



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Document Number AMS-SC-19-0015]

Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order; Change in Membership, Nominations, Procedures, and Continuance Referenda Period

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This rule changes the membership, nominations, procedures, and continuance referenda period for the Softwood Lumber Board (Board) established under the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order). The Board administers the Order with oversight by the U.S. Department of Agriculture (USDA). This action will also make administrative changes to other provisions of the Order.

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

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SUPPLEMENTARY INFORMATION: This rule affecting 7 CFR part 1217 (the Softwood Lumber Research, Promotion, Consumer Education and Industry Information (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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (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.

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

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 rule changes the Board's membership, nominations, procedures, and continuance referenda period under the Order. The Board administers the Order with oversight by USDA. Under the Order, assessments are collected from manufacturers and importers and used for projects to promote softwood lumber within the United States. This rule reduces the number of Board members from 19 to 14, revises the nomination procedures, and

revises the quorum and voting procedures. This rule also revises the time frame for periodic continuance referenda from five to seven years. Finally, this rule makes clarifying and conforming changes to other provisions of the Order. All of these changes will help facilitate program operations and were recommended to the Secretary by the Board at its November 28, 2018 meeting.

Board Membership and Geographical Distribution

Pursuant to § 1217.40(b), the Board is composed of 18 or 19 members, depending upon whether an additional importer member is appointed to the Board. Seats on the Board are apportioned based on the volume of softwood lumber manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. Seats are also apportioned based on size of operation within each geographic region as specified herein. Large manufacturers are those who account for the top two-thirds of the total annual volume of assessable softwood lumber and small manufacturers are those who account for the remaining one-third of the total annual volume of assessable softwood lumber, based on a three-year average.

Table 1 shows the current structure of the Board. Of the 19 total Board seats, 12 are held by domestic manufacturers and

seven are held by importers, six of whom are Canadian. Of the 12 domestic manufacturers, six represent the U.S. South (two large and four small), five represent the U.S. West (four large and one small), and one represents the Northeast and Lake States. Of the six Canadian importers, four represent Canada West (three large and one small) and two represent Canada East (one large and one small). An additional importer member may be appointed to represent all other importing countries other than Canada.

Table 1. Current Board structure						
	Domestic manufacturers					Total Board seats
Region	U.S. South		U.S. West		U.S. NE & Lake	
Size	Large	Small	Large	Small	Any size	
Seats	2	4	4	1	1	
Region Totals	6		5		1	
Grand Total	12					
	Importers					
Region	Canada West		Canada East		Other importers	
Size	Large	Small	Large	Small	Any size	
Seats	3	1	1	1	1	
Region Totals	4		2		1	
Grand Total	7					19

Section 1217.40(c)(1) requires that, in each five-year period, the Board review, based on a three-year average, the geographical distribution of the volume of softwood lumber manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into

the United States. Section 1217.40(c)(2) requires that the Board also review, based on a three-year average, the distribution of the size of operations within each region. Section 1217.40(c)(3) specifies that, if warranted, the Board may recommend to the Secretary the reapportionment of its membership to reflect changes in the geographical distribution of the volume of softwood lumber manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. The number of Board members may also be changed. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

Pursuant to § 1217.40, the Board evaluated the geographic distribution of softwood lumber by region, based on a three-year average (2015-2017). The Board utilized data from Forest Economic Advisors¹ to evaluate the regional distribution of assessable softwood lumber. The results of this evaluation are shown in Table 2. Based on a three-year average (2015-2017), the volume of assessed softwood lumber was largest in the U.S. South and U.S. West regions, at 36 percent and 30 percent, respectively, of the total assessed volume over all regions.

¹ Forest Economic Advisors, LLC. FEA is an owner-operated company comprised of experienced and informed analysts covering the forest products industry. FEA applies rigorous economic analysis and delivers actionable information through their third-party forecasts and monthly advisors.

Canada West followed with 20 percent of the total assessed volume. In these three regions, assessed volume by large entities made up the majority of assessed regional volume. In all other regions, assessed volume by small entities was either equal to or greater than the assessed volume by large entities.

Table 2. Three-year average of assessed softwood lumber volume by regions (2015-2017)											
Domestic manufacturers										Total assessed volume (bbf)	
Region	U.S. South			U.S. West			U.S. NE & Lake				
Size	Large	Small	Total	Large	Small	Total	Large	Small	Total		
Assessed volume (bbf)	9.42	4.49	13.91	7.69	4.06	11.75	0.32	0.55	0.87		
Portion of Total	68%	32%	36%	65%	35%	30%	37%	63%	2%		
Importers											
Region	Canada West			Canada East			Outside Canada				
Size	Large	Small	Total	Large	Small	Total	Large	Small	Total		
Assessed volume (bbf)	6.14	1.76	7.90	2.01	2.00	4.01	0	0.34	0.34		38.78
Portion of Total	78%	22%	20%	50%	50%	10%	0%	100%	1%		100%

Sources: Softwood Lumber Board; Forest Economic Advisors.

From this evaluation, the Board recommended revising the Board membership from 19 current seats to 14 seats for the 2021 term of office, of which six members must represent large manufacturers or importers, four must represent small manufacturers or importers, and four may represent any size manufacturers or importers. Of the four representing any size manufacturer or importer, at least two of these members must represent small manufacturers or importers. The Board recommended adding more flexibility to the Order in terms of certain seats being open to representatives of any size

manufacturer or importer. This will allow the Board to better adjust in the future to shifts in the size of operations within a region.

The Board also took into consideration the consolidation in the softwood lumber industry since the inception of the Order. The Board has indicated that the number of companies eligible to be represented on the Board has declined. According to the Board, there were about 290 entities eligible to be represented on the Board in 2013, and about 210 entities in 2018. The Board has faced challenges securing enough nominees for membership on the Board. This compelled the Board to consider a reduction in Board membership.

The Board seats are revised as follows: Ten domestic manufacturers seats, of which five members must be from the U.S. South Region (two large, two small, and one manufacturer of any size), four members must be from the U.S. West Region (two large, one small, and one manufacturer of any size), and one member from the Northeast and Lake States Region. Importers will have four seats on the Board (two large, one small, and one importer of any size) with a minimum of two from Canada West Region, a minimum of one from Canada East Region and the remaining member may be from Canada West, Canada East or offshore Regions. Table 3 illustrates this categorization of

seats in the revised Board structure.

Table 3. Proposed Board structure								
Domestic manufacturers							Total Board seats	
Region	U.S. South			U.S. West				U.S. NE & Lake
Size	Large	Small	Any size	Large	Small	Any size		Any size
Seats	2	2	1	2	1	1		1
Region Totals	5			4				1
Grand Total	10							
Importers								
	Region			Size				
	Canada West	Canada East	Any region	Large	Small	Any size		
Seats	2	1	1	2	1	1		
Grand Total	4							14

As the Board conducted the evaluation pursuant to § 1217.40, it also made a recommendation to align § 1217.40(a) and (c) (1) and (3) with section 515(b) (3) of the 1996 Act. (7 U.S.C. 7414(b) (3)). Section 1217.40(a) clarifies that the Board shall be apportioned based on the volume of softwood lumber *production* that is manufactured and shipped within the United States by domestic manufacturers. Section 1217.40(c) (1) and (3), respectively, specify that the Board shall review, based on a three-year average, the geographical distribution of the volume of softwood lumber *produced* and shipped within the United States by domestic manufacturers, and that the Board shall make recommendations to revise its structure based on this review.

Additionally, the Board recommended that U.S. Board members reside in the region they represent. This will ensure that entities from outside the U.S. that own softwood lumber entities within the U.S. could represent a U.S. region on the Board only if the individual seeking nomination resides in the respective

region. The Board will review the USDA Advisory Committee on Research and Promotion Background Information Form AD-755 to determine in which Region each nominee resides.

According to the Board, this action should make the reduced number of seats easier to fill and reflect the current distribution of the industry.

The Board recommended a transitional approach to reduce the Board from 19 members to 14 members over a three-year period. The 2019 Board currently has 19 members. The 2020 Board will have 16 members consisting of five domestic manufacturer members representing the U.S. South Region (two large and three small), five representing the U.S. West Region (four large and one small) and one representing the Northeast and Lake States. Of the five Canadian importers (three large and two small), there will be three from the Canada West Region and two from the Canada East Region. The non-Canadian importer seat will not be filled in 2020 (when the current member reaches tenure).

The 2021 Board will have 14 members consisting of five domestic manufacturer members representing the U.S. South Region (two large, two small and one manufacturer of any size), four members representing the U.S. West Region (two large, one small and one manufacturer of any size) and one representing the Northeast and Lake States. Of the four Canadian importers (two

large, one small and one importer of any size), there will be two from the Canada West Region and one from the Canada East Region. The remaining member may be from Canada West, Canada East or offshore Regions.

Nomination Procedures

Section 1217.41 establishes the procedures for the conduct of nominations to obtain Board nominees for appointment by the Secretary. The Board recommended to remove the procedures in § 1217.41(a) regarding the initial nominations to select the nominees for the initial Board in 2011. Section 1217.41(b) establishes an election process for nominations. In order to secure more nominees for Board seats, the Board recommended removing the election process from its nomination procedures.

The nomination procedure provides that the Board conduct outreach and solicit nominees who are interested in serving on the Board. A nominee could seek nomination to the Board for all seats for which he or she is qualified. The Board will evaluate all nominees and submit one recommended candidate for each open seat and one additional nominee for each open seat to the Secretary for consideration. Other qualified persons interested in serving in the open seats but not recommended by the Board will be designated as other nominees for consideration by the

Secretary. From the nominations made, the Secretary would appoint members of the Board.

Finally, the Board recommended a clarification to § 1217.41(b) (7) that specifies no two members shall be employed by a single corporation, company, partnership, or any other legal entity, includes subsidiaries and affiliates thereof. Section 1217.41 will be revised accordingly.

Quorum and Voting Procedures

Section 1217.44 specifies the quorum and voting procedures for the Board based on the current 19 Board members. The Board's recommendation is to revise these provisions from specific number requirements needed for a quorum and for votes to a general term "majority" that could apply to any size Board. Thus, the Board recommended these conforming changes to complement the reduction in Board membership. Section 1217.44 will be revised accordingly.

Continuance Referenda Period

Section 1217.81(b) specifies that the Secretary conduct a referendum of the industry for the purpose of ascertaining whether manufacturers for the U.S. market favor the continuation of the Order. The first continuance referendum was held in 2018, and 78 percent of the voters representing 94 percent of the volume voted supported continuance of the Order. The Board

recommended that the period between referenda be extended from five to seven years for the purpose of efficiency. The Board would incur costs associated with referenda once every seven years rather than every five years. The Order would still permit referenda to be held at the request of the Board; at the request of 10 percent or more of the number of persons eligible to vote in a referendum; and at any time as determined by the Secretary, pursuant to § 1217.81(b) (3), (4) and (5), respectively. Section 1217.81(b) will be revised accordingly.

This rule also makes minor changes to §§ 1217.52(h) and 1217.101(1), by updating the Harmonized Tariff Schedule (HTS) number codes. The HTS number codes are periodically updated by the United States Internal Trade Commission. Finally, this rule changes the OMB control number assigned to the previously approved information collection referenced in §§ 1217.88 and 1217.108 from 0581-0264 to 0581-0093, the correct control number assigned by 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 (SBA) defines, in 13 CFR part 121, small agricultural service firms (domestic manufacturers and importers) as those having annual receipts of no more than \$7.5 million.² The Random Lengths yearly average framing lumber composite price was \$460 per thousand board feet in 2018.³ Dividing the \$7.5 million threshold that defines an agricultural service firm as small by this price results in a maximum threshold of 16.3 million board feet (mmbf) of softwood lumber per year that a domestic manufacturer or importer may ship to be considered a small entity for purposes of the RFA. Table 4 shows the number of entities and the amount of volume they represent that may be categorized as small or large based on the SBA definition.

	Domestic manufacturers		Importers		Totals	
	Entities	Volume (MMBF)	Entities	Volume (MMBF)	Entities	Volume (MMBF)
Small	178	1,156	753	919	931	2,074
Large	334	33,642	118	39,572	452	73,214
Total	512	34,798	871	40,491	1,383	75,288

Sources: Forest Economic Advisors; Customs and Border Protection.

² SBA does have a small business size standard for “Sawmills” of 500 employees (see https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf). Based on USDA’s understanding of the lumber industry, using this criterion would be impractical as sawmills often use contractors rather than employees to operate and, therefore, many mills would fall under this criterion while being, in reality, a large business. Therefore, USDA used agricultural service firm as a more appropriate criterion for this analysis.

³ Random Lengths Publications, Inc.; www.randomlengths.com.

As shown in Table 4, there were a total of 1,383 domestic manufacturers and importers of softwood lumber based on 2018 data. Of these, 931 entities, or 67 percent, shipped or imported less than 16.3 mmbf and would be small entities under the SBA definition. These 931 entities domestically manufactured or imported 2.07 billion board feet (bbf) in 2018, less than 3 percent of total volume. The reduction in Board seats and other administrative changes will not disproportionately burden small domestic manufacturers and importers of softwood lumber.

This rule revises the Board's membership, nominations, procedure, and continuance referenda period provisions under the Order. Section 1217.40 is revised to reduce the number of Board members from 19 to 14 and reflects the diversity of the industry in terms of geographical distribution and size of operation. An additional change to this section requires that U.S. Board members reside in the region they represent. Section 1217.41 is revised by eliminating the election process in the nomination procedures. In § 1217.44 the quorum and voting procedures for the Board are revised to complement the reduction in Board membership. Section 1217.81 is revised to instruct that subsequent continuance referenda to be conducted every seven years rather than five. These changes were recommended by the

Board and are authorized under §§ 1217.40(c)(3), 1217.41(b)(8), 1217.46(b), and 1217.87 of the Order and section 515(b)(3) of the 1996 Act.

Regarding the economic impact of this rule on affected entities, these changes are administrative in nature and would have no economic impact on entities covered under the program. These changes will help in securing nominees to fill seats on the Board, address the concerns of the softwood lumber industry not securing enough nominees to be submitted to the Secretary for selection, make conforming changes necessary to complement the reduction in Board membership, and improve efficiency regarding continuance referenda.

The Board's Industry Relations and Governance Committee (Committee) reviewed various alternatives to the Board's current 19-member make-up. The Committee considered a 12 and 13-member Board. The committee also considered maintaining the status quo at 19 members. Regarding the referenda period, one option the Board considered was to maintain the status quo. However, the Board recommended changing the period from five to seven years to improve the operating efficiency of the Board.

Reporting and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection and

recordkeeping requirements have been approved previously under OMB control number 0581-0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved and does not impose additional reporting requirements or recordkeeping burden on domestic manufacturers and importers of softwood lumber.

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.

Regarding outreach efforts, the actions were discussed by the Board's Industry Relations and Governance Committee at meetings on May 30, 2018, August 15, 2018, and October 26, 2018. The full Board discussed outreach efforts at meetings on May 31, 2018, August 15, 2018. The Board then made its recommendation to the Secretary on November 28, 2018. All of 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 June 26, 2019 (84 FR 30040). A 30-day

comment period ending July 26, 2019, was provided to allow interested persons to submit comments.

Analysis of Comments

Fifteen comments were received in response to the proposed rule. Thirteen comments supported all the Board recommended changes. Two comments were considered outside the scope of this action. In summary, most commenters agreed that reducing the size of the Board is appropriate due to industry consolidation, resulting in fewer individuals eligible to serve. One commenter noted that the reduced size would allow the Board to administer the program more efficiently and would help streamline business operations. In addition, one commenter supported the proposed approach to the geographic distribution, stating that it allows for fair and appropriate representation of all segments of the industry. Thirteen commenters supported the proposed change to the nomination procedures noting that allowing the Board to conduct outreach and recommend nominees to the Secretary is a more acceptable process for the industry. Lastly, the commenters agreed that extending the period between conducting continuance referenda from five to seven years was in the best interest of the program. It not only reduces the cost to the industry and provides a more efficient process, but it allows

the Board to focus on its program areas of research and promotion of softwood lumber.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board, the comments received, 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 1217

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Softwood Lumber promotion.

For the reasons set forth in the preamble, 7 CFR part 1217 is amended as follows:

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

1. The authority citation for 7 CFR part 1217 continues to read as follows:

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

2. Revise § 1217.40 to read as follows:

§ 1217.40 Establishment and membership.

(a) *Establishment of the Board.* There is hereby established a Softwood Lumber Board to administer the terms and

provisions of the Order and promote the use of softwood lumber. The Board shall be composed of manufacturers for the U.S. market who manufacture and domestically ship or import 15 million board feet or more of softwood lumber in the United States during a fiscal period. Seats on the Board shall be apportioned based on the volume of softwood lumber production that is manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. Seats on the Board shall also be apportioned based on size of operation within each geographic region, as specified in paragraphs (b)(1)(i) and (ii) and (b)(2) and (3) of this section. For purposes of this section, "large" means manufacturers for the U.S. market who account for the top two-thirds of the total annual volume of assessable softwood lumber and "small" means those who account for the remaining one-third of the total annual volume of assessable softwood lumber. If there are no eligible nominees for a large or small seat within a region, that seat may be filled by a nominee representing an eligible manufacturer for the U.S. market of any size. Should the size of a manufacturer for the U.S. market change during a member's term of office, that member may serve for the remainder of the term.

(b) *Composition of the Board.* The 2020 Board shall be composed of 16 members. The 2021 Board and each subsequent Board shall be composed of 14 members. The Board shall be established as follows:

(1) *Domestic manufacturers.* For the 2020 Board, 11 members shall represent domestic manufacturers and for the 2021 Board and each subsequent Board, ten members shall represent domestic manufacturers who reside in the following three regions:

(i) Five members shall reside in the U.S. South Region, which consists of the states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. For the 2020 Board, of these five members, two must represent large and three must represent small domestic manufacturers. For the 2021 Board and each subsequent Board of these five members, two must represent large, two must represent small, and one may represent domestic manufacturers of any size;

(ii) Five members shall reside in the U.S. West Region for the 2020 Board, and for the 2021 Board and each subsequent Board, four members shall reside in the U.S. West Region, which consists of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. For the

2020 Board, of these five members, four must represent large and one must represent small domestic manufacturers. For the 2021 Board and each subsequent Board, of the four members, two must represent large, one must represent small, and one may represent domestic manufacturers of any size; and

(iii) One member shall reside in the Northeast and Lake States Region, which consists of the states of Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Wisconsin and all other parts of the United States not listed in paragraph (b) (1) (i), (ii), or (iii) of this section. This member may represent domestic manufacturers of any size.

(iv) For the 2021 Board, four members may represent a manufacturer for the U.S. market of any size.

(2) *Importers for the 2020 Board.* Five members shall be importers from the following two regions:

(i) Three members must import softwood lumber from the Canadian West Region, which consists of the provinces of British Columbia and Alberta. Of these three members, two must represent large and one must represent small importers; and

(ii) Two members must import softwood lumber from the Canadian East Region, which consists of the Canadian territories and all other Canadian provinces not listed in paragraph (b)(2)(i) of this section that import softwood lumber into the United States. Of these two members, one must represent large and one must represent small importers.

(3) *Importers for the 2021 Board and each subsequent Board.* Four members shall represent importers. Of these four members, two must represent large, one must represent small, and one may represent importers of any size. At least three of these members must import softwood lumber from the following regions:

(i) Two members must import softwood lumber from the Canadian West Region, as defined in paragraph (b)(2)(i) of this section; and

(ii) One member must import softwood lumber from the Canadian East Region, as defined in paragraph (b)(2)(ii) of this section.

(c) *Periodic review.* In each five-year period, but not more frequently than once in each three-year period, the Board shall:

(1) Review, based on a three-year average, the geographical distribution of the volume of softwood lumber production that is manufactured and shipped within the United States by domestic

manufacturers and the volume of softwood lumber imported into the United States; and

(2) Review, based on a three-year average, the distribution of the size of operations within each region; and

(3) If warranted, recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographical distribution of the volume of softwood lumber production that is manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. The distribution of volumes between regions and the distribution of the size of operations within regions shall also be considered. The number of Board members may also be changed. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

3. Revise § 1217.41 to read as follows:

§1217.41 Nominations and appointments.

Nominations shall be conducted as follows:

(a) The Board shall conduct outreach to all segments of the softwood lumber industry. Softwood lumber domestic manufacturers and importers may submit nominations to the Board. Nominees must domestically manufacture and/or import 15 million board feet or more of softwood lumber per fiscal year;

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

(c) Nominees may seek nomination to the Board for all open or vacant seats for which the nominees are eligible;

(d) The Board will evaluate all eligible nominees and submit the name of one nominee for each open seat and the name of one additional nominee for each open seat to the Secretary. 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;

(e) 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;

(f) No two members shall be employed by a single corporation, company, partnership, or any other legal entity. This includes subsidiaries and affiliates thereof; and

(g) 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.

4. Revise §1217.44 to read as follows:

§1217.44 Procedure.

(a) A majority of Board members (exclusive of vacant seats) will constitute a quorum so long as at least two of the members present are importer members and five of the members present are domestic manufacturers. If participation by telephone or other means is permitted, members participating by such means shall count as present in determining quorum or other voting requirements set forth in this section.

(b) All votes at meetings of the Board, executive committee, and other committees will be cast in person or by electronic voting or other means as the Board and Secretary deem appropriate to allow members participating by telephone or other electronic means to cast votes. 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 a majority of Board members (exclusive of vacant seats), except for recommendations to change the assessment rate or to adopt a budget, both of which require affirmation by at least a majority of Board members plus two (exclusive of vacant seats).

(d) The Board must give members and the Secretary timely notice of all Board, executive committee, and other 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 Board members (exclusive of vacant seats) vote in favor of the action (unless a vote of a majority of Board members plus two (exclusive of vacant seats) is required under the Order); and

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

5. Revise §1217.52(h) to read as follows:

§1217.52 Assessments.

* * * * *

(h) The HTSUS categories and assessment rates on imported softwood lumber are listed in the following table. A factor shall be used to determine the equivalent volume of softwood

lumber in thousand board feet. The factor used to convert one cubic meter to one thousand board feet is 0.423776001.

Accordingly, the assessment rate per cubic meter is as follows.

Table 1 to Paragraph (h)

Softwood lumber (by HTSUS No.)	Assessment \$/cubic meter
4407.11.00	0.1483
4407.12.00	0.1483
4407.19.05	0.1483
4407.19.06	0.1483
4407.19.10	0.1483
4409.10.05	0.1483
4409.10.10	0.1483
4409.10.20	0.1483
4409.10.90	0.1483
4418.99.10	0.1483

* * * * *

6. In §1217.81, revise paragraphs (b) (1) and (2) to read as follows:

§1217.81 Referenda.

* * * * *

(b) * * *

(1) For the purpose of ascertaining whether manufacturers for the U.S. market favor the continuation, suspension, or termination of the Order;

(2) No later than seven years after the Order becomes effective and every seven years thereafter, to determine whether softwood lumber manufacturers for the U.S. market favor the continuation of the Order. The Order shall continue if it is favored by a majority of domestic manufacturers and importers voting in the referendum who also represent a majority of the volume of softwood lumber represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the domestic manufacturing or importation of softwood lumber;

* * * * *

7. Revise §1217.88 to read as follows:

§1217.88 OMB Control numbers.

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

8. Revise § 1217.101(1) to read as follows:

§1217.101 Definitions.

* * * * *

(1) *Softwood lumber* means and includes softwood lumber and products manufactured from softwood as described in section 804(a) within Title VIII (Softwood Lumber Act of 2008 or SLA of 2008) of the Tariff Act of 1930 (19 U.S.C. 1202-1677g), as amended by section 3301 of the Food, Conservation and Energy Act of 2008 (Pub. L. 110-246, enacted June 18, 2008) and categorized in the following Harmonized Tariff Schedule of the United States (HTSUS) numbers—4407.11.00, 4407.12.00, 4407.19.05, 4407.19.06, 4407.19.10, 4409.10.05, 4409.10.10, 4409.10.20, 4409.10.90, and 4418.99.10. Domestic product that cannot be categorized in the referenced HTSUS numbers if it were an import is not covered under the Order. Further, softwood lumber originating in the United States that is exported to another country and shipped back to the United States is also covered under the Order, provided it can be categorized in the referenced HTSUS numbers. Additionally, articles brought into the United States temporarily and for which an exemption is claimed under subchapter XIII of chapter 98 of the HTSUS are exempted from the SLA of 2008 and are not covered under the Order.

* * * * *

9. Revise §1217.108 to read as follows:

§1217.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 4 U.S.C. is OMB control number 0581-0093.

Dated: September 16, 2019.

Bruce Summers,
Administrator.

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