



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1222**

[Document Number AMS-SC-18-0072]

**Paper and Paper-Based Packaging Promotion, Research and Information Order; Change in Membership and Nominations**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposal invites comments on changing the membership and nomination procedures of the Paper and Packaging Board (Board). The Paper and Paper-Based Packaging Promotion, Research and Information Order (Order) is administered by the Board with oversight by the U.S. Department of Agriculture (USDA). This proposal would also make administrative changes to other provisions of the Order.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments may be submitted on the internet at: <http://www.regulations.gov> or to the Promotion and Economics Division, Specialty Crops 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>.

**FOR FURTHER INFORMATION CONTACT:** Marlene Betts, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; telephone: (202) 720-5057; facsimile: (202) 205-2800; or electronic mail: Marlene.Betts@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This proposal affecting 7 CFR part 1222 (the Paper and Paper-Based Packaging Promotion, Research and Information Order (Order)) is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

**Executive Orders 12866, 13563, and 13771**

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

falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

**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**

This proposal invites comments on reducing the size of the Board from 12 members to 8 members, reducing the number of regions for manufacturer representation on the Board from four (South, Northeast, Midwest, and West) to two (South and Other parts of the United States), eliminating the at-large seat, and

changing the nomination process 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 the use of paper and paper-based packaging.

### **Board Membership and Regional Representation**

Currently, the 1996 Act and § 1222.40(c) require the Board to review its membership and size of the Board to reflect changes in its geographical distribution and quantity of paper and paper-based packaging manufactured in the U.S. and the quantity of paper and paper-based packaging imported into the U.S. This is the first review of the Board's membership and size since the Board's implementation in 2014. The Board reviewed data to determine if the geographical distribution of paper and paper-based packaging manufactured in the U.S. and the quantity imported into the U.S. and Board membership needed to be changed. The proposed action was unanimously recommended by the Board in June 2018 and would contribute to the effective administration of the program.

Section 1222.40 provides that the Board should consist of 12 members - 11 manufacturers and 1 importer. Section 1222.40 also requires that the Board be comprised of manufacturers and importers of paper and paper-based packaging that manufacture or import 100,000 short tons or more of paper and paper-based

packaging during the year. Of the 11 manufacturers, 10 shall be from the following four regions: South - 6 members; Northeast - 1 member; Midwest - 2 members; and West - 1. One manufacturer at-large member may be from any region and shall manufacture at least 100,000 short tons but no more than 250,000 short tons of paper and paper-based packaging. If there are no eligible nominees, the seat shall be allocated to the largest producing region.

In 2017, approximately 61.3 million short tons of U.S. paper and paper-based packaging was produced and covered under the program. Of the 61.3 million short tons, it is estimated that 64 percent was manufactured in the South, 17 percent was manufactured in the Midwest, 9 percent was manufactured in the Northeast, and 10 percent was manufactured in the West. While the U.S. production of paper and paper-based packaging has dropped from 66.1 million short tons in 2014 to 61.3 million short tons in 2017, the number of domestic companies that pay assessments into the program has decreased from 53 to 39, which equals a 26 percent decrease in three years. Due to the consolidation in the industry, the Board believes that the proposed changes to the Board size and its regions would better reflect the distribution of the manufacturing of paper and paper-based packaging and the imports of paper and paper-based packaging.

With the proposed amendment, the total number of Board members would decrease from the current 12 members to 8 members. The proposed 8-member Board would be comprised of 7 manufacturers and 1 importer. Of the 7 manufacturers, 4 members would be from the South, and 3 members would be from all other parts of the U.S. According to the Board, this proposed action should make the reduced number of seats easier to fill and reflect the current distribution of the industry.

The Board has recommended a transitional approach to reduce the Board from 12 members to 8 members over a three-year period. The 2019 Board currently has 12 members. The 2020 Board would have 10 members consisting of 5 members representing the South, 4 members representing the other parts of the U.S., and 1 importer. This would require the Board to fill two seats in the South region whose terms will expire December 31, 2019. The 2021 Board would have 8 members consisting of 4 members representing the South, 3 members from other parts of the U.S., and 1 importer. This would require the Board to fill two seats - an importer seat and one seat representing other parts of the U.S. whose terms would expire on December 31, 2020. These changes are authorized under § 1222.40(c). Lastly, the Board recommended one seat from the South whose term will expire on December 31, 2021, be for a two-year term rather than a three-year term. Section 515 of the 1996 Act (7 U.S.C. 7414) and §

1222.42 state that members shall serve for a term of three-years, except for the initial appointments. Therefore, a term shorter than three-years is not being implemented as recommended.

### **Nomination Process**

Sections 1222.41 and 1222.46 provide authority for the Board to recommend amendments to the Order. Nominations to the Board are currently made by an election process. This process is conducted by the Board, which notifies all known manufacturers and importers of 100,000 short tons or more of paper and paper-based packaging annually of the open Board seats. Manufacturers and importers may nominate eligible persons from their own company or any other eligible company for a seat on the Board. Once the Board receives the nominees, the Board conducts an election by mail ballot in each region where there is a vacancy. The votes are tabulated by region, with nominees receiving the highest number of votes placed at the top of the list, in descending order. Due to consolidation of companies from 53 to 39, the pool of eligible manufacturers to fill board seats has decreased, therefore the number of eligible nominees has decreased too. The Board recommended a new nomination process to help alleviate this situation.

The Board would conduct outreach and issue a call for nominations for all open seats to all known manufacturers and

importers of 100,000 short tons or more of paper and paper-based packaging. The Board would evaluate all the nominees and recommend at least two names for each open seat as their first and second choice to be placed on the nomination slate. Other qualified persons interested in serving in the open seats, but not recommended by the Board will be submitted and designated as additional nominees for consideration by the Secretary.

In addition, this proposal would change the OMB control number in §§ 1222.88 and 1222.108 from 0581-0281 to 0581-0093, the control number assigned by OMB. This change would reflect the accurate OMB control number.

#### **Initial Regulatory Flexibility Act Analysis**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on 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 (SBA) 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 (first handlers and importers) as those having annual receipts of no more than \$7.5 million.

According to the Board, there are 39 manufacturers in the United States that produce the types of paper and paper-based packaging covered under the Order. Using an average price of \$784 per short ton<sup>1</sup>, a manufacturer who produces less than about 9,560 short tons of paper and paper-based packaging per year would be considered a small entity. It is estimated that no more than three manufacturers produced less than 9,560 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 2017 there were approximately 1700 importers of paper and paper-based packaging. Fifty importers, or about 3 percent, imported more than \$7.5 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 \$7.5 million worth of paper and paper-based packaging. Therefore, none of the 20 importers covered under the Order would be considered small businesses.

Based on domestic production of approximately 61.3 million short tons in 2017 and an average price of \$784 per short ton,

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<sup>1</sup> Industry sources do not publish information on average price for paper and paper-based packaging. A reasonable estimate for average price of paper and paper-based packaging is the value per ton of paper and paper-based packaging exports. According to U.S. Census data, the average value of paper and paper-based packaging exports in 2017 was approximately \$784 per short ton.

the domestic paper and paper-based packaging industry is valued at approximately \$48.1 billion. According to Customs data, the value of paper and paper-based packaging imports in 2017 was about \$5.9 billion.

The proposed amendments would reduce the size of the Board from 12 members to 8, reduce the number of regions for manufacturers from four (South, Northeast, Midwest, and West) to two (South, and other parts of the United States), eliminate the at-large member, and change the nomination process as specified in §§ 1222.40 and 1222.41. The proposed amendments are administrative in nature; therefore, there should be no economic impact on manufacturers and importers.

Currently, the Order requires 12 Board members, 11 domestic manufacturers and one importer. Of the 11 domestic manufacturers, 6 represent the South, 2 represent the Midwest, 1 represents the Northeast, 1 represents the West, and 1 at-large member represents any region and must manufacture at least 100,000 short tons, but not more than 250,000 short tons. Due to mergers and closings, the number of eligible companies (manufacturers and importers of 100,000 tons or more of paper and paper-based packaging annually) has decreased from 53 to 39 eligible manufacturers since the inception of the Order in 2014. With an overall pool of 39 eligible U.S. manufacturers, an 8-

member Board can effectively represent the interest of the paper and paper-based packaging industry.

The proposed 8-member Board would be comprised of 7 manufacturers and 1 importer. Of the 7 manufacturers, 4 members would be from the South, and 3 members would be from all other parts of the U.S. According to the Board, this proposed action would make the reduced number of seats easier to fill and reflect the current distribution of the industry.

This proposed rule is also recommending a change to the current nomination procedures. The Board unanimously recommended eliminating the election process and proposed a new nomination process, whereby all the submitted names of the eligible candidates would be submitted to the Secretary with recommendations by the Board. This action would allow the Board the flexibility to provide a slate that would reflect the diverse membership of the paper and paper-based packaging industry in terms of various segments of the industry.

The new nomination process would allow the Board to conduct outreach to all known manufacturers and importers of 100,000 short tons or more of paper and paper-based packaging, whereby the Board would evaluate all the nominees and recommend at least two names for each open seat. Other qualified persons interested in serving in the open seats, but not recommended by

the Board will be submitted and designated as additional nominees for consideration by the Secretary.

The proposed changes to the size of the Board, number of regions, and nomination process is administrative in nature and would have no economic impact on entities covered under the program. These changes would help increase the pool of candidates as companies operate in multiple regions and seek nomination for a region of their choice. Eligible manufacturers and importers interested in serving on the Board would have to complete a background questionnaire. Those requirements are addressed later in this proposal in the section titled **Reporting and Recordkeeping Requirements**.

Alternatives to the proposal that were considered by the Board included recommending no changes and considering a variety of mechanisms for nominating candidates. The Board explored whether other industry organizations should be tasked with nominating candidates but determined that it would unnecessarily complicate the nominations process. However, due to mergers and closings, the number of eligible companies has decreased making it more difficult to fill Board seats. Therefore, the Board concluded that reducing the Board size, reducing the number of regions, eliminating the at-large member, and revising the nomination process would provide a Board that would better reflect the industry.

Lastly, this rule proposes changes to §§ 1222.80 and 1222.108 to correct the OMB control numbers that are assigned to the Paper and Packaging Board by OMB.

***Reporting and Recordkeeping Requirements***

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are imposed by the part have been previously approved by OMB under OMB control number 0581-0093. This proposed rule would not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting requirements or recordkeeping burden on manufacturers or 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. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

The Board met on June 28, 2018, and unanimously recommended reducing the size of the Board, reducing the number of regions and eliminating the election process for nominations and proposing a new nominations process. The Board meetings are open to the public and interested persons are invited to participate and express their views.

AMS has performed this initial RFA regarding the impact of this proposed action on small entities and invites comments concerning potential effects of this action.

USDA has determined that this proposed rule 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. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

**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 proposed to be 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. Revise § 1222.40(b) to read as follows:

**§ 1222.40 Establishment and membership.**

\* \* \* \* \*

(b) *Composition of Board.* The 2020 Board shall be composed of 10 members. The 2021 Board and each subsequent Board shall be composed of 8 members. The Boards shall be established as follows:

(1) Manufacturers. For the 2020 Board, 9 members shall be manufacturers and for the 2021 Board and each subsequent Board, 7 members shall be manufacturers, from the following two regions:

(i) Five members shall be from the South for the 2020 Board and four members shall be from the South for the 2021 Board and each subsequent Board. The South shall consist of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia; and

(ii) Four members shall be from all other parts of the United States for the 2020 Board and three members shall be from all other parts of the United States for the 2021 Board and each subsequent Board. All other parts of the United States consist of those states not listed in paragraph (b)(1)(i) of this section.

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

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3. Revise § 1222.41(c) to read as follows:

**§ 1222.41 Nominations and appointments.**

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(c) Subsequent nominations shall be conducted as follows:

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

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

(3) Nominees may seek nomination to the Board for all vacant seats for which the nominees are qualified;

(4) For domestic seats allocated by region, domestic manufacturers must manufacture paper and paper-based packaging in the region for which they seek nomination. Nominees that manufacture in both regions may seek nomination in one region of their choice. The Board will issue the call for nominations to all known manufacturers and recommend nominees for each open seat and the additional nominees to the Secretary;

(5) Nominees that are both a manufacturer and an importer may seek nomination to the board as either a manufacturer or importer so long as they meet the qualifications. The Board will issue the call for nominations to all known importers and

recommend nominees for each open seat and the additional nominees to the Secretary;

(6) The Board will evaluate all the nominees and recommend at least two names for each open seat. Other qualified persons interested in serving in the open seats, but not recommended by the Board, will be designated by the Board as additional nominees for consideration by the Secretary;

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

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

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

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

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

4. Section 1222.88 is revised to read as follows:

**§ 1222.88 OMB control number.**

The control numbers assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, are OMB control number 0505-0001 (Board nominee background statement) and OMB control number 0581-0093.

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. is OMB control number 0581-0093.

Dated: April 7, 2019.

Bruce Summers,  
Administrator.

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