 2) the affordability of the program, 3) the ability of the industry to advertise for themselves, 4) government control of the program, 5) the feasibility of a research and promotion program for the paper and paper-based packaging industry, and 6) justification for the exemptions suggested in the Order. Based on our evaluation of these comments, no changes will be made to the Order. These comments are discussed below.

Four commenters expressed concern that the assessment collected would be a tax on the industry. In addition, one commenter questioned the use of government resources to run the program. The proposed program would be paid for by the paper and paper-based packaging industry through assessments on domestic manufacturers and importers of 100,000 short tons or more of paper and paper-based packaging annually. Research and promotion programs are self-help programs funded by their respective industry and do not receive taxpayer funds. Furthermore, the Board would be required to reimburse USDA for

costs incurred by USDA in overseeing the Order's operations, including all costs associated with referenda.

Three commenters questioned the affordability of the program for paper and paper-based packaging manufacturers. One commenter stated that they cannot afford and likely would not benefit from the promotion. Another commenter opined that levying \$0.35 per short ton would add more cost to paper, and that cost would be passed on to customers. A third commenter stated that the assessment would add more cost to paper and paper-based packaging.

As previously discussed, the economic downturn as well as competition from digital media, has had an adverse effect on the paper and paper-based packing industry. However, USDA has received sufficient justification to warrant proceeding to a referendum so that industry members may vote as to whether a paper and paper-based packaging research and promotion program should be implemented. Additionally, as previously mentioned, USDA received several comments that referenced the state of the economy and jobs in the rural community attributed to paper and paper-based packaging manufacturing as reasons that the program is essential.

The purpose of the proposed Order is to enhance and broaden the understanding of the use and attributes of paper and paper-

based packaging for the purpose of maintaining and expanding markets for paper and paper-based packaging. The proposed Order does not regulate the price of paper and paper-based packaging. Cost distribution is a business decision of the individuals affected by the Order.

Four commenters were concerned about the government's role in marketing and advertising for the paper and paper-based packaging industry. Specifically, one commenter stated that it would be impossible for the scope of advertising achieved by USDA to reach the consumer. Two commenters opined that the government should not have a role in the promotion of paper, and companies should be allowed to promote for themselves. An additional comment on the subject stated that companies should be allowed to create their own marketing plans.

The 1996 Act provides the authority for agricultural industries to develop programs for generic research and promotion for their respective industries. Under these programs, it is the Board (composed of industry members) that develops their own budgets and marketing plan. USDA provides oversight of these programs. The Board, with the approval of the Secretary, would decide how the funds are used. Generic promotion, research, and industry information activities play a unique role in advancing the demand for their respective

commodities, since such activities may increase the total market demand for the commodity. While, the Board may conduct strategic planning for the industry as a whole, individual companies are not precluded from doing their own advertising and promotion.

One commenter who questioned the government's involvement with the proposed program stated that the program should be voluntary and not mandatory. The proposed 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. Research and promotions programs overseen by USDA are self-help, government speech programs, initiated by members of the industry. Industry members that would be affected by the program would be given the opportunity to vote in a referendum to determine if the program should be approved prior to the Order going into effect. For the proposed Order to become effective, it must be approved by a majority of manufacturers and importers voting for approval in a referendum, who also represent a majority of the volume of paper and paper-based packaging represented in the referendum. In order to provide notification of an impending vote to those who USDA

believes would be regulated under the proposed program, USDA is mailing a copy of this rule to all known industry members and will do a subsequent mailing of ballots, instructions and a summary of the program to all known potential eligible voters. In addition, any one that believes they are eligible to vote in the referendum may request a ballot by calling the toll free number in the "Addresses" section of this document.

Three commenters who opposed the program questioned the feasibility of check-off programs for the paper and paper-based packaging industry. One of the commenters opined that check-off programs are great for consumer based industries, but offer little value to industrial companies. Another commenter stated that check-off programs are ineffective and cost prohibitive, and referenced dairy and orange juice check-off programs to support their statement. A third commenter stated that they personally have derived little or no benefit from the Cotton Research and Promotion program into which they are currently paying assessments.

The commenter that referenced dairy and orange juice check-off programs provided four additional points to support their statement. In reference to the dairy program, the commenter stated that despite the massive outlay of funds since 1983 and a national campaign to promote dairy products: 1) Per capita

consumption of milk has been on a downward trend since 1945; 2) Overall milk consumption has declined 3 percent a year in four out of the last five years; 3) Growth in consumption of fluid milk has not kept pace with population growth; and 4) In the highly competitive beverage market, milk has lost significant share since 1980, from 37 percent in 1980 to 19 percent in 2011.

In response to the aforementioned comment, per capita consumption of all milk has declined in the post-war era, but that decline has been reversed since the institution of the National Dairy Promotion and Research Program in 1983 (0.25 percent increase per year since). Overall milk consumption has risen in each of the last 5 years and continues to grow. Finally, independent analysis contracted by USDA shows that there is a significant positive return to fluid milk processors, contrary to the commenter's assertion<sup>21</sup>.

In response to the comment regarding the effectiveness of the orange juice program, a Florida Citrus Commission considered the possibility of a research and promotion program. However, the industry decided not to move forward with a proposal prior to submitting a proposal to USDA.

In response to the commenters that question the feasibility

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<sup>21</sup> Sources: USDA (AMS, ERS, FAS, FSA, NASS), Department of Labor (BLS), Department of Commerce (Bureau of Census), and ERS calculations.

of research and promotion programs for industrial industries, other research and promotion programs administered by USDA cover commodities that are from various sources and made into multiple products. The purpose of generic promotion programs is to increase the total market for a product to the benefit of an industry, even when the commodity may be made into various products.

In response to the commenter that stated that they have received little to no benefit from their payment into the Cotton Research and Promotion Program, an in-depth independent economic effectiveness study conducted in early 2011 on the effectiveness of the Cotton Research and Promotion Program concluded that the Cotton Research and Promotion Program generates a positive return for U.S. cotton producers and importers of cotton products<sup>22</sup>.

One commenter had two concerns regarding the exemptions in the proposed Order. First, the commenter stated that the proposed rule does not provide justification for excluding tissue paper and newsprint. The two types of paper and paper-based packaging that would not be covered under the program are tissue paper and newsprint. With the exception of restroom hand-dryers versus paper towels, tissue paper products are not

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facing competition from alternative products. The opposite is true for newsprint. Demand for newsprint has drastically declined due to the shift toward digital communications. However, the Panel concluded and the Department concurs that the newsprint segment of the industry would not be able to incur the cost of a promotion program at this time.

Second, the commenter did not believe that there is justification for an organic exemption. A domestic manufacturer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, only manufactures paper and paper-based packaging that is eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, would be exempt from the payment of assessments. Likewise, an importer who imports only paper and paper-based packaging that is eligible to be labeled as 100 percent organic under the NOP, is not a split operation, and who does not import any nonorganic paper and paper-based packaging would be exempt from the payment of assessments. Section 2103 of the Organic Food Production Act of 1990 (7 U.S.C. 6501-6522) includes the consumption of non-food products. For example, under the Cotton Research and Promotion Program, organic cotton products are exempt from assessment, including non-food products. Thus, organic paper and paper-based products would be exempt from assessment under

the proposed Order. Domestic manufacturers and importers would have to provide sufficient information to the Board to warrant an organic exemption.

***Additional Comments***

In addition, two comments were received that neither supported nor opposed the program, but raised concerns or made recommendations. One commenter raised a concern that although they would be exempt from the program, the paperwork required to request an exemption would be burdensome. The other commenter suggested that the proposed assessment should be based on 1,000 kg metric ton, as the commenter prescribes is the preferred measurement system as promulgated by Executive Order 12770 from 1991.

In response to the comment regarding metric usage, while Executive Order 12770, issued on July 25, 1991, directed agencies to convert to the metric system, Executive Order 12770 Section 2(a)(1) states that metric usage shall not be required to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms. Furthermore, the paper and paper-based packaging industry utilizes short ton for measurement as an industry standard. Therefore, no change has been made to the Proposed Order based on this comment.

In response to the comment about exemption paperwork, USDA is working to develop a process whereby an importer could provide Customs a copy of the exemption certificate issued by the Board. However, the only available alternative at this time is for Customs to collect the assessment, and the Board to refund such importers their assessment no later than 60 calendar days after receipt by the Board. USDA recognizes that submitting the certificate of exemption may be burdensome for some importers. Therefore, section 1222.53(a) of the Proposed Order is changed to adjust the requirements of importers to submit a certificate of exemption to receive an exemption from the Board. Instead, importers that would have been exempt from assessments in the prior fiscal year would automatically be considered exempt for the fiscal year that assessments are due. However, as stated above, Customs would collect the assessment, and the Board would refund exempt importers their assessment no later than 60 calendar days after receipt by the Board.

In the January 2, 2013, 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 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 paper and paper-based packaging; (d) the accuracy of USDA's estimate of the number of manufacturers and importers of paper and paper-based packaging 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. No comments were received regarding information collection.

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

As previously mentioned, for the proposed Order to become effective, it must be approved by a majority of manufacturers and importers voting for approval in a referendum, who also represent a majority of the volume of paper and paper-based

packaging represented in the referendum. Referendum procedures will be published separately in this issue of the **Federal Register**.

#### **Referendum Order**

Pursuant to the 1996 Act, a referendum will be conducted to determine whether eligible domestic manufacturers and importers favor issuance of the proposed Order. Section 518 of the 1996 Act authorizes USDA to conduct a referendum prior to the Order going into effect.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1 through December 31, 2012. Domestic manufacturers must have manufactured 100,000 short tons or more of paper and paper-based packaging within the United States and importers must have imported 100,000 short tons or more of paper and paper-based packaging to the United States during the representative period to be eligible to vote. In addition, entities eligible to vote must be currently engaged in the domestic manufacturing or importation of paper and paper-based packaging. If the Order becomes effective, entities that are not be eligible to vote in the referendum because they manufactured and/or imported less than 100,000 short tons of paper and paper-based packaging during the representative period, may be subject to assessments

if they domestically manufacture and/or import 100,000 short tons or more of paper and paper-based packaging during subsequent marketing year. The Order shall become effective if it is approved by a majority of eligible U.S. manufacturers and importers voting in the referendum who also represent a majority of the volume of paper and paper-based packaging represented in the referendum.

The referendum procedures that were issued pursuant to the 1996 Act shall be used to conduct the referendum (7 CFR 1222.100 through 1222.108). The referendum shall be conducted by mail from October 28 through November 8, 2013. Ballots must be received by the referendum agents no later than the close of business 4:30 p.m. (Eastern Standard Time) on November 8, 2013, to be counted.

Marlene Betts and Kimberly Coy of the USDA, AMS, Promotion and Economics Division, are designated as the referendum agents to conduct the referendum. Prior to the first day of the voting period, the referendum agents will mail the ballots to be cast in the referendum and voting instructions to all eligible voters. Any domestic manufacturer or importer who does not receive a ballot should contact the referendum agents cited in the **For Further Information** section no later than one week before the end of the voting period.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot was submitted to the OMB and approved under OMB Control No. 0581-0282.

**List of Subjects in 7 CFR Part 1222**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Paper and paper-based-packaging promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1222, as added elsewhere in this issue of the Federal Register, be amended as follows:

**PART 1222 – Paper and Paper-Based Packaging Promotion, Research and Information Order**

1. The authority citation for part 1222 continues to read as follows:

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

2. Subpart A is added to read as follows:

**Subpart A -- Paper and Paper-Based Packaging Promotion, Research and Information Order**

**Definitions**

Sec.

1222.1 Act.

1222.2 Board.

1222.3 Conflict of interest.

1222.4 Converted products.

1222.5 Customs or CBP.

1222.6 Department or USDA.

1222.7 Fiscal period and marketing year.

1222.8 Importer.

1222.9 Information.

1222.10 Kraft process.

1222.11 Linerboard.

1222.12 Manufacture or produce.

1222.13 Manufacturer or producer.

1222.14 Medium.

1222.15 Order.

1222.16 Panel.

1222.17 Paper and paper-based packaging.

1222.18 Part and subpart.

1222.19 Person.

1222.20 Program, plans and projects.

1222.21 Promotion.

1222.22 Pulp.

1222.23 Research.

1222.24 Secretary.

1222.25 Short ton or ton.

1222.26 State.

1222.27 Suspend.

1222.28 Terminate.

1222.29 United States.

**Paper and Paper-Based Packaging Board**

1222.40 Establishment and membership.

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## **Subpart A - Paper and Paper-Based Packaging Promotion, Research and Information Order**

### **Definitions**

#### **§ 1222.1 Act.**

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

#### **§ 1222.2 Board.**

Board means the Paper and Paper-Based Packaging Board

established pursuant to § 1222.40, or such other name as recommended by the Board and approved by the Department.

**§ 1222.3 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.

**§ 1222.4 Converted products.**

Converted products means products made from paper and paper-based packaging.

**§ 1222.5 Customs or CBP.**

Customs or CBP means the U.S. Customs and Border Protection, an agency of the U.S. Department of Homeland Security.

**§ 1222.6 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.

**§ 1222.7 Fiscal period and marketing year.**

Fiscal period and marketing year means the 12-month period ending on December 31 or such other period as recommended by the

Board and approved by the Secretary.

**§ 1222.8 Importer.**

Importer means any person who imports paper and paper-based packaging 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 paper and paper-based packaging 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 paper and paper-based packaging.

**§ 1222.9 Information.**

Information means information and programs for consumers, customers and industry, including educational activities, information and programs designed to enhance and broaden the understanding of the use and attributes of paper and paper-based packaging, increase efficiency in manufacturing paper and paper-based packaging, maintain and expand existing markets, and develop new markets and marketing strategies. These include:

(a) Consumer education and information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding paper and paper-based packaging; and

(b) Industry information, which means information and programs that would enhance the image of the paper and paper-based packaging industry.

**§ 1222.10 Kraft process.**

Kraft process means a process that transforms wood into a high quality strong pulp for making paper and paper-based packaging.

**§ 1222.11 Linerboard.**

Linerboard means a grade of containerboard that is used as facing material in the manufacture of corrugated or solid fiber shipping boxes.

**§ 1222.12 Manufacture or produce.**

Manufacture or produce means the process of transforming pulp into paper and paper-based packaging.

**§ 1222.13 Manufacturer or producer.**

Manufacturer or producer means any person who manufactures paper and paper-based packaging in the United States.

**§ 1222.14 Medium.**

Medium means a grade of containerboard used as the inner fluting material in the manufacture of corrugated or solid fiber shipping boxes.

**§ 1222.15 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.

**§ 1222.16 Panel.**

Panel means the Paper and Paper-Based Packaging Panel formed to pursue development of a paper and paper-based packaging promotion, research and information program.

**§ 1222.17 Paper and paper-based packaging.**

(a) Paper and paper-based packaging means:

(1) Printing, writing and related paper, which is coated or uncoated paper that is subsequently converted into products used for printing, writing and other communication purposes, such as file folders, envelopes, catalogues, magazines and brochures. For purposes of this Order, printing, writing and related paper includes thermal paper but does not include carbonless paper;

(2) Kraft packaging paper, which is coarse unbleached, semi-bleached or fully bleached grades of paper that are subsequently converted into products such as grocery bags, multiwall sacks, waxed paper and other products;

(3) Containerboard, which is all forms of linerboard and medium that is used to manufacture corrugated boxes, shipping containers and related products; and

(4) Paperboard, which is solid bleached kraft board, recycled board and unbleached kraft board that is subsequently converted into a wide variety of end uses, including folding boxes, food and beverage packaging, tubes, cans, and drums, and other miscellaneous products. Paperboard does not include construction-related products such as gypsum wallboard facings and panel board.

(b) For purposes of this Order, paper and paper-based packaging does not include tissue paper, newsprint or converted products.

**§ 1222.18 Part and subpart.**

Part means the Paper and Paper-Based Packaging Promotion, Research and 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.

**§ 1222.19 Person.**

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

**§ 1222.20 Programs, plans and projects.**

Programs, plans and projects means those research, promotion and information programs, plans or projects established pursuant to the Order.

**§ 1222.21 Promotion.**

Promotion means any action, including paid advertising and the dissemination of information, utilizing public relations or other means, to enhance and broaden the understanding of the use and attributes of paper and paper-based packaging for the purpose of maintaining and expanding markets for paper and paper-based packaging.

**§ 1222.22 Pulp.**

Pulp means the material that is produced by chemically or mechanically separating cellulose fibers from wood or recycling recovered fiber.

**§ 1222.23 Research.**

Research means any type of test, study, or analysis designed to enhance the image, desirability, use, marketability, manufacturing, recyclability, reusability or quality of paper and paper-based packaging, including research directed to product characteristics and product development, including new uses of existing products, new products or improved technology in the manufacturing of paper and paper-based packaging.

**§ 1222.24 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.

**§ 1222.25 Short ton or ton.**

Short ton or ton means a measure of weight equal to 2,000 pounds.

**§ 1222.26 State.**

State means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

**§ 1222.27 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.

**§ 1222.28 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.

**§ 1222.29 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.

**Paper and Paper-Based Packaging Board**

**§ 1222.40 Establishment and membership.**

(a) Establishment of the Board. There is hereby established a Paper and Paper-Based Packaging Board to administer the terms and provisions of this Order. The Board shall be composed of manufacturers and importers of paper and paper-based packaging that manufacture or import 100,000 short tons or more of paper and paper-based packaging during a marketing year. Seats on the Board shall be apportioned as set forth in paragraph (b) of this section based on the geographical distribution of the quantity of paper and paper-based packaging manufactured in the United States and the quantity of paper and paper-based packaging imported to the United States.

(b) The Board shall be composed of 12 members and shall be established as follows:

(1) Manufacturers. Eleven members shall be manufacturers. Of the 11 manufacturers, 10 shall be from the following four regions:

(i) Six members shall be from the South, which consists of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, and all other parts of the United States not listed in paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) of this

section;

(ii) One member shall be from the Northeast, which consists of the states of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont;

(iii) Two members shall be from the Midwest, which consists of the states of Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, North Dakota, Ohio, South Dakota, Wisconsin and Wyoming; and

(iv) One member shall be from the West, which consists of the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, and Washington.

(v) One manufacturer member at large may be from any region and shall manufacture at least 100,000 short tons but no more than 250,000 short tons of paper and paper-based packaging annually. If there are no eligible nominees, this seat shall be allocated to the largest producing region specified in paragraphs (b) (1) (i) through (b) (1) (iv).

(2) Importers. One member shall be an importer.

(c) At least once in every five-year period, but not more frequently than once in every three-year period, the Board will review the geographical distribution of the quantity of paper and paper-based packaging manufactured within the United States

and the quantity of paper and paper-based packaging imported to the United States. The review will be conducted using the Board's annual assessment receipts and, if available, other reliable reports from the industry. If warranted, the Board will recommend to the Secretary that the membership or size of the Board be adjusted to reflect changes in geographical distribution of the quantity of paper and paper-based packaging manufactured in the United States and the quantity of paper and paper-based packaging imported to the United States. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

**§ 1222.41 Nominations and appointments.**

(a) Nominees must manufacture or import 100,000 short tons or more of paper and paper-based packaging in a marketing year.

(b) Initial nominations shall be submitted to the Secretary by the Panel. Before considering any nominations, the Panel shall publicize the nomination process, using trade press or other means it deems appropriate, and shall conduct outreach to all known manufacturers and importers manufacturing or importing 100,000 short tons or more of paper and paper-based packaging in a marketing year to generate nominees that reflect the range of operations within the paper and paper-based packaging industry. The Panel may use regional caucuses, mail or other methods to

elicit potential nominees. The Panel shall work with USDA to ensure that all eligible candidates are aware of the opportunity to serve on the Board. The Panel shall submit the nominations to the Secretary and recommend two nominees for each Board position specified in § 1222.40(b). The Secretary shall select the initial members of the Board from the nominations submitted by the Panel.

(c) Subsequent nominations shall be conducted as follows:

(1) The Board shall conduct outreach to all known manufacturers and importers manufacturing or importing 100,000 short tons or more of paper and paper-based packaging in a marketing year. Manufacturers and importers may submit nominations to the Board;

(2) Manufacturer 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 manufacturer and an importer may seek nomination to the Board as either a manufacturer or an importer, but not both;

(4) For the domestic seats allocated by region, domestic manufacturers must manufacture paper and paper-based packaging in the region for which they seek nomination. Nominees that manufacture in more than one region may seek nomination in one

region of their choice. Nominees must specify for which region they are seeking nomination. The names of manufacturer nominees shall be placed on a ballot by region. The ballots along with the background statements shall be mailed to all manufacturers who manufacture 100,000 short tons or more of paper and paper-based packaging per marketing year. Manufacturers may vote in each region in which they manufacture paper and paper-based packaging. The votes shall be tabulated for each region and the nominees receiving the highest number of votes shall be placed at the top of the list in descending order by vote. The top two candidates for each position shall be submitted to the Secretary;

(5) The names of nominees for at large domestic manufacturers shall be placed on a ballot. The ballots along with the background statements shall be mailed to all manufacturers who manufacture 100,000 short tons or more of paper and paper-based packaging per marketing year. The votes shall be tabulated and the nominees receiving the highest number of votes shall be placed at the top of the list in descending order by vote. The top two candidates shall be submitted to the Secretary;

(6) The names of importer nominees shall be placed on a ballot. The ballots along with background statements shall be mailed to importers who import 100,000 short tons or more of

paper and paper-based packaging per marketing year. The votes shall be tabulated and the nominees receiving the highest number of votes shall be placed at the top of the list in descending order by vote. The top two candidates for each position shall be submitted to the Secretary;

(7) The Board must submit nominations to the Secretary at least six months before the new Board term begins;

(8) Any manufacturer or importer nominated to serve on the Board shall file with the Secretary at the time of the nomination a background questionnaire;

(9) From the nominations made pursuant to this section, the Secretary shall appoint the members of the Board on the basis of representation provided in § 1222.40(b);

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

(11) 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.

**§ 1222.42 Term of office.**

(a) With the exception of the initial Board, each Board member shall serve for a term of three years 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 full consecutive three-year terms, except as provided in paragraph (b) of this section.

(b) For the initial Board, the terms of the 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 Panel.

**§ 1222.43 Removal and vacancies.**

(a) The Board may recommend to the Secretary that a member be removed from office if the member consistently fails or refuses to perform his or her duties properly or engages in dishonest acts or willful misconduct. If the Secretary determines that any person appointed under this subpart consistently fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. A person appointed under this subpart or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

(b) If a member resigns, is removed from office, or in the event of death of any member or if any member of the Board

ceases to work for or be affiliated with a manufacturer or importer, or if a manufacturer ceases to do business in the region he or she represents, such position shall become vacant.

(c) If a position becomes vacant nominations to fill the vacancy will be conducted using the nominations process set forth in this Order or the Board may recommend to the Secretary that he or she appoint a successor from the most recent list of nominations for the position.

(d) A vacancy will not be required to be filled if the unexpired term is less than six months.

**§ 1222.44 Procedure.**

(a) A majority of the Board members shall constitute a quorum.

(b) Each member of the Board shall be entitled to one vote on any matter put to the Board and the motion will carry if supported by a majority of Board members, except for recommendations to change the assessment rate or to adopt a budget, both of which require affirmation by two-thirds of the total number of Board members.

(c) At an assembled meeting, all votes shall be cast in person.

(d) In lieu of voting at an assembled meeting and, when in the opinion of the chairperson of the Board such action is

considered necessary, the Board may take action if supported by a majority of members (unless two-thirds is required under the Order) by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at an assembled meeting. All votes shall be recorded in Board minutes.

(e) There shall be no proxy voting.

**§ 1222.45 Reimbursement and attendance.**

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

**§ 1222.46 Powers and duties.**

The Board shall have the following powers and duties:

(a) To administer this subpart 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 and regulations as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet not less than annually, organize, and select

from among the members of the Board a chairperson, vice chairperson, secretary/treasurer, other officers, and committees and subcommittees, as the Board determines to be appropriate. The committee and subcommittees may include persons other than Board members, including representatives of Board members, as the Board deems necessary and appropriate, provided Board members or their representative constitute a majority of all committees and subcommittees;

(d) To employ or contract with persons, other than the Board members, as the Board considers necessary to assist the Board in carrying out its duties, and to determine the compensation and specify the duties of the persons;

(e) To notify manufacturers and importers of all Board meetings through a press release or other means and to give the Secretary the same notice of meetings of the Board (including committee, subcommittee, and the like) as is given to members so that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(f) To develop and submit programs, plans and projects to the Secretary for the Secretary's approval, and enter into contracts or agreements related to such programs, plans and projects, which must be approved by the Secretary before

becoming effective, for the development and carrying out of programs, plans or projects of promotion, research and information. The payment of costs for such activities shall be from funds collected pursuant to this Order. 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 or budgets that shall show the estimated cost to be incurred for such program, plan or project;

(2) The contractor or agreeing party shall keep accurate records of all 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 the 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.

(g) To prepare and submit for the approval of the Secretary fiscal year budgets in accordance with § 1222.50;

(h) To borrow funds necessary for startup expenses of the

Order during the first year of operation by the Board;

(i) 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;

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

(k) To cause its books to be audited by an independent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(l) To periodically prepare and make public reports of program activities and, at least once each fiscal year, to make public an accounting of funds received and expended;

(m) To maintain such minutes, books and records and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(n) To act as an intermediary between the Secretary and any manufacturer or importer;

(o) To receive, investigate, and report to the Secretary

complaints of violations of the Order;

(p) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and

(q) To work to achieve an effective, continuous, and coordinated program of promotion, research, and information and to carry out programs, plans, and projects designed to provide maximum benefits to the paper and paper-based packaging industry.

**§ 1222.47 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, misleading or disparaging to another agricultural commodity. Paper and paper-based packaging of all geographic origins shall be treated equally.

**Expenses and Assessments**

**§ 1222.50 Budget and expenses.**

(a) At least 60 calendar days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Department a budget for the fiscal year 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.

Shifts of funds that do not result in an increase in the Board's approved budget and are consistent with governing bylaws need not have prior approval by the Department.

(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. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use. The Board may receive funds from outside sources 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 three years after the date of the establishment of the Board, the Board may not expend for administration, maintenance, and the functioning of the Board an amount that is greater than 15 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 years excess funds in any reserve so established: Provided, That, the funds in the reserve do not exceed one fiscal year'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.

**§ 1222.51 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.

**§ 1222.52 Assessments.**

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

(b) Subject to the exemptions specified in § 1222.53, each manufacturer and importer shall pay an assessment to the Board in the amount of 35 cents per short ton or its equivalent manufactured and imported. The assessment shall be on the roll of paper and paper-based packaging manufactured or imported, except that the assessment for cut-size printing and writing paper imported or made by domestic manufacturers prior to leaving the manufacturer's mill shall be on the cut-size paper.

(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 of at least two-thirds of the Board, a change in the assessment rate. 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 30<sup>th</sup> calendar day of the month following the end of the quarter in which the paper and paper-based packaging was manufactured.

(e) Each importer of paper and paper-based packaging shall pay through Customs to the Board an assessment on the paper and

paper-based packaging imported into the United States identified in the Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the table below.

<b>Paper and paper-based packaging</b>	<b>Assessment \$/kg</b>
4802.54.1000	\$.000386
4802.54.3100	\$.000386
4802.54.5000	\$.000386
4802.54.6100	\$.000386
4802.55.1000	\$.000386
4802.55.2000	\$.000386
4802.55.4000	\$.000386
4802.55.6000	\$.000386
4802.55.7020	\$.000386
4802.55.7040	\$.000386
4802.56.1000	\$.000386
4802.56.2000	\$.000386
4802.56.4000	\$.000386
4802.56.6000	\$.000386
4802.56.70	\$.000386
4802.57.1000	\$.000386
4802.57.2000	\$.000386
4802.57.4000	\$.000386
4802.58.1000	\$.000386
4802.58.20	\$.000386
4802.58.5000	\$.000386
4802.58.60	\$.000386
4802.61.1000	\$.000386
4802.61.2000	\$.000386
4802.61.30	\$.000386
4802.61.5000	\$.000386
4802.61.60	\$.000386
4802.62.1000	\$.000386
4802.62.2000	\$.000386
4802.62.3000	\$.000386
4802.62.5000	\$.000386
4802.62.60	\$.000386
4802.69	\$.000386
4804.11.0000	\$.000386
4804.19.0000	\$.000386
4804.21.0000	\$.000386
4804.29.0000	\$.000386

4804.31.40	\$.000386
4804.31.6000	\$.000386
4804.39.4020	\$.000386
4804.39.4049	\$.000386
4804.39.60	\$.000386
4804.41.2000	\$.000386
4804.41.4000	\$.000386
4804.42.00	\$.000386
4804.49.0000	\$.000386
4804.51.0000	\$.000386
4804.52.00	\$.000386
4804.59.0000	\$.000386
4805.11.0000	\$.000386
4805.12	\$.000386
4805.19	\$.000386
4805.24	\$.000386
4805.25.0000	\$.000386
4805.91.1010	\$.000386
4805.91.9000	\$.000386
4805.92.4010	\$.000386
4805.92.4030	\$.000386
4805.93.4010	\$.000386
4805.93.4030	\$.000386
4805.93.4050	\$.000386
4805.93.4060	\$.000386
4807.00.9100	\$.000386
4807.00.9400	\$.000386
4810.13.11	\$.000386
4810.13.1900	\$.000386
4810.13.20	\$.000386
4810.13.5000	\$.000386
4810.13.6000	\$.000386
4810.13.70	\$.000386
4810.14.11	\$.000386
4810.14.1900	\$.000386
4810.14.20	\$.000386
4810.14.5000	\$.000386
4810.14.6000	\$.000386
4810.14.70	\$.000386
4810.19.1100	\$.000386
4810.19.1900	\$.000386
4810.19.20	\$.000386
4810.22.1000	\$.000386
4810.22.50	\$.000386

4810.22.6000	\$.000386
4810.22.70	\$.000386
4810.29.10	\$.000386
4810.29.5000	\$.000386
4810.29.6000	\$.000386
4810.29.70	\$.000386
4810.31.1020	\$.000386
4810.31.1040	\$.000386
4810.31.3000	\$.000386
4810.31.6500	\$.000386
4810.32.10	\$.000386
4810.32.3000	\$.000386
4810.32.6500	\$.000386
4810.39.1200	\$.000386
4810.39.1400	\$.000386
4810.39.3000	\$.000386
4810.39.6500	\$.000386
4810.92.12	\$.000386
4810.92.65	\$.000386
4810.99.1050	\$.000386
4810.99.6500	\$.000386
4811.51.2010	\$.000386
4811.51.2020	\$.000386
4811.51.2030	\$.000386
4811.59.4020	\$.000386
4811.90.8030	\$.000386

(f) If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment directly to the Board within 30 calendar days after the end of the quarter in which the paper and paper-based packaging was imported.

(g) When a 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.

(h) The Board may accept advance payment of assessments from any manufacturer or importer that will be credited toward any amount for which that person may become liable. The Board may not pay interest on any advance payment.

(i) 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.

**§ 1222.53 Exemption from assessment.**

(a) Minimum quantity exemption. (1) Manufacturers that manufacture less than 100,000 short tons of paper and paper-based packaging in a marketing 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 marketing year. This is an annual exemption and manufacturers must reapply each year. Such manufacturers shall certify that they will manufacture less than 100,000 short

tons of paper and paper-based packaging during the marketing 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 manufacturing data to support the exemption request. The Board will issue, if deemed appropriate, a certificate of exemption to the eligible manufacturer. It is the responsibility of the manufacturer to retain a copy of the certificate of exemption.

(2) Importers that import into the United States less than 100,000 short tons of paper and paper-based packaging in a marketing year are exempt from paying assessments. This is an annual exemption and importers must qualify each year.

(i) Importers that imported less than 100,000 short tons of paper and paper-based packaging during the prior marketing year shall automatically be considered exempt during the upcoming marketing year. Customs data will be reviewed to verify applicable importers.

(ii) Importers that imported more than 100,000 short tons of paper and paper-based packaging during the prior marketing year, but believe and can document that they will import less than 100,000 short tons of paper and paper-based packaging during the upcoming marketing year, may apply to the Board, on a form provided by the Board, for a certificate of exemption prior

to the start of the fiscal year. Such importers shall certify that they will import less than 100,000 short tons of paper and paper-based packaging during the marketing 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 import data and other documentation to support the exemption request. The Board will 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.

(iii) The Board shall refund such importers considered exempt their assessments as collected by Customs no later than 60 calendar days after receipt of such assessments by the Board. The Board will stop refund of assessments to such importers who during the marketing year import more than 100,000 short tons of paper and paper based packaging. These importers will be notified accordingly. No interest shall be paid on the assessments collected by Customs or the Board.

(3) Manufacturers that did not apply to the Board for an exemption and that manufactured less than 100,000 short tons of paper and paper-based packaging during the marketing year shall automatically receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the

marketing year. Board staff shall determine the assessments paid and refund the amount due to the manufacturer accordingly.

(4) Importers that did not apply to the Board for an exemption, imported more than 100,000 short tons of paper and paper-based packaging during the prior marketing year, and that imported less than 100,000 short tons of paper and paper-based packaging during the marketing year shall automatically receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the marketing year.

(5) If an entity is a manufacturer and an importer, such entity's combined quantity of paper and paper-based packaging manufactured and imported during a marketing year shall count towards the 100,000 short ton-exemption.

(6) Manufacturers and importers that received an exemption certificate or an automatic exemption from the Board but manufactured or imported 100,000 short tons or more of paper and paper-based packaging during the marketing year shall pay the Board the applicable assessments owed on the quantity manufactured or imported within 30 calendar days after the end of the marketing year and submit any necessary reports to the Board pursuant to § 1222.70.

(7) The Board may develop additional procedures to administer this exemption as appropriate. Such procedures shall

be implemented through rulemaking by the Secretary.

(b) Organic. (1) Organic Act means section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6501-6522).

(2) A manufacturer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, only manufactures paper and paper-based packaging 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 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 paper and paper-based packaging 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 paper and paper-based packaging, 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 manufacturers in paragraph (b)(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 paper and paper-based packaging 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**

#### **§ 1222.60 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, information and other activities including consumer and industry information and advertising.

(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 program, plan or project.

**§ 1222.61 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.

**§ 1222.62 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, product formulations, or publications, 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, § 1222.83 shall apply to determine disposition of all such property.

### **Reports, Books, and Records**

#### **§ 1222.70 Reports.**

(a) Manufacturers and importers 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 manufacturers:

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

(ii) The quantity of paper and paper-based packaging manufactured by type.

(2) For importers:

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

(ii) The quantity of paper and paper-based packaging imported by type; and

(iii) The country of export.

(b) For manufacturers, such information shall be reported to the Board no later than the 30<sup>th</sup> calendar day of the month following the end of the quarter in which the paper and paper-based packaging was manufactured and shall accompany the collected payment of assessments as specified in § 1222.52.

First quarter data (January-March) shall be reported to the Board no later than the 30<sup>th</sup> calendar day of April; second quarter data (April-June) shall be reported no later than the 30<sup>th</sup> calendar day of July; third quarter data (July-September) shall be reported no later than the 30<sup>th</sup> calendar day of October; and fourth quarter data (October-December) shall be reported no later than the 30<sup>th</sup> calendar day of January of the following marketing year.

(c) For importers who pay their assessments directly to the Board, such information shall accompany the payment of collected assessments within 30 calendar days after the end of the quarter in which the paper and paper-based packaging was imported specified in § 1222.52.

**§ 1222.71 Books and records.**

Each manufacturer and importer 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. Such books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. Manufacturers and importers must maintain the books and records for two years beyond the fiscal year to which they apply.

**§ 1222.72 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 manufacturers and importers. 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**

#### **§ 1222.80 Right of the Secretary.**

All fiscal matters, programs, plans 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.

#### **§ 1222.81 Referenda.**

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

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

(1) For the purpose of ascertaining whether manufacturers and importers favor the amendment, continuation, suspension, or termination of the Order;

(2) Not later than seven years after this Order becomes effective and every seven years thereafter, to determine whether manufacturers and importers favor the continuation of the Order. The Order shall continue if it is favored by a majority of manufacturers and importers voting in the referendum who also represent a majority of the volume of paper and paper-based packaging represented in the referendum and who, during a representative period determined by the Secretary, have been engaged in the manufacturing or importation of paper and paper-based packaging;

(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.

**§ 1222.82 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 year whenever the Secretary determines that its suspension or termination is favored by a majority of 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 manufacturing or importation of paper and paper-based packaging.

(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.

**§ 1222.83 Proceedings after termination.**

(a) Upon termination of this subpart, the Board shall recommend to the Secretary up to five of its members 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 paper and paper-based packaging organizations in the United States whose mission is generic promotion, research, and information programs.

**§ 1222.84 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.

**§ 1222.85 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.

**§ 1222.86 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.

**§ 1222.87 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.

**§ 1222.88 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 0581-0281.

Dated: September 10, 2013

Rex A. Barnes  
Associate Administrator

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