



## **Agricultural Marketing Service**

### **7 CFR Part 1222**

**[Doc. No. AMS-SC-23-0080]**

## **Paper and Paper-Based Packaging Promotion, Research and Information Order; Clarifying Changes**

**AGENCY:** Agricultural Marketing Service, Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** This final rule implements clarifying amendments to the Paper and Paper-Based Packaging Promotion, Research and Information Order (Order). The amendments include an added definition for partnership; clarification of the nominations process; clarification about in person and electronic voting for any Board meetings; an update of the timing of financial reporting; and a revision of requirements for when exemptions can be requested. This final rule brings language in the Order up to date with current industry practices.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Samantha Mareno, Agricultural Marketing Specialist, Market Development Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 1406-S, STOP 0244, Washington, DC 20250-0244; Telephone: (720) 827-4907; or Email: [Samantha.Mareno@usda.gov](mailto:Samantha.Mareno@usda.gov).

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

**Executive Orders 12866, 13563 and 14094**

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866, 13563, and 14094. 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. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This rule is not a significant regulatory action within the meaning of Executive Order 12866. Accordingly, this action has not been reviewed by the Office of Management and Budget under section 6 of the Executive Order.

#### **Executive Order 13175**

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions will have Tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, or the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### **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 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 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with the U.S. Department of Agriculture (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 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**

Under the Order, which became effective on January 23, 2014, the Paper and Packaging Board (Board), with oversight by USDA, administers a nationally coordinated program of research, promotion and information designed to strengthen the paper and paper-based packaging industry. The program covers four types of paper and paper-based packaging—printing and writing paper (used to make products for printing, writing, and other communication purposes), kraft packaging paper (used for products like grocery bags and sacks), containerboard (used to make corrugated boxes, shipping containers, and related products), and paperboard (used for food and beverage packaging, tubes, and other miscellaneous products). The program is financed by assessments on domestic manufacturers and importers of paper and paper-based packaging.

This final rule makes multiple clarifying amendments to the Order. These amendments include an added definition for partnership; clarification on the nomination

process; clarification of language about in person and electronic voting for any Board meetings; an update of the timing of financial reporting; and revised requirements concerning when exemptions may be requested. The Board, which is composed of domestic manufacturers from across the country and importers, unanimously recommended the changes to the Order on August 19, 2023. This action modifies language in the Order to bring it up to date with current industry practices.

### **Board Recommendation to Revise Order**

The final rule revises several sections in subpart A of the Order. This rule changes the language in §1222.7 from fiscal period to fiscal year as the term is better understood by the industry. Sections 1222.12 and 1222.13 include the term produce and producer respectively in the definition of manufacture and manufacturer. The term produce and producer are not used in the paper and paper-based packaging industry. Therefore, the final rule removes these terms from the definition of manufacture and manufacturer.

Lastly, this rule adds a new term for partnership in § 1222.19 and states that a partnership includes, but is not limited to, spouses and joint ventures. This revision clarifies who is responsible for paying assessments. With this change, the existing §§ 1222.19 through 1222.29 are renumbered.

Section 1222.41 outlines the Board nominations and appointments process. This rule amends §1222.41(c)(1) by specifically issuing a call for nominations to all current manufacturers and importers who have paid assessments during the prior fiscal year. Furthermore, revisions to §1222.41(c)(4) and (5) remove repetitive language. Lastly, §1222.41(c)(10) is revised by the rule to specify that no two members shall be employed by a single manufacturer or importer that pays assessments under the Order to avoid confusion as to who can serve on the Board.

Section 1222.43(a) allows the Secretary to remove a Board member or employee for failure or refusal to perform their duties, per the Board's recommendation. This final rule removes the employee clause to be consistent with language in other research and promotion orders.

Section 1222.44 outlines the Board's procedures for conducting Board meetings. Section 1222.44(c) states that votes shall be cast in person at an assembled meeting. Additionally, §1222.44(d) allows for other means of voting in lieu of voting at an assembled meeting. This final rule includes revisions to both sections to include options for electronic voting, or other means.

Section 1222.47 outlines prohibited activities for the Board. Section 1222.47(c) states no program, plan or project including advertising shall be false, misleading, or disparaging to another agriculture commodity. To be consistent in writing style, the rule modifies the language to state any program, plan or project including advertising that is false, misleading, or disparaging to another agriculture commodity. This section is updated to ensure clarity in wording.

Section 1222.50(i) outlines the operating monetary reserve for the Board and states that the funds in the reserve may not exceed one fiscal year's budget of expenses. This rule increases the funds in the reserve so they may not exceed two fiscal years, which is consistent with other research and promotion orders.

Section 1222.51(b) describes when financial statements are to be submitted to the Department. The current timeframe is 30 days after the time period to which it applies, which is too restrictive because the Board reports financial statements on a quarterly basis. Therefore, this final rule specifies that the financial statements are to be submitted quarterly and no later than 70 days after the period to which it applies.

Section 1222.51(c) refers to the annual financial statement that is submitted to the Department. The annual financial statement is due to the Department within 90 days

after the end of the fiscal year. The Board has had difficulty in meeting this short deadline. Therefore, this rule extends the timeframe to no later than 120 days to allow the Board more time to submit the statement to the Department.

Section 1222.52(e) states that importers of paper and paper-based packaging shall pay assessments through Customs to the Board. Customs does not currently collect import assessments for the Board and therefore, this final rule removes “through Customs” in paragraph (e), instead stating that each importer shall pay their assessment to the Board.

Section 1222.52(f) states Customs collects assessments. Since Customs does not collect the assessment, the final rule revises the section to state that each importer is responsible for paying assessments directly to the Board.

Section 1222.53(a)(1) specifies the minimum quantity necessary to be eligible for an exemption from assessments and requires manufacturers to apply for an exemption prior to the start of the marketing year. This final rule removes this requirement, allowing them to apply for an exemption at any time during a marketing year, not just before the year starts.

Section 1222.53(a)(2)(iii) provides that importers’ assessments are collected by Customs and the Board shall refund the importer who has filed for exemption. Because Customs doesn’t collect assessments, the final rule updates this section to reflect that the importer would pay the Board directly.

Section 1222.53(a)(5) details how the quantity of paper and paper-based packaging counts towards an exemption. This final rule revises the paragraph to ensure that in determining whether a manufacturer or import qualifies for the exemption, the combined quantity of all paper and paper-based packaging manufactured or imported during a marketing year shall count towards the 100,000 short ton exemption.

Section 1222.81(b)(2) refers to the frequency of referenda and outlines the criteria for continuation. This final rule updates this section to clarify that only eligible domestic manufacturers or eligible importers are included in the referendum voting. This change does not change who can vote and does not change voting restrictions.

Section 1222.82(b) states that the Secretary has the right to suspend or terminate the program whenever it is favored by the industry. The final rule updates this section to make the language used more concise to avoid confusion by the industry.

This rule updates definitions in §1222.101 to be consistent with terms defined in subpart A. Specifically, paragraph (e) includes *producer* in the definition for *eligible domestic manufacturer*. This final rule revises this section to remove the word *producer*. Paragraph (i) includes the term *produce* in the definition of *manufacture* and this final rule removes the term *produce* from the definition.

Lastly, §1222.102(a) outlines the voting eligibility of domestic manufacturers and importers. This final rule revises this section to include clarifying language to avoid confusion in the eligibility.

### **Final Regulatory Flexibility Act Analysis**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 - 612), AMS has considered the economic impact of this action on small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale of businesses subject to such action so that small businesses will not be disproportionately burdened. Manufacturers and importers would be considered agricultural service firms. The Small Business Administration defines small agricultural service firms as those having annual receipts of no more than \$30 million (13 CFR part 121).

According to the Board, there are approximately 47 manufacturers in the United States that manufacture the types of paper and paper-based packaging covered under the

Order. Using an average price of \$1,350 per short ton,<sup>1</sup> a manufacturer who manufactures less than 22,220 short tons of paper and paper-based packaging per year would be considered a small entity. The Board estimated that no entity manufactured less than 22,220 short tons in 2022; thus, no domestic manufacturers would be considered small businesses.

Based on Customs data, there were 3,272 importers of paper and paper-based packaging in 2022. Of these, 40 importers, or 1 percent, had annual receipts of more than \$30 million of paper and paper-based packaging. Thus, the majority of importers would be considered small entities.

This final rule makes multiple clarifying changes to the Order. The changes include a revision to the definition of importer; inclusion of a definition for partnership; clarification of the nominations process; clarifying language about in person and electronic voting for any Board meetings; an update to the timing of financial reporting; and a revision to the requirements concerning when exemptions will be requested.

### **Paperwork Reduction Act**

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 0581-0093. This final rule does not change the information collection and recordkeeping requirements previously approved and would impose no additional reporting and recordkeeping burden on domestic manufacturers and importers of paper and paper-based packaging.

As with all Federal research and promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and

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<sup>1</sup> No domestic market pricing information for paper and paper-based packaging was publicly available; instead, average prices were estimated using export data from the U.S. Census Bureau.



public sector agencies. AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final 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 alternatives, the Board considered not making the clarifying changes to the Order and leaving it as it is currently. The Board decided against leaving the Order unchanged as confusion would continue and potentially worsen over time. Therefore, that alternative was rejected.

Regarding outreach efforts, the Board determined that making these changes clarifies the issues and answer questions that have arisen over the last eight years and will help resolve similar questions in the future. These changes were discussed by the Board in June and November 2022, and the full Board unanimously recommended the changes on August 19, 2023. AMS has performed this RFA analysis regarding the impact of this action on small entities and invited comments concerning potential effects of this action.

A proposed rule concerning this action was published in the *Federal Register* on July 15, 2024 (89 FR 57368). A copy of the proposed rule was also made available through the internet by AMS via <https://www.regulations.gov>. A 30-day comment period ending on August 14, 2024, was provided for interested parties to respond to the proposal.

### **Comment Analysis**

During the proposed rule's 30-day comment period, AMS received two comments, which may be viewed on <https://www.regulations.gov/document/AMS-SC-23-0080-0001/comment>. One comment received was in support of the changes, and one comment was opposed.

The commenter in support of the changes stated they are in favor of the changes as they will be helpful for industry stakeholders.

The other commenter opposed the revised definition of importer, stating the change broadens the scope of the definition, potentially causing confusion. The commenter suggested not revising the definition. AMS considered the comment and agreed. Therefore, the change was not made to this rule.

With 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 Order.

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

Administrative practice and procedure, Advertising, Labeling, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 1222 as follows:

#### **PART 1222—PAPER AND PAPER-BASED 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 § 1222.7 to read as follows:

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

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

3. Revise § 1222.12 to read as follows:

##### **§ 1222.12 Manufacture.**

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

4. Revise § 1222.13 to read as follows:

**§ 1222.13 Manufacturer.**

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

**§§ 1222.19 through 1222.29 [Redesignated as §§ 1222.20 through 1222.30]**

5. Redesignate §§ 1222.19 through 1222.29 as §§ 1222.20 through 1222.30, respectively.

6. Add new § 1222.19 to read as follows:

**§ 1222.19 Partnership.**

*Partnership* includes, but is not limited to:

(a) Spouses who have title to, or leasehold interest in, a paper and paper-based packaging manufacturing entity as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(b) So called “joint ventures” wherein one or more parties to an agreement, informal or otherwise, contributed land, facilities, capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, that results in the manufacturing or importation of paper and paper-based packaging and the authority to transfer title to the paper and paper-based packaging so manufactured or imported.

7. In § 1222.41, revise paragraphs (c)(1), (4), (5), and (10) to read as follows:

**§ 1222.41 Nominations and appointments.**

\* \* \* \* \*

(c) \* \* \*

(1) The Board shall issue a call for nominations and conduct outreach to all current manufacturers and importers who paid assessments during the prior fiscal year. Manufacturers and importers may submit nominations to the Board;

\* \* \* \* \*

(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;

(5) Nominees that are both a manufacturer and an importer may seek nomination to the board either as a manufacturer or as an importer so long as they meet the qualifications;

\* \* \* \* \*

(10) No two members shall be employed by a single manufacturer or importer that pays assessments under this part; and,

\* \* \* \* \*

8. In § 1222.43, revise paragraph (a) to read as follows:

**§ 1222.43 Removal and vacancies.**

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

\* \* \* \* \*

9. In § 1222.44, revise paragraphs (c) and (d) to read as follows:

**§ 1222.44 Procedure.**

\* \* \* \* \*

(c) The Board and related committees may conduct meetings by any means of communication available, electronic or otherwise, that effectively assembles the required participants and facilitates open communication. Eligible participants may vote by any means of communication available, electronic or otherwise; provided that votes cast are verifiable and that a quorum and other procedural requirements are met.

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

\* \* \* \* \*

10. In § 1222.47, revise paragraph (c) to read as follows:

**§ 1222.47 Prohibited activities.**

\* \* \* \* \*

(c) Any program, plan, or project including advertising that is false, misleading, or disparaging to another agricultural commodity. Paper and paper-based packaging of all geographic origins shall be treated equally.

11. In § 1222.50, revise paragraph (i) to read as follows:

**§ 1222.50 Budget and expenses.**

\* \* \* \* \*

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

\* \* \* \* \*

12. In § 1222.51, revise paragraphs (b) and (c) to read as follows:

**§ 1222.51 Financial statements.**

\* \* \* \* \*

(b) Each quarterly financial statement shall be submitted to the Department no later than 70 calendar days after the period to which it applies.

(c) The Board shall submit to the Department an audited annual financial statement no later than 120 calendar days after the end of the fiscal year to which it applies.

13. In § 1222.52, revise paragraphs (e) introductory text and (f) to read as follows:

**§ 1222.52 Assessments.**

\* \* \* \* \*

(e) Each importer of paper and paper-based packaging shall pay to the Board an assessment on the paper and paper-based packaging imported into the United States identified in the Harmonized Tariff Schedule of the United States (HTSUS) number listed in the following table. In the event that any HTSUS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of the paper and paper-based packaging involved, assessments will continue to be collected based on the new number.

\* \* \* \* \*

(f) Each importer is responsible for paying the assessment directly to the Board within 30 calendar days after the end of the quarter in which the paper and paper-based packaging was imported.

\* \* \* \* \*

14. § 1222.53, revise paragraphs (a)(1), (a)(2)(iii), and (a)(5) to read as follows:

**§ 1222.53 Exemption from assessment.**

(a) \* \* \*

(1) Manufacturers that manufacture less than 100,000 short tons of paper and paper-based packaging in a marketing year are exempt from paying assessments. Such manufacturers must apply to the Board, on a form provided by the Board, for a certificate of exemption. This is an annual exemption, and manufacturers must reapply each year. Such manufacturers shall certify that they will manufacture less than 100,000 short tons of paper and paper-based packaging during the marketing year for which the exemption is claimed. Upon receipt of an application for exemption, the Board shall determine whether an exemption may be granted. The Board may request past manufacturing data to support the exemption request. The Board will issue, if deemed appropriate, a certificate of exemption to the eligible manufacturer. It is the responsibility of the manufacturer to retain a copy of the certificate of exemption.

(2) \* \* \*

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

\* \* \* \* \*

(5) In calculating whether a manufacturer or importer qualifies for an exemption, the combined quantity of all paper and paper-based packaging manufactured or imported by the manufacturer or importer during a marketing year shall count towards the 100,000 short-ton exemption.

\* \* \* \* \*

15. In § 1222.81, revise paragraph (b)(2) to read as follows:

**§ 1222.81 Referenda.**

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

16. In § 1222.82, revise paragraph (b) to read as follows:

**§ 1222.82 Suspension or termination.**

\* \* \* \* \*

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal year whenever the Secretary determines that its suspension or termination is favored by a majority of manufacturers and importers voting in the referendum who, during a representative period determined by the Secretary, are each an eligible domestic manufacturer or an eligible importer and who also represent a majority of the volume of paper and paper-based packaging represented in the referendum.



\* \* \* \* \*

17. In § 1222.101, revise paragraphs (e) and (i) to read as follows:

**§ 1222.101 Definitions.**

\* \* \* \* \*

(e) *Eligible domestic manufacturer* means any person who is currently a domestic manufacturer and who manufactured 100,000 short tons or more of paper and paper-based packaging during the representative period.

\* \* \* \* \*

(i) *Manufacture* means the process of transforming pulp into paper and paper-based packaging.

\* \* \* \* \*

18. In § 1222.102, revise paragraph (a) to read as follows:

**§ 1222.102 Voting.**

(a) Each eligible domestic manufacturer and importer of paper and paper-based packaging shall be entitled to cast only one ballot in the referendum. However, each domestic manufacturer in a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to manufacture paper and paper-based packaging, in which more than one of the parties is a domestic manufacturer or importer, shall be entitled to cast one ballot in the referendum covering only such domestic manufacturer or importer's share of ownership.

\* \* \* \* \*

**Erin Morris,**

*Associate Administrator,*

*Agricultural Marketing Service.*