



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1211

[Document Number AMS-FV-11-0074; PR-A2]

RIN 0581-AD24

Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule; supplemental notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend the 2013 proposed rule for a Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order (Order). In that 2013 proposed rule, USDA requested comments on a proposed industry-funded, national research and promotion program for hardwood lumber and hardwood plywood that would be administered by a board of industry members selected by the Secretary of Agriculture (Secretary). USDA is reopening the comment period only with respect to specific issues identified in this proposed rule. USDA is taking this action in response to the extensive comments received in response to that 2013 proposed rule.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Pursuant to the Paperwork Reduction Act (PRA), comments on information collection issues must be received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this supplemental proposal. Comments may be submitted on the Internet at: <http://www.regulations.gov> or to the Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; facsimile: (202) 205-2800. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at <http://www.regulations.gov>.

Pursuant to the PRA, comments concerning the information collection should also be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Promotion and Economics Division, Fruit and

Vegetable Program, AMS, USDA, 1400 Independence Avenue, SW.,
Room 1406, Stop 0244, Washington, DC 20250-0244; telephone:
(301) 334-2891; facsimile (301) 334-2896; or electronic mail:
Patricia.Petrella@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal 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 November 13, 2013 (78 FR
68298), on establishing an industry-funded promotion, research
and information program for hardwood lumber and hardwood
plywood. That proposal provided for a 60-day comment period
which ended on January 13, 2014. On January 16, 2014, a notice
was published in the **Federal Register** that reopened and extended
the comment period until February 18, 2014 (79 FR 2805). A
total of 939 comments were received during both comment periods.

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 has been designated as "non-significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 13175

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

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any

obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

In June 2011, USDA received a proposal for a national research and promotion program for hardwood lumber and hardwood plywood from the Blue Ribbon Committee (BRC). The BRC is a committee of 14 hardwood lumber and hardwood plywood industry leaders representing small and large manufacturers geographically distributed throughout the United States.

The BRC proposed a program that would be financed by an assessment on hardwood lumber and hardwood plywood manufacturers and administered by a board of industry members selected by the Secretary. The purpose of the program would be to strengthen the position of hardwood lumber and hardwood plywood in the marketplace and maintain and expand markets for hardwood lumber and hardwood plywood. A referendum would be held among eligible hardwood lumber and hardwood plywood manufacturers to determine whether they favor implementation of the program prior to it going into effect.

As previously stated, a proposed rule regarding this action that was published in the **Federal Register** on November 13, 2013, provided for a 60-day comment period ending January 13, 2014. The comment period was reopened and extended an additional 30 days, or through February 18, 2014. A total of 939 comments were received during both comment periods. Many of the comments included substantive questions about fundamental provisions of the program as proposed. Some of these questions included what products would be covered, how products would be assessed, how the exemption for small manufacturers would be administered, and how the referendum would be conducted. Some of the comments provided recommendations in these different areas. Several

comments also expressed concern with the overall cost of the program on manufacturers.

As a result, USDA is reopening the comment period to solicit additional comments on specific areas in the November 2013 proposal. USDA is proposing alternative language that would modify several previously proposed provisions (including adding two proposed definitions), taking into account the comments received. USDA is also asking specific questions regarding other aspects of the proposed program. This is intended to assist USDA in its further consideration of the proposal for a program. The specific areas open for comment are detailed in the section titled **Scope of Supplemental Notice of Proposed Rulemaking**.

Clarification Regarding Exports and Imports

In this document, USDA is clarifying that exports would be covered under the program. The background section of the November 2013 proposed rule (78 FR 68298) inadvertently stated that exports would be exempted from the proposed program. USDA is also reiterating that imports would not be covered under the program. Several commenters raised this question during the comment period in response to the November 2013 proposed rule.

In this document, USDA is also informing stakeholders of a supplemental notice of proposed rulemaking published elsewhere

in this issue of the **Federal Register** to amend a separate proposed rule also published in November 2013 concerning referenda procedures related to the proposed hardwood program (November 13, 2013; 78 FR 67979).

Scope of Supplemental Notice of Proposed Rulemaking

Proposed Modifications to Previously Proposed Provisions

USDA is proposing to revise several provisions of the previously proposed Order (including adding two definitions) taking into account the comments received in response to the November 2013 proposed rule. USDA requests comments on the proposed revisions which are described in the following paragraphs.

Definitions

Green air dried (G/AD)

USDA is proposing to add a term to § 1211.11 to the Order detailed in the November 2013 proposed rule to define the term "green air dried (G/AD)" to mean green hardwood lumber or hardwood lumber that has been dried by exposure to air in a yard or shed, without artificial heat. This term is needed to address concerns raised by commenters regarding how green air dried lumber would be handled under the proposed program.

Green (G) hardwood lumber

USDA is proposing to modify the term "green (G) hardwood lumber" as defined in the November 2013 proposed rule in proposed § 1211.11 to clarify that green (G) hardwood lumber does not include kiln dried or air dried lumber. This modification is needed to address concerns raised by commenters regarding how air dried lumber would be handled under the proposed program. Thus, the term "green (G) hardwood lumber" would mean hardwood lumber that has not been kiln dried or air dried.

Hardwood lumber

USDA is proposing to modify the term "hardwood lumber" as defined in the November 2013 proposed rule in proposed section 1211.12 to clarify that it includes yellow poplar in the list of trees referenced, and that the respective trees must be grown in the United States. This modification is proposed in response to comments received requesting that the term be clarified. Thus, the term hardwood lumber would mean timber from the wood of a cypress tree or a deciduous, broad leafed tree (including but not limited to aspen, birch, cypress, poplar, yellow poplar, maple, cherry, walnut and oak) grown in the United States that has been sawn into boards or blocks by a sawmill in the United States.

Hardwood lumber manufacturer

USDA is proposing to modify the term "hardwood lumber manufacturer" as defined in the November 2013 proposed rule in proposed section 1211.13 to include not only entities that kiln dry but also entities that air dry green hardwood lumber. This modification is needed to address concerns raised by commenters regarding how air dried lumber would be handled under the proposed program. Thus, the term hardwood lumber manufacturer would mean a person who cuts raw, green hardwood logs into hardwood lumber or hardwood lumber products or a person who kiln dries or air dries green hardwood lumber to create hardwood lumber, hardwood lumber products or hardwood lumber value-added products.

Hardwood lumber products

USDA is proposing to modify the term "hardwood lumber products" as defined in the November 2013 proposed rule in proposed § 1211.14 to link the definition to a grade standard defined in the National Hardwood Lumber Association Rules for the Inspection of Hardwood & Cypress. This definition would also be modified to exclude industrial products. This modification is being proposed in response to comments received requesting that industrial products be excluded from the proposed program and that the term be linked to a grade standard.

Thus, the term hardwood lumber products would mean hardwood G/AD/KD lumber that has been transformed into products that remain boards meeting or exceeding the level of "Grade 3A Common" as defined by National Hardwood Lumber Association Rules for the Inspection of Hardwood & Cypress effective January 1, 2015 (<http://nhla.com/rulesbook>), or equivalent standard, as recommended by the Board and approved by the Secretary. The Grade 3A Common standard would provide minimum requirements for covered hardwood in terms of width, length and other factors. This third party standard would be incorporated by reference, which would specify the current version of the cited third-party standard and would include information on the availability of this standard to meet requirements for incorporation by reference. For purposes of this Order, hardwood lumber would not include industrial products which remain in board or block form such as ties, cants, crane mat material and pallet stock or products which are transformed from boards or blocks of lumber into other products such as furniture, tight cooperage, cabinetry, and constructed pallets.

Hardwood lumber value-added product manufacturer

USDA is proposing to modify the term "hardwood lumber value-added product manufacturer" as defined in the November 2013 proposed rule in proposed § 1211.15 to include not only

entities that kiln dry but also entities that air dry green hardwood lumber. This modification is needed to address questions raised by commenters regarding how air dried lumber would be handled under the proposed program.

Thus, the term hardwood lumber value-added product manufacturer would mean a person who operates a sawmill to manufacture hardwood lumber value-added products (the hardwood lumber may be air dried or kiln dried), or a person who operates a kiln to dry hardwood lumber that is then used to manufacture hardwood lumber value-added products.

Hardwood lumber value-added products

USDA is proposing to modify the term "hardwood lumber value-added products" as defined in the November 2013 proposed rule in proposed § 1211.16 to exclude industrial products. This modification is being proposed in response to comments received requesting that industrial products be excluded from the proposed program.

Thus, the term hardwood lumber value-added products would mean products which remain in the general shape of hardwood lumber boards, but have undergone additional processing beyond surfacing or cutting to a particular size. Hardwood lumber value-added products would include products such as solid wood unfinished strip flooring, all-sides surfaced boards, finger-

jointed strips ripped to width, and moldings. For purposes of this Order, hardwood lumber value-added products would not include industrial products which remain in board or block form such as ties, cants, crane mat material, and pallet stock or products which are transformed from boards or blocks of lumber into other products, such as furniture, tight cooperage, cabinetry, and constructed pallets. Further, it would not include multi-component or further manufactured products such as furniture, cabinets, cabinet doors, prefinished or engineered flooring, pallets, or dimension or glued components for cabinets or furniture.

Manufacturer

USDA is proposing to modify the term "manufacturer" as defined in the November 2013 proposed rule in proposed § 1211.22 to mean any person who is engaged in the business of manufacturing covered hardwood lumber in the United States as defined in this Order. The definition as proposed in the 2013 proposed rule included the term "domestic" which appeared to cause some confusion regarding whether imports were covered under the proposed program. USDA is proposing to revise the definition for the purpose of clarity.

Sale

USDA is proposing to modify the term "sale" as defined in the November 2013 proposed rule in proposed section 1211.31 to address questions posed regarding whether the proposed program was assessing the commodity at the appropriate point in production. The definition as proposed in the November 2013 proposed rule linked a sale to the dollar value of covered hardwood purchased rather than the dollar value of covered hardwood sold. USDA is proposing to modify this definition based on comments received.

Thus, the term sale for purposes of calculating assessments, would mean the total dollar value of hardwood lumber, hardwood lumber products, hardwood lumber value-added products, or hardwood plywood that are sold from a hardwood lumber manufacturer or hardwood plywood manufacturer. Sales, for purposes of the assessment, would not include freight or discounts, and brokered sales would not be included within the meaning of the sale.

Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Board

Nominations and appointments

USDA is proposing to modify the initial nomination procedures for the first Board as specified in the November 2013 proposed rule in proposed paragraph (a) of § 1211.42. The

November 2013 proposed rule provides that the BRC solicit potential nominees and submit the nominations to the Secretary. Some commenters noted the importance of trying to ensure that the nomination process is highly publicized so that interested persons are aware of the process. In response, USDA is proposing to modify this section to require the BRC and USDA to work together to publicize the nomination process so that eligible candidates are aware of the opportunity to serve on the Board.

Assessments

USDA is proposing to modify portions of the assessment provisions as specified in the November 2013 proposed rule. Specifically, paragraph (a) of § 1211.52 regarding assessments would be revised to clarify that assessments would be applicable to hardwood plywood and hardwood lumber, both in its green (rough) form and as it is kiln dried or air dried to create hardwood lumber products and hardwood lumber value-added products. The reference to air dried was omitted in the November 2013 proposed rule. This modification is needed to address questions raised by commenters regarding how air dried lumber would be handled under the proposed program.

USDA is also proposing to modify paragraph (b) of § 1211.52 as specified in the November 2013 proposed rule in an effort to

clarify how covered hardwood would be assessed under the program. USDA received many comments during the comment period with regard to the assessment section. Many commenters opined that the calculations were complicated and may not be workable.

USDA is proposing to simplify the table used as an illustration in § 1211.52(b) by omitting references to descriptions of products and using instead the terms defined in the proposed program. The table would read as follows:

COVERED HARDWOOD	ASSESSMENT RATE	ALLOWABLE DEDUCTIONS 1/
Hardwood lumber	\$1/\$1,000 in sales	N/A
Hardwood lumber products	\$1/\$1,000 in sales	-dollar value of green hardwood lumber purchases
Hardwood lumber value-added products	\$0.75/\$1,000 in sales of value-added products plus \$1.00 per \$1,000 in sales of green (G/AD/KD)hardwood lumber	-dollar value of green hardwood lumber purchases
Hardwood plywood	\$3/\$1,000 in sales	N/A

1/The deductions are necessary to take into account assessments already paid on green (G/AD/KD) hardwood lumber purchased by the manufacturer to make the product or value-added product.

The table would also be revised to clarify that the assessment rate for hardwood lumber value-added products includes \$0.75 per \$1,000 in sales of value added products, plus \$1.00 per \$1,000 in sales of green (G/AD/KD) hardwood lumber, minus the dollar value of the green (G/AD/KD) hardwood lumber purchases used to make the products.

USDA is also proposing to clarify the remainder of § 1211.52(b) that explains in narrative form how the assessments are computed depending on the type of covered hardwood. The proposed paragraphs would read as follows:

(1) Hardwood lumber manufacturers that cut raw, green hardwood logs into hardwood lumber or kiln dry or air dry hardwood lumber that can be further processed into products would pay at the rate of \$1.00 per \$1,000 in sales of green (G/AD/KD) hardwood lumber;

(2) Hardwood lumber manufacturers that manufacture hardwood lumber products would pay at a rate of \$1.00 per \$1,000 in sales of hardwood lumber products minus the dollar value of green (G/AD/KD) hardwood lumber purchases;

(3) Hardwood lumber value-added product manufacturers would pay a rate of \$0.75 per \$1,000 in sales of hardwood lumber value-added products, plus \$1.00 per \$1,000 in sales of green (G/AD/KD) hardwood lumber, minus the dollar value of the green hardwood lumber purchases (G/AD/KD); and

(4) Hardwood plywood manufacturers would pay at the rate of \$3.00 per \$1,000 in sales of hardwood plywood lumber.

(5) Brokered sales of hardwood lumber or hardwood lumber products would be excluded from the calculation of assessments.

(6) Vertically integrated manufacturers that manufacture hardwood lumber, then transfer the lumber from one business unit to another within the same company to manufacture non-assessed product, would pay assessments based on the fair market value of the non-assessed product, minus the fair market value of the green (G/AD/KD) hardwood lumber, minus the fair market value of the green (G/AD/KD) hardwood lumber purchases times \$0.001. This formula is necessary to ensure that covered hardwood lumber in a vertically integrated company is appropriately assessed.

Exemptions from assessment

USDA is proposing to modify § 1211.53 of the November 2013 proposed rule pertaining to exemptions from assessment. Paragraph (b) of that section requires manufacturers who meet the exemption threshold to apply to the Board for an exemption certificate every year. Commenters raised concerns with the burden of this on small companies. Thus, USDA is proposing to revise this paragraph so that the exemption certificates issued by the Board remain valid for as long as the annual sales of the respective manufacturers remain below the exemption threshold. Paragraph (b) in § 1211.53 is proposed to be modified accordingly. It should be noted that even with this modification to § 1211.53, exempt manufacturers would still be required to keep records pursuant to § 1211.71.

Organic exemption from assessment

Section 1211.53(e) as proposed in the November 2013 proposed rule stated that to be eligible for an organic exemption, a hardwood lumber or hardwood plywood manufacturer who operated under a National Organic Program (NOP) (7 CFR part 205) system plan, could only manufacture and have annual sales of covered hardwood lumber eligible to be labeled as 100 percent organic under the NOP and could not be a split operation.

This limitation was based on legislative authority in section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) (7 U.S.C. 7401), which established certain provisions for generic commodity promotion programs created under the various commodity promotion laws. Section 501 of the FAIR Act was previously amended in May 2002, by section 10607 of the Farm Security and Rural Investment Act (2002 Farm Bill) (Pub. L. 107-171) to exempt persons that produced and marketed solely 100 percent organic products, and who did not otherwise produce or market any conventional or nonorganic products, from the payment of an assessment for commodity promotion activities under a commodity promotion law.

However, section 10004 of the Agricultural Act of 2014 (2014 Farm Bill) (Pub. L. 113-79) subsequently expanded the organic assessment exemption to apply to any agricultural commodity that

is certified as "organic" or "100 percent organic" as defined by NOP regardless of whether the person requesting the exemption also produces, handles, markets, or imports conventional or nonorganic products.

USDA is proposing to modify § 1211.53(e) so that it is consistent with the FAIR Act as amended by the 2014 Farm Bill. The exemption would then allow manufacturers of "organic" and "100 percent organic" hardwood lumber certified under NOP, regardless of whether the person requesting the exemption also produces, handles, markets, or imports conventional or nonorganic products, to be eligible for an exemption from assessments.

Miscellaneous

Referenda

USDA is proposing to modify the referenda criteria as specified in the November 2013 proposed rule in paragraphs (a) and (b) of proposed § 1211.81 to require approval by a majority of manufacturers voting in the referendum who also represent a majority of the volume (board foot or equivalent) of covered hardwood, represented in the referendum and by those who, during a representative period determined by the Secretary, were engaged in the manufacturing of covered hardwood. Only manufacturers who would pay or paid assessments under the

program (those with annual sales over the respective exemption threshold) would be eligible to vote in referenda.

USDA is proposing this modification in response to the many comments received regarding the criteria proposed in the November 2013 proposed rule. That rule proposed approval by a majority of the volume of covered hardwood represented in the referendum. Several commenters expressed concern that this voting criteria favored large manufacturers and disadvantaged small companies.

Suspension and termination

USDA is also proposing to modify the paragraph (b) of § 1211.82 as specified in the November 2013 proposed rule regarding suspension and termination to mirror the proposed change to § 1211.81 regarding referenda. Section 1211.82(b) as proposed in the November 2013 proposed rule would require the Secretary to suspend or terminate the proposed program at the end of a fiscal period based on a majority of the volume (board foot equivalent) of covered hardwood represented in a referendum by those who, during a representative period determined by the Secretary, were engaged in the manufacturing of covered hardwood.

USDA is proposing to revise § 1211.82(b) to require the Secretary to suspend or terminate the program if suspension or

termination is favored by a majority of manufacturers voting in a referendum who represent a majority of the volume (board foot or equivalent) represented in the referendum, and who, during a representative period determined by the Secretary, were engaged in the manufacturing of covered hardwood. As explained in the section above titled **Referenda**, USDA is proposing this change in response to several comments received regarding the referenda criteria.

Questions Regarding Other Aspects of the Proposed Program

USDA received numerous comments in response to the November 2013 proposed rule that raised other substantive issues with regard to the proposed program. To address these issues, USDA is posing the following questions for comment. Responses should cite the number and subsection of the question being answered. USDA requests that commenters provide specific data, statistics, or any other evidence as appropriate upon which those comments are based.

1. Hardwood plywood

Several comments questioned the inclusion of hardwood plywood in the proposed program. Commenters opined that hardwood plywood competes with hardwood lumber, and that plywood is too different to include in the program. As USDA continues to evaluate the merits of including hardwood plywood in the

proposed program, USDA seeks comments on the following questions:

- a. What are the benefits and the drawbacks for including hardwood lumber and hardwood plywood together in the same research and promotion program?
- b. How would the proposed program benefit the hardwood plywood sector of the industry?
- c. What types of promotion programs could be envisioned by the industry for hardwood plywood and how would this impact the hardwood lumber sector of the industry?
- d. What impact would excluding hardwood plywood have on the expected amount of assessments to be collected under the proposed program?
- e. What impact would excluding hardwood plywood have on the proposed Board structure?

2. Assessments

As previously mentioned, several comments were received regarding the proposed assessment section. USDA has clarified the section in this supplemental proposed rule, but also seeks comments on the following questions:

- a. Should the assessment computation be revised? If so, how should it be revised and what would be the impact

on the projected amount of assessments to be collected under the proposed program?

- b. Should the proposed rates of assessment on any of the four types of covered hardwood be revised? If so, to what level and what would be the impact on the projected amount of assessments to be collected under the proposed program?

Proposed Editorial Changes

The proposed regulatory text contained in this document includes other changes to make the proposed program’s provisions more clear and improve readability. The editorial changes are summarized in Table 1 below.

Table 1. Proposed Editorial Changes

Description in revised regulatory text (proposed section)	Proposed revision	Explanation
1211.9	Add the words “recommended by the Board” after the word “source.”	Clarify that the Board would recommend a source to the Secretary for fair market value.
1211.10	Add the word “fiscal” before the word “year.”	Clarify that the terms “fiscal period” and “fiscal year” have the same meaning.
1211.20	Add the abbreviation “KD” to the term kiln dried.	Clarify that KD, a common abbreviation used in the industry, means kiln dried.
1211.41(e) (1) and (2)	Substitute the term “manufactured” for the term “produced” and omit the phrase “within the United States.”	Clarify that when the Board reviews data every 5-years to assess whether changes are necessary to the Board’s structure to ensure it continues to reflect the geographic distribution of covered hardwood, the

		Board's review is on covered hardwood manufactured, and that the review is not limited to sales within the United States.
1211.42(a) and (b) (1)	Change the phrase "nominees must have annual sales of more than \$2 million of covered hardwood lumber or have annual sales of more than \$10 million of hardwood plywood per fiscal year" to "nominees must have annual sales of \$2 million or more of hardwood lumber, hardwood products, and hardwood value-added products, or have annual sales of \$10 million or more of hardwood plywood per fiscal year."	Clarify the eligibility requirements for Board membership.
1211.53(d)	Change the phrase "Hardwood lumber manufacturers who received an exemption certificate from the Board but have annual sales of more than \$2 million or hardwood plywood manufacturers that have annual sales of more than \$10 million during the fiscal year" to "Hardwood lumber manufacturers who received an exemption certificate from the Board but have annual sales of \$2 million or more or hardwood plywood manufacturers that have annual sales of \$10 million or more during the fiscal year."	Clarify the exemption thresholds under the proposed program.
1211.81(b)	Change the penultimate sentence from "The Secretary will also conduct a referendum if requested by the Board or by 10 percent or more of all non-exempt manufacturers paying an assessment" to "The Secretary will also conduct a referendum if requested by the Board or if requested by 10 percent or more of all manufacturers eligible to vote in a referendum."	Clarify when the Secretary must conduct a referendum under the proposed program.

Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.¹

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) as those having annual receipts of no more than \$7.0 million. According to information submitted by the proponents, it is estimated that there are 2,804 hardwood lumber manufacturers and 36 hardwood plywood manufacturers in the United States. This number represents separate business entities and includes exempted and assessed entities under the Order; one business entity may include multiple sawmills. It is estimated that 85 to 90 percent of the manufacturers are small businesses.

In this document, USDA is proposing to amend the November 2013 proposed rule for a national research and promotion program

¹ The complete Regulatory Flexibility Act Analysis appears in the proposed rule at 78 FR 68307 (Nov. 13, 2013).

for hardwood lumber and hardwood plywood. In that 2013 proposed rule, USDA requested comments on a proposed industry-funded Order for hardwood lumber and hardwood plywood that would be administered by a board of industry members selected by the Secretary. USDA is reopening the comment period only with respect to specific issues identified in this proposed rule. USDA is taking this action in response to the extensive comments received in response to that November 2013 proposed rule. The proposed program is authorized under the 1996 Act.

Regarding the economic impact of the changes proposed in this supplemental notice, most of the changes are for the purpose of clarification and would have no economic impact on affected entities. These changes include the following: adding a new term to § 1211.11 to define the term green air dried; clarifying the following terms - green (G) hardwood lumber (§ 1211.11), hardwood lumber (§ 1211.12), hardwood lumber manufacturer (§ 1211.13), hardwood lumber products, including an incorporation by reference (§ 1211.14), , hardwood lumber value-added product manufacturer (§ 1211.15), manufacturer (§ 1211.22), and sale (§ 1211.31); modifying the initial nomination process to help ensure the process is appropriately publicized (§ 1211.42); clarifying the assessment section (§ 1211.52); modifying the organic exemption so that it is consistent with

the FAIR Act as amended by the 2014 Farm Bill (§ 1211.53(e)), and making the proposed editorial changes as previously specified in Table 1 of this document. The proposed change to the referenda criteria in § 1211.81 to require approval by a majority of those voting and by a majority of the volume represented in a referendum would also have no economic impact on affected entities.

Proposed changes to three of the sections detailed in this supplemental notice would have some economic impact on the proposed program. Excluding industrial products from the terms hardwood lumber products in § 1211.14 and hardwood lumber value-added product manufacturer in § 1211.15 would likely reduce the amount of assessments collected under the program. We do not have information regarding to what extent assessments would be reduced or whether the number of entities covered under the proposed program would be reduced. Comments providing any information of the impact of this change on the amount of assessments anticipated under the proposed program or the number of entities expected to be covered under the program are requested.

The third proposed change that would have an economic impact on the proposed program concerns § 1211.53(b) regarding requirements for small manufacturers. USDA received many

comments during the comment period regarding potential effects on small companies. Several commenters expressed concern that the proposed program would increase their costs and that the program would be burdensome to their businesses.

In response to these comments, USDA is proposing to reduce the information collection requirements on small manufacturers. As previously mentioned in this document, § 1211.53(b) of the November 2013 proposed rule would require small manufacturers who meet the exemption threshold to apply to the Board annually for an exemption certificate. Commenters argued that this would be very burdensome on small companies. Thus, USDA is proposing to revise the November 2013 proposed rule so that certificates of exemption issued by the Board remain valid for as long as the annual sales of the respective manufacturers remain below the exemption thresholds. USDA is proposing to revise § 1211.53(b) accordingly, and is also proposing to revise the related reporting burden requirements as detailed in the section below titled **Paperwork Reduction Act**.

Paperwork Reduction Act

In accordance with the PRA of 1995 (44 U.S.C. Chapter 35), in the November 2013 proposed rule, AMS announced its intention to request approval of new information collection and recordkeeping requirements for the proposed hardwood lumber and

hardwood plywood program. In this proposal, AMS requests comments on proposed revisions to the information collection requirements contained in the November 2013 proposed rule.

Title: Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order.

OMB Number: 0581-NEW.

Expiration Date of Approval: 3 years from approval date.

Type of Request: Proposed revisions to a new information collection for research and promotion programs.

Abstract: AMS is proposing to amend the November 2013 proposed rule for a national research and promotion program for hardwood lumber and hardwood plywood that would reduce the information collection requirements under the proposed program. AMS is taking this action in response to comments received in response to the November 2013 proposed rule. The information collection requirements in the request are essential to carry out the intent of the 1996 Act.

In the 2013 proposed rule, AMS proposed that manufacturers of hardwood lumber, hardwood products, and hardwood value-added products with annual sales of less than \$2 million, and hardwood plywood manufacturers with annual sales of less than \$10 million could submit a written request to the Board for an exemption

from paying assessments. The request would be made on the form "Application for Exemption from Assessments."

As mentioned previously, the November 2013 proposed rule stated that manufacturers would need to submit this form every year to the Board. Based on comments received, AMS is proposing to revise this requirement so that companies with annual sales under the exemption thresholds need only submit this form once to the Board.

Information collection requirements that are included in this proposal include:

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 reporting on covered hardwood sold. Upon approval of an application, manufacturers would receive an exemption certification.

Respondents: Hardwood lumber manufacturers and hardwood plywood manufacturers who have annual sales of less than \$2 million or less than \$10 million, respectively.

Estimated number of Respondents: 497 (1,490 for the first year, 0 for the second year and potentially 2 annually thereafter).

Estimated number of Responses per Respondent: 0.10 (1 every 10 years).

Estimated Total Annual Burden on Respondents: 124 (372 hours for the first year, 0 hours for the second year and potentially 1 hour thereafter).

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

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper

performance of functions of the proposed Order and USDA's oversight of the proposed Order, including whether the information would have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Incorporation by Reference

USDA is proposing to modify the term "hardwood lumber products" as defined in the November 2013 proposed rule in proposed section 1211.14 to link the definition to a grade standard defined in the National Hardwood Lumber Association Rules for the Inspection of Hardwood & Cypress. The standard "Grade 3A Common," effective January 1, 2015, was discussed in greater detail in the section-by-section analysis. The standard can be obtained from the National Hardwood Lumber Association, PO Box 34518, Memphis, TN 38184; phone (901) 377-1818; <http://www.nhla.com/> and inspected at the Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400

Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; facsimile: (202) 205-2800.

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty-days is deemed appropriate because this proposal supplements a November 2013 proposed rule for a national promotion program for hardwood lumber and plywood. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

The entire proposed Order is published for ease of reference.

List of Subjects in 7 CFR Part 1211

Administrative practice and procedure, Advertising, Consumer information, Incorporation by reference, Marketing agreements, Hardwood lumber promotion, Hardwood plywood promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that title 7, chapter XI of the Code of Federal Regulations as

proposed to be added on November 13, 2013 (78 FR 68298), be amended as follows:

**PART 1211—HARDWOOD LUMBER AND HARDWOOD PLYWOOD PROMOTION,
RESEARCH AND INFORMATION ORDER**

**Subpart A--Hardwood Lumber and Hardwood Plywood Promotion,
Research and Information Order**

Definitions

Sec.

- 1211.1 Act.
- 1211.2 Blue Ribbon Committee.
- 1211.3 Board.
- 1211.4 Brokered sale.
- 1211.5 Concentration yard.
- 1211.6 Conflict of interest.
- 1211.7 Covered hardwood.
- 1211.8 Department or USDA.
- 1211.9 Fair market value.
- 1211.10 Fiscal period or fiscal year.
- 1211.11 Green air dried (G/AD) and Green (G) hardwood lumber.
- 1211.12 Hardwood lumber.
- 1211.13 Hardwood lumber manufacturer.
- 1211.14 Hardwood lumber products.
- 1211.15 Hardwood lumber value-added product manufacturer.
- 1211.16 Hardwood lumber value-added products.
- 1211.17 Hardwood plywood.
- 1211.18 Hardwood plywood manufacturer.
- 1211.19 Information.
- 1211.20 Kiln dried.
- 1211.21 Market or marketing.
- 1211.22 Manufacturer.
- 1211.23 Manufacturing.
- 1211.24 Member.
- 1211.25 Order.
- 1211.26 Part and subpart.
- 1211.27 Person.
- 1211.28 Programs, plans and projects.
- 1211.29 Promotion.
- 1211.30 Research.

- 1211.31 Sale.
- 1211.32 Secretary.
- 1211.33 State.
- 1211.34 Suspend.
- 1211.35 Terminate.
- 1211.36 Transfer.
- 1211.37 United States.

Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Board

- 1211.41 Establishment and membership.
- 1211.42 Nominations and appointments.
- 1211.43 Term of office.
- 1211.44 Removal and vacancies.
- 1211.45 Procedure.
- 1211.46 Reimbursement and attendance.
- 1211.47 Powers and duties of the Board.
- 1211.48 Prohibited activities.

Expenses and Assessments

- 1211.50 Budget and expenses.
- 1211.51 Financial statements.

Assessments

- 1211.52 Assessments.
- 1211.53 Exemption from assessment.

Promotion, Research and Information

- 1211.60 Programs, plans, and projects.
- 1211.61 Independent evaluation.
- 1211.62 Patents, copyrights, trademarks, information, publications, and product formulations.

Reports, Books and Records

- 1211.70 Reports.
- 1211.71 Books and records.
- 1211.72 Confidentiality of information.

Miscellaneous

- 1211.80 Right of the Secretary.
- 1211.81 Referenda.
- 1211.82 Suspension and termination.
- 1211.83 Proceedings after termination.
- 1211.84 Effect of termination or amendment.

1211.85 Personal liability.
1211.86 Separability.
1211.87 Amendments.
1211.88 OMB control number.

Authority: 7 U.S.C. 7411-7425, 7 U.S.C. 7401.

**Subpart A--Hardwood Lumber and Hardwood Plywood Promotion,
Research and Information Order**

§ 1211.1 Act.

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

§ 1211.2 Blue Ribbon Committee.

Blue Ribbon Committee means the 14-member committee representing businesses that manufacture hardwood lumber, hardwood lumber products, hardwood lumber value-added products and hardwood plywood in the United States formed to pursue an industry promotion, research and information program.

§ 1211.3 Board.

Board or Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Board means the administrative body established pursuant to this Part. It may be referred to by such other name as the Board recommends and the Secretary approves.

§ 1211.4 Brokered sale.

Brokered sale is a sale in which product is purchased from a person and resold to a different person without taking physical possession of the product.

§ 1211.5 Concentration yard.

Concentration yard means an operation with kilns that purchases hardwood lumber from sawmills, or wholesalers by means of a brokered sale, and may grade, sort, dry and/or surface the hardwood lumber. It excludes distribution yards that do not have kilns.

§ 1211.6 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 an entity that performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1211.7 Covered hardwood.

Covered hardwood means hardwood lumber, hardwood lumber products, hardwood lumber value-added lumber products, and hardwood plywood to which an assessment has been or may be levied pursuant to the Order.

§ 1211.8 Department or USDA.

Department or USDA means the United States Department of Agriculture or any officer or employee of the Department to whom

authority has been delegated, or to whom authority may hereafter be delegated, to act for the Secretary.

§ 1211.9 Fair market value.

Fair market value means, with respect to covered hardwood, the value of the hardwood lumber as determined by a source recommended by the Board and approved by the Secretary.

§ 1211.10 Fiscal period or fiscal year.

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

§ 1211.11 Green air dried (G/AD) and Green (G) hardwood lumber.

Green air dried (G/AD) means green hardwood lumber or hardwood lumber that has been dried by exposure to air in a yard or shed, without artificial heat.

Green (G) hardwood lumber means hardwood lumber that has not been kiln dried or air dried.

§ 1211.12 Hardwood lumber.

Hardwood lumber means timber from the wood of a cypress tree or a deciduous, broad-leafed tree (including but not limited to aspen, birch, cypress, poplar, yellow poplar, maple, cherry, walnut and oak) grown in the United States that has been sawn into boards or blocks by a sawmill in the United States.

§ 1211.13 Hardwood lumber manufacturer.

Hardwood lumber manufacturer means a person who cuts raw, green hardwood logs into hardwood lumber or hardwood lumber products or a person who kiln dries or air dries green hardwood lumber to create hardwood lumber, hardwood lumber products or hardwood lumber value-added products.

§ 1211.14 Hardwood lumber products.

Hardwood lumber products means hardwood G/AD/KD lumber that has been transformed into products that remain boards meeting or exceeding the level of "Grade 3A Common" in the Rules for the Inspection of Hardwood & Cypress, effective January 1, 2015 (<http://nhla.com/rulesbook>), or equivalent proprietary standard, as recommended by the Board and approved by the Secretary. For purposes of this Order, hardwood lumber does not include industrial products which remain in board or block form such as ties, cants, crane mat material, and pallet stock or products which are transformed from boards or blocks of lumber into other products such as furniture, tight cooperage, cabinetry, and constructed pallets. "Grade 3A Common," Rules for the Inspection of Hardwood & Cypress, effective January 1, 2015, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, USDA must publish notice of change in the Federal Register and the material must be available to the public. All approved material is available for inspection at

the Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; facsimile: (202) 205-2800, and is available from National Hardwood Lumber Association, PO Box 34518, Memphis, TN 38184; phone (901) 377-1818; <http://www.nhla.com/>. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

§ 1211.15 Hardwood lumber value-added product manufacturer.

Hardwood lumber value-added product manufacturer means a person who operates a sawmill to manufacture hardwood lumber value-added products (the hardwood lumber may be air dried or kiln dried), or a person who operates a kiln to dry hardwood lumber that is then used to manufacture hardwood lumber value-added products.

§ 1211.16 Hardwood lumber value-added products.

Hardwood lumber value-added products means products which remain in the general shape of hardwood lumber boards, but have

undergone additional processing beyond surfacing or cutting to a particular size. Hardwood lumber value-added products include products such as solid wood unfinished strip flooring, all-sides surfaced boards, finger-jointed strips ripped to width, and moldings. For purposes of this Order, hardwood lumber value-added products does not include industrial products which remain in board or block form such as ties, cants, crane mat material, and pallet stock or products which are transformed from boards or blocks of lumber into other products, such as furniture, tight cooperage, cabinetry, and constructed pallets. Further, it does not include multi-component or further manufactured products such as furniture, cabinets, cabinet doors, prefinished or engineered flooring, pallets, or dimension or glued components for cabinets or furniture.

§ 1211.17 Hardwood plywood.

Hardwood plywood means a panel product, the decorative face of which is made from hardwood veneer intended for interior use composed of an assembly of layers or plies of veneer or veneers in combination with lumber core, particleboard, medium density fiberboard core, hardboard core, or special core or special back material joined with an adhesive.

§ 1211.18 Hardwood plywood manufacturer.

Hardwood plywood manufacturer means a person who utilizes hardwood logs, veneer, or lumber to create hardwood plywood.

§ 1211.19 Information.

Information means activities and programs that are designed to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood and the forests from which it comes in the United States. These include:

(a) Consumer information, which means any action taken to provide information to the general public regarding the harvesting, consumption, use, and care of covered hardwood; and

(b) Industry information, which means any action taken to provide information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for covered hardwood, and activities to enhance the image of the hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood industries.

§ 1211.20 Kiln dried (KD).

Kiln dried (KD) means hardwood lumber that has been seasoned in a kiln by means of artificial heat, humidity and circulation.

§ 1211.21 Market or marketing.

Marketing means the sale or other disposition of covered hardwood in any channel of commerce. To market means to sell or otherwise dispose of covered hardwood in any channel of commerce.

§ 1211.22 Manufacturer.

Manufacturer means any person who is engaged in the business of manufacturing covered hardwood lumber in the United States as defined in this Order.

§ 1211.23 Manufacturing.

Manufacturing means the process of transforming logs into hardwood lumber, or the process of creating hardwood lumber products, hardwood lumber value-added products, or hardwood plywood.

§ 1211.24 Member.

Member means a member appointed by the Secretary to the Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Board.

§ 1211.25 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 of covered hardwood under the Act.

§ 1211.26 Part and subpart.

Part means the Hardwood Lumber and Hardwood Plywood 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.

§ 1211.27 Person.

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

§ 1211.28 Programs, plans and projects.

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

§ 1211.29 Promotion.

Promotion means any action taken to present a favorable image of hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood to the general public and to any and all consumers and those who influence consumption of covered hardwood lumber with the intent of improving the perception, markets and competitive position of

covered hardwood lumber and stimulating sales of covered hardwood lumber.

§ 1211.30 Research.

Research means any type of test, study, or analysis designed to advance the knowledge, image, desirability, use, marketability, production, product development, or quality of covered hardwood. The term research includes the communication of the results of any research conducted under this Part.

§ 1211.31 Sale.

For purposes of calculating the assessment, provided for in section 1211.52, a sale means the total dollar value of hardwood lumber, hardwood lumber products, hardwood lumber value-added products, or hardwood plywood that are sold from a hardwood lumber manufacturer or hardwood plywood manufacturer. Sales, for purposes of the assessment, do not include freight or discounts. Brokered sales are not included within the meaning of sale.

§ 1211.32 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Secretary to whom the Secretary has delegated the authority to act on behalf of the Secretary.

§ 1211.33 State.

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

§ 1211.33 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.

§ 1211.34 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 specified in the rule.

§ 1211.35 Transfer.

Transfer means when a vertically integrated manufacturing plant in which post-manufacturing operations turn an assessed hardwood product (covered hardwood) into a non-assessed product while remaining under the control of the same person.

§ 1211.36 United States or U.S.

United States or U.S. means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Board

§ 1211.41 Establishment and membership.

(a) There is hereby established a Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Board composed of 28 members who are either owners or employees of hardwood lumber manufacturers or hardwood plywood manufacturers who are appointed by the Secretary. Of the 28 members, 22 shall be hardwood lumber manufacturers, one shall be a hardwood lumber value-added manufacturer who manufactures flooring products, and five shall be hardwood plywood manufacturers.

(b) The five members designated for hardwood plywood manufacturers shall be appointed as follows:

(1) Three members shall be from the States that are west of the Mississippi River; and

(2) Two members shall be from the States that are east of the Mississippi River.

(c) The one member designated as a hardwood lumber value-added products manufacturer of covered hardwood flooring products shall be appointed from nominees from any State within the United States.

(d) The remaining 22 members designated as hardwood lumber manufacturers, (exclusive of the hardwood flooring manufacturer) shall be apportioned as follows:

(1) Six members from District 1, which consists of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia and the District of Columbia;

(2) Four members from District 2, which consists of the States of Florida, Georgia, North Carolina, South Carolina, Virginia, the Commonwealth of Puerto Rico, and the U.S. territories;

(3) Five members from District 3, which consists of the States of Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas;

(4) Six members from District 4, which consists of the States of Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin; and

(5) One member from District 5, which consists of the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(e) Once every five years, the Board will review data, including assessment records, government, industry statistics, and other reliable data, concerning the manufacturing of covered hardwood lumber. The Board shall:

(1) Review the geographical distribution of the volume of covered hardwood manufactured and sold by hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood manufacturers; and

(2) If warranted, recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographical distribution of the volume of covered hardwood manufactured and sold by hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood manufacturers. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

§ 1211.42 Nominations and appointments.

(a) Initial nominations will be submitted to the Secretary by the Blue Ribbon Committee (BRC). Before considering any nominations, the BRC shall publicize the nomination process, using trade press or other means it deems appropriate, and shall outreach to all manufacturers with annual sales of \$2 million or more of hardwood lumber, hardwood lumber products, and hardwood lumber value-added products and with annual sales of \$10 million or more of hardwood plywood per fiscal year in order to generate nominees that reflect the different operations within the hardwood lumber industry. The BRC may use regional caucuses, mail or other methods to elicit potential nominees. The BRC and

USDA shall work together to publicize the nomination process so that eligible candidates are aware of the opportunity to serve on the Board. The BRC shall submit the nominations to the Secretary and recommend two nominees for each Board position specified. In addition, nominees for the initial Board may be submitted directly to the Secretary if accompanied by the signatures of at least 20 persons who pay assessments or will pay assessments under the Order. From the nominations submitted by the BRC or directly to the Secretary, the Secretary shall select the members of the Board.

(b) Subsequent nominations shall be conducted as follows:

(1) The Board shall outreach to all segments of the hardwood lumber industry. The Board may also solicit nominees using existing regional organizations. Initial and subsequent nominees must have annual sales of \$2 million or more of hardwood lumber, hardwood products, and hardwood value-added products, or have annual sales of \$10 million or more of hardwood plywood per fiscal year;

(2) Manufacturer nominees may provide the Board a short background statement outlining their qualifications to serve on the Board;

(3) Manufacturers who manufacture covered hardwood lumber in more than one district may seek nomination only in the

district in which they manufacture the majority of the volume of their covered hardwood lumber. The names of hardwood manufacturer nominees shall be placed on a ballot by district. The ballots along with the background statements shall be mailed to manufacturers in each respective district for a vote. Manufacturers who manufacture covered hardwood lumber in more than one district may only vote in the district in which they manufacture the majority of the volume of their covered hardwood lumber. The Board must submit nominations to the Secretary at least six months before the new Board term begins. Before considering any nominations, the Board shall publicize the nomination process, using trade press or other means it deems appropriate, and shall outreach to all sizes of manufacturers of covered hardwood in order to generate nominees that reflect the different size of operations within the hardwood lumber industry. The Board may use district caucuses or other methods to elicit potential nominees. The votes shall be tabulated for each district with the nominee receiving the highest number of votes at the top of the list in descending order by vote. The top two candidates for each position shall be submitted to the Secretary.

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

(5) 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.

§ 1211.43 Term of office.

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

(b) For the initial Board, the terms of Board members shall be staggered for two, three, and four years so that the terms of approximately one-third of the Board expire in any given year.

§ 1211.44 Removal and vacancies.

(a) In the event that any member of the Board ceases to own or work for a hardwood lumber or hardwood plywood manufacturer, or ceases to do business in the district he or she represents, such position shall become vacant.

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

(c) If a position becomes vacant, nominations to serve the unexpired term will be handled using the nominations process set forth in this Order. If the unexpired term has less than six months remaining, the Secretary may leave the position vacant.

§ 1211.45 Procedure.

(a) At a Board meeting, a majority of the Board members duly appointed by the Secretary will constitute a quorum. A member attending the meeting by telephone or other electronic means shall be considered present for purposes of quorum.

(b) All votes at meetings of the Board and any committees will be cast in person or by electronic voting, including by telephone. Voting by proxy will not be allowed.

(c) Each member of the Board will be entitled to one vote on any matter put to the Board and the motion will carry if supported by more than 50 percent of the Board members present or participating by electronic means.

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

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

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

(2) A majority of the members vote in favor of the action;
and

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

§ 1211.46 Reimbursement and attendance.

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

§ 1211.47 Powers and duties of the Board.

The Board shall have the following powers and duties:

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

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

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

(d) To create any committees, including an executive committee, or subcommittees, as the Board deems necessary from its membership. Subcommittees may include individuals other than Board members;

(e) To employ or contract 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 such persons or to contract such services from an organization and to enter into contracts or agreements in order to carry out authorized functions;

(f) To provide appropriate notice of meetings to the industry and USDA and keep minutes of such meetings;

(g) To develop and administer programs, plans, and projects and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for promotion, research and information, including consumer and industry information, research and advertising designed to strengthen hardwood lumber industry's position in the marketplace and to maintain, develop, and expand markets for covered hardwood lumber. The payment of costs for such activities shall be with funds collected pursuant to the Order, including funds collected pursuant to section 1211.50(f). Each contract or agreement shall provide that:

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

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

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

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

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

(i) To maintain such records and books 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;

(j) To act as an intermediary between the Secretary and any manufacturer;

(k) To cause its books to be audited by a certified public accountant 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 to the Secretary;

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

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

(n) To receive, investigate, and report to the Secretary complaints of violations of the Order, including investigating complaints of violation, and ensuring consistent, uniform and appropriate application of this Part;

(o) To consider and recommend to the Secretary new products and the application of the assessment to such products.

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

(q) To periodically prepare and make public and to make available to manufacturers reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended;

(r) To invest assessment funds collected but not yet disbursed pursuant to this Part. Investments shall be in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, obligations fully guaranteed as to principal and interest by the United

States or any agency of the United States, or general obligations of any State or any political subdivision of a State.

(s) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood industry's position in the market; maintain and expand existing markets and uses for covered hardwood; and to carry out programs, plans, and projects designed to provide maximum benefits to the hardwood lumber, hardwood lumber products, hardwood lumber value-added products and hardwood plywood industries.

§ 1211.48 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 is 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, other than recommending to the Secretary amendments to this Part; and

(c) No program, plan, or project including advertising shall be false or misleading, or disparaging to another agricultural commodity.

Expenses and Assessments

§ 1211.50 Budget and expenses.

(a) At least 60 days before the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering the Order. Each such budget, which must be approved by the Secretary before it is implemented, shall include:

(1) A statement of objectives and strategy for each program, plan, or project developed and approved by the Board;

(2) A summary of anticipated revenue, with comparative data or at least one preceding 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 year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve.

(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 which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

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

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

(f) The Board may accept voluntary contributions, and is encouraged to seek other appropriate funding sources to carry out activities authorized by the Order. Such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use. The Board may

receive funds from outside sources (i.e., Federal or State grants, Foreign Agricultural Service funds), with approval of the Secretary, for specific authorized projects.

(g) The Board shall reimburse the Secretary for all expenses the Secretary incurs in the implementation, administration, and supervision of this Part, including all costs relating to the conducting of a referendum in connection with this Part.

(h) For fiscal years beginning three years after the establishment of the Board, the Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Board for that fiscal year. Reimbursements to the Secretary required under this section are excluded from this limitation on spending.

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

(j) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may

invest assessments and all other revenues collected under this part in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System;

(4) Obligations fully guaranteed as to principal interest by the United States; or

(5) Other investments as authorized by the Secretary.

§ 1211.51 Financial statements.

(a) Upon the Secretary's request, the Board shall prepare and submit financial statements to the Secretary on a monthly or 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 Secretary within 30 days after the end of the time period to which it applies.

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

Assessments

§ 1211.52 Assessments.

(a) The Board's programs and expenses shall be paid by assessments on manufacturers of covered hardwood, other income of the Board, and other funds available to the Board. This section authorizes hardwood lumber manufacturers to be assessed on hardwood plywood and hardwood lumber, both in its green (rough) form and as it is kiln dried or air dried to create hardwood lumber products and hardwood lumber value-added products.

(b) Subject to the exemption specified in § 1211.53, each manufacturer shall pay the following assessment:

COVERED HARDWOOD	ASSESSMENT RATE	ALLOWABLE DEDUCTIONS 1/
Hardwood lumber	\$1/\$1,000 in sales	N/A
Hardwood lumber products	\$1/\$1,000 in sales	-dollar value of hardwood lumber purchases
Hardwood lumber value-added products	\$0.75/\$1,000 in sales of value-added product plus \$1.00 per \$1,000 in sales of green (G/AD/KD) hardwood lumber	-dollar value of hardwood lumber purchases

Hardwood plywood	\$3/\$1,000 in sales	N/A
------------------	----------------------	-----

1/The deductions are necessary to take into account assessments already paid on green (G/AD/KD) hardwood lumber purchased by the manufacturer to make the product or value-added product.

(1) Hardwood lumber manufacturers that cut raw, green hardwood logs into hardwood lumber or kiln dry or air dry hardwood lumber that can be further processed into products shall pay at the rate of \$1.00 per \$1,000 in sales of green (G/AD/KD) hardwood lumber;

(2) Hardwood lumber manufacturers that manufacture hardwood lumber products shall pay at a rate of \$1.00 per \$1,000 in sales of hardwood lumber products minus the dollar value of green (G/AD/KD) hardwood lumber purchases;

(3) Hardwood lumber value-added product manufacturers shall pay a rate of \$0.75 per \$1,000 in sales of hardwood lumber value-added products, plus \$1.00 per \$1,000 in sales of green (G/AD/KD) hardwood lumber, minus the dollar value of the green (G/AD/KD) hardwood lumber purchases; and

(4) Hardwood plywood manufacturers shall pay at the rate of \$3.00 per \$1,000 in sales of hardwood plywood lumber.

(5) Brokered sales of hardwood lumber or hardwood lumber products are excluded from the calculation of assessments.

(6) Vertically integrated manufacturers that manufacture hardwood lumber, then transfer the lumber from one business unit

to another within the same company to manufacture non-assessed product, shall pay assessments based on the fair market value of the non-assessed product, minus the fair market value of the green (G/AD/KD) hardwood lumber, minus the fair market value of the green (G/AD/KD) hardwood lumber purchases times \$0.001. This formula is necessary to ensure that covered hardwood lumber in a vertically integrated company is appropriately assessed.

(c) Assessments shall be remitted to the Board on a quarterly basis, accompanied by a form that the Board shall develop, no later than thirtieth calendar day of the month following the end of the quarter in which the covered hardwood lumber was marketed. Any information collected pursuant to the collection of assessments, shall be kept confidential as specified in § 1211.72 so that no Board member or person subject to assessment shall have access to such information.

(d) The assessment rate specified in this section may be changed only upon a recommendation by the Board to the Secretary for implementation through rulemaking.

(e) If the assessment is not paid 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 recommended by the Board to the Secretary through rulemaking. Persons failing to remit total assessments

due in a timely manner may also be subject to actions under federal debt collection procedures.

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

(g) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall receive assessments and invest them on behalf of the Board, and shall pay such assessments and any interest earned to the Board when it is established.

(h) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

§ 1211.53 Exemption from assessment.

(a) Small hardwood lumber manufacturers and small hardwood plywood manufacturers shall be exempt from paying assessments as follows:

(1) Hardwood lumber manufacturers, hardwood lumber product manufacturers, and hardwood lumber value-added products manufacturers with sales of any assessed product combined to be less than \$2 million are exempt from paying assessments.

(2) Hardwood plywood manufacturers with annual sales of less than \$10 million are exempt from paying assessments.

(b) Hardwood lumber manufacturers and hardwood plywood manufacturers who meet the exemption threshold shall apply for an exemption, on a form provided by the Board. The certificate of exemption shall remain valid for as long as the annual sales of the respective hardwood lumber manufacturer and hardwood plywood manufacturer remain under the exemption threshold. Upon receipt of an application for exemption, the Board shall determine whether an exemption may be granted. The Board will then issue, if deemed appropriate, a certificate of exemption to each manufacturer who is eligible to receive one. Each person shall retain a copy of the certificate of exemption. The Board may develop additional procedures to administer this exemption as appropriate. Such procedures shall be implemented through rulemaking by the Secretary.

(c) Hardwood lumber manufacturers who did not apply to the Board for an exemption and have annual sales of less than \$2 million or hardwood plywood manufacturers that have annual sales of less than \$10 million during the fiscal year shall receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year. Board staff shall determine the assessments paid and refund the amount due to the manufacturer accordingly.

(d) Hardwood lumber manufacturers who received an exemption certificate from the Board but have annual sales of \$2 million or more or hardwood plywood manufacturers that have annual sales of \$10 million or more during the fiscal year shall pay the Board the applicable assessments owed on the annual sales of the covered hardwood within 30 calendar days after the end of the fiscal year and submit any necessary reports to the Board pursuant to § 1211.70.

(e) Organic. (1) A hardwood lumber or hardwood plywood manufacturer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part provided that:

(i) Only agricultural products certified as "organic" or "100 percent organic" (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified "organic" or "100 percent organic" (as defined in the NOP) products of a manufacturer regardless of whether the agricultural commodity subject to the exemption is manufactured by a person that also manufactures conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The manufacturer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501-6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any manufacturer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible manufacturer shall submit a request to the Board on an Organic Exemption Request Form (Form AMS-15) at any time during the year initially, and annually thereafter on or before the start of the fiscal year, as long as the manufacturer continues to be eligible for the exemption.

(3) A manufacturer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant manufactures organic products eligible to be labeled "organic" or "100 percent organic" under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a manufacturer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the manufacturer within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) The exemption will apply immediately following the issuance of a Certificate of Exemption.

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

Promotion, Research and Information

§ 1211.60 Programs, plans, and projects.

(a) The Board shall develop and submit to the Secretary for approval programs, plans, and projects authorized under this Part. Such programs, plans, or projects shall provide for the establishment, issuance, implementation, and administration of appropriate programs for promotion, research and information with respect to covered hardwood.

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

(c) The Board shall periodically review or evaluate each program, plan, or project implemented under this subpart to ensure that it contributes to an effective program of promotion, research or information. If the Board finds that any such 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.

§ 1211.61 Independent evaluation.

Within four years of the first Board meeting and at least once every five years thereafter, the Board shall authorize and fund an independent evaluation of the effectiveness of the Order and 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 section.

§ 1211.62 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this part 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, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this part, § 1211.83 shall apply to determine disposition of all such property.

Reports, Books and Records

§ 1211.70 Reports.

(a) Each hardwood lumber manufacturer and hardwood lumber plywood manufacturer will be required to provide periodically to the Board staff such information as the Board, with the approval

of the Secretary, may require. Such information may include, but not be limited to:

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

(2) The annual sales of covered hardwood lumber; and

(3) The annual sales of covered hardwood lumber for which assessments were paid.

(b) Such information shall accompany the collected payment of assessments on a quarterly basis specified in § 1211.52.

§ 1211.71 Books and records.

Each manufacturer, including those exempt under § 1211.53, shall maintain any books and records necessary to carry out the provisions of this subpart and regulations issued thereunder, including such records as are necessary to verify any required reports. Such books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. A manufacturer must maintain the books and records for two years beyond the fiscal period to which they apply.

§ 1211.72 Confidentiality of information.

All information obtained from books, records, or reports under the Act, this subpart and the regulations issued thereunder shall be kept confidential by all persons, including

all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or other manufacturers. 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

§ 1211.80 Right of the Secretary.

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

§ 1211.81 Referenda.

(a) Initial referendum. The Order shall not become effective unless the Order is approved by a majority of manufacturers voting in the referendum who also represent a majority of the volume (board foot or equivalent) of covered hardwood lumber represented in the referendum and who, during a representative period determined by the Secretary, were engaged in the manufacturing of covered hardwood lumber.

(b) Subsequent referenda. Five years after the initial meeting of the Board, the Secretary shall hold a referendum to determine whether manufacturers favor the continuation of the Order. Thereafter, the Secretary shall conduct a referendum at least every seven years. The Order shall continue if it is favored by a majority of manufacturers voting in the referendum who also represent a majority of the volume (board foot or equivalent) of covered hardwood lumber represented in the referendum and who, during a representative period determined by the Secretary, were engaged in the manufacturing of covered

hardwood lumber. The Secretary will also conduct a referendum if requested by the Board or if requested by 10 percent or more of all manufacturers eligible to vote in a referendum. In addition, the Secretary may hold a referendum at any time.

§ 1211.82 Suspension and termination.

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

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

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

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

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

§ 1211.83 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. 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 claim existing 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 the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all 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 hardwood lumber and hardwood plywood industry organizations in the interest of continuing hardwood lumber and hardwood plywood promotion, research and information programs.

§ 1211.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination or amendment of this part or any subpart 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 part; or

(b) Release or extinguish any violation of this part; 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.

§ 1211.85 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.

§ 1211.86 Separability.

If any provision of this subpart is declared invalid or the applicability thereof 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.

§ 1211.87 Amendments.

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

§ 1211.88 OMB control number.

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

Dated: June 1, 2015.

Erin Morris,
Associate Administrator.

BILLING CODE 3410-02 P

[FR Doc. 2015-13719 Filed: 6/8/2015 08:45 am; Publication Date:
6/9/2015]