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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1222

[Document Number AMS-FV-14-0082]

Paper and Paper-Based Packaging Promotion, Research and Information Order; Late Payment and Interest Charges on Past Due Assessments

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This rule prescribes late payment and interest charges on past due assessments under the Paper and Paper-Based Packaging Promotion, Research and Information Order (Order). The Order is administered by the Paper and Packaging Board (Board) with oversight by the U.S. Department of Agriculture (USDA). Under the Order, assessments are collected from manufacturers and importers and used for projects to promote paper and paper-based packaging. This rule implements the authority contained in the Order that allows the Board to collect late payment and interest charges on past due assessments. Two additional changes are being made to reflect current practices and update the Order and regulations. This action contributes to effective administration of the program and was unanimously recommended by the Board.

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

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SUPPLEMENTARY INFORMATION: This rule is issued under the Order (7 CFR part 1222). The Order is authorized under the Commodity Promotion, Research and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

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, reducing costs, harmonizing rules and promoting flexibility. This action has been designated as a "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 will not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a 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, the USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This rule prescribes late payment and interest charges on past due assessments under the Order. The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from manufacturers and importers and used for projects to promote paper and paper-based packaging. This rule implements authority contained in the Order and the 1996 Act that allows the Board to collect late payment and interest charges on past due assessments. This action was unanimously recommended by the Board and will contribute to the effective administration of the program.

Section 1222.52(a) of the Order specifies that the Board's programs and expenses shall be paid by assessments on manufacturers and importers and other income or funds available to the Board. Paragraph (g) of that section specifies further

that when a manufacturer or importer fails to pay the assessment within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest. The late payment charge and rate of interest must be prescribed in regulations issued by the Secretary. All late assessments will be subject to the specified late payment charge and interest.

The Order became effective on January 23, 2014. Assessment collection began on March 1, 2014. Manufacturers and importers must pay their assessments owed to the Board by the 30th calendar day of the month following the end of the quarter in which the paper and paper-based packaging was manufactured or imported. For example, assessments for paper manufactured or imported during the months of January, February and March are due to the Board by April 30.

Entities that domestically manufacture or import to the United States less than 100,000 short tons of paper and paper-based packaging in a year are exempt from paying assessments. If an entity is both a manufacturer and an importer, the entity's combined quantity of paper and paper-based packaging manufactured and imported during a marketing year counts toward the 100,000 short ton exemption.

Assessment funds are used for promotion activities that are intended to benefit all industry members. Entities who fail to pay their assessments on time could reap the benefits of Board

programs at the expense of others. In addition, they could utilize funds for their own use that should otherwise be paid to the Board to finance Board programs. Thus, it is important that all assessed entities pay their assessments in a timely manner.

Board Recommendation

At a meeting held September 25, 2014, the Board unanimously recommended implementing the Order authority regarding late payment and interest charges. Specifically, the Board recommended that a late payment charge be imposed on any manufacturer or importer who fails to make timely remittance to the Board of the total assessments for which such manufacturer or importer is liable. The late payment charge will be imposed on any assessments not received within 60 calendar days of the date they are due. This one-time late payment charge will be equal to 10 percent of the assessments due before interest charges have accrued.

The Board also recommended that an interest rate of 1½ percent per month be added to the outstanding balance, including any late payment charge and accrued interest, of any accounts for which payment has not been received within 60 calendar days after the assessments are due. Interest will continue to accrue monthly until the outstanding balance is paid to the Board.

This action is expected to help facilitate program administration by providing an incentive for entities to remit

their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities.

Accordingly, a new Subpart C is added to the Order for provisions implementing the paper and paper-based packaging Order, and a new § 1222.520 is added to Subpart C.

This rule also makes two additional changes to the Order. This rule will revise the term "Board" as defined in § 1222.2 from the Paper and Paper-Based Packaging Board to the Paper and Packaging Board. This change will simplify the term and bring the Order in line with current industry use. Conforming changes will also be made to § 1222.40(a) and the heading immediately prior to this section where the term is also referenced. In addition, in § 1222.108, the OMB control number will be changed from 0581-NEW to 0581-0281, the control number assigned by the OMB.

Final 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 rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small

agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (manufacturers and importers) as those having annual receipts of no more than \$7.0 million.

According to the Board, there are 69 manufacturers in the United States that produce the types of paper and paper-based packaging covered under the Order. Using an average price of \$806 per short ton¹, a manufacturer who produces less than about 8,680 short tons of paper and paper-based packaging per year would be considered a small entity. It is estimated that no more than four manufacturers produced less than 8,680 short tons per year. Thus, the majority of manufacturers would not be considered small businesses.

Based on U.S. Customs and Border Protection (Customs) data, it is estimated that in 2014 there were 2,800 importers of paper and paper-based packaging. Ninety importers, or about 3 percent, imported more than \$7.0 million worth of paper and paper-based packaging. Thus, the majority of importers would be considered small entities. However, all of the 20 entities that imported 100,000 short tons or more (the Order's exemption threshold) also imported more than \$7.0 million worth of paper and paper-based

¹ Industry sources do not publish information on average price for paper and paper-based packaging. A reasonable estimate for average price of paper and paper-based packaging is the value per ton of paper and paper-based packaging exports. According to U.S. Census data, the average value of paper and paper-based packaging exports in 2014 was approximately \$806 per short ton.

packaging. Therefore, none of the 20 importers covered under the Order would be considered small businesses.

Based on domestic production of approximately 66.1 million short tons in 2014 and an average price of \$806 per short ton, the domestic paper and paper-based packaging industry is valued at approximately \$53.3 billion. According to Customs data, the value of paper and paper-based packaging imports in 2014 was about \$5.9 billion.

This rule prescribes late payment and interest charges on past due assessments under the Order. The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from manufacturers and importers and used for projects to promote paper and paper-based packaging. This rule will add a new § 1222.520 that will specify a late payment charge of 10 percent of the assessments due and interest at a rate of 1½ percent per month on the outstanding balance, including any late payment charge and accrued interest. This section will be included in a new Subpart C - Provisions for Implementing the Paper and Paper-Based Packaging Promotion, Research and Information Order. This action was unanimously recommended by the Board and is authorized under § 1222.52(g) of the Order and section 517(e) of the 1996 Act. In addition, two additional changes are being made to reflect current practices and update the Order and regulations. These changes are: (1)

revising the name of the Board from the Paper and Paper-Based Packaging Board to the Paper and Packaging Board; and (2) the OMB control number will be changed from 0581-NEW to 0581-0281, the control number assigned by the OMB.

Regarding the economic impact of this rule on affected entities, this action imposes no costs on manufacturers and importers who pay their assessments on time. It merely provides an incentive for entities to remit their assessments in a timely manner. For all entities who are delinquent in paying assessments, both large and small, the charges will be applied the same. As for the impact on the industry as a whole, this action will help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities.

Additionally, as previously mentioned, the Order provides for an exemption for entities that domestically manufacture or import less than 100,000 short tons annually. It is estimated that 24 out of the 69 domestic manufacturers, or 35 percent, produce less than 100,000 short tons per year and are thus exempt from paying assessments under the Order. Of the 2,800 importers of paper and paper packaging, it is estimated that 2,780, or 99 percent, import less than 100,000 short tons per year and are

also exempt from paying assessments. Thus, about 45 domestic manufacturers and 20 importers pay assessments under the Order.

The alternative to this action would be to maintain the status quo and not impose late payment and interest charges on past due assessments. However, the Board determined that implementing these charges will help facilitate program administration by encouraging entities to pay their assessments in a timely manner. The Board reviewed the late payment and interest charges applied by other research and promotion programs and concluded that a 10 percent late payment charge and interest at a rate of 1½ percent per month on the outstanding balance would be appropriate.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581-0281. This rule will not result in a change to the information collection and recordkeeping requirements previously approved and will impose no additional reporting and recordkeeping burden on manufacturers and importers of paper and paper-based packaging.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not

identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

Regarding outreach efforts, the Board met on September 25, 2014, and unanimously made its recommendation. The Board's meetings, including meetings held via teleconference, are open to the public and interested persons are invited to participate and express their views.

A proposed rule concerning this action was published in the **Federal Register** on August 19, 2015 (80 FR 50225). The proposal was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending October 19, 2015, was provided to allow interested persons to submit comments. One comment was received in favor of implementing the late payment and interest charges.

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

List of Subjects in 7 CFR Part 1222

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

For the reasons set forth in the preamble, 7 CFR part 1222 is amended as follows:

PART 1222—PAPER AND PAPER-BASED PACKAGING PROMOTION, RESEARCH AND INFORMATION ORDER

1. The authority citation for 7 CFR part 1222 continues to read as follows:

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

2. Section 1222.2 is revised to read as follows:

§ 1222.2 Board.

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

3. Revise the undesignated center heading preceding § 1222.40 to read as follows:

PAPER AND PACKAGING BOARD

4. Amend § 1222.40 by revising the first sentence of paragraph (a) to read as follows:

§ 1222.40 Establishment and membership.

(a) Establishment of the Board. There is hereby established a Paper and Packaging Board to administer the terms and provisions of this Order. ***

5. Section 1222.108 is revised to read as follows:

§ 1222.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581-0281 and 0505-0001.

6. Add Subpart C, consisting of §1222.520, to read as follows:

Subpart C - Provisions Implementing the Paper and Paper-Based Packaging Promotion, Research and Information Order

Sec.

1222.520 Late payment and interest charges for past due assessments.

§ 1222.520 Late payment and interest charges for past due assessments.

(a) A late payment charge shall be imposed on any manufacturer or importer who fails to make timely remittance to the Board of the total assessments for which such manufacturer or importer is liable. The late payment shall be imposed on any

assessments not received within 60 calendar days of the date they are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued.

(b) In addition to the late payment charge, 1½ percent per month interest on the outstanding balance, including any late payment charge and accrued interest, will be added to any accounts for which payment has not been received by the Board within 60 calendar days after the assessments are due. Such interest will continue to accrue monthly until the outstanding balance is paid to the Board.

Dated: December 21, 2015

Rex A. Barnes
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Agricultural Marketing Service

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