

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 1211**

[Document Number AMS–FV–11–0074;  
PR–A1]

RIN 0581–AD24

**Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on a proposed Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order (Order). Hardwood lumber and hardwood plywood are used in products like flooring, furniture, moldings, doors, and kitchen cabinets. The program would be financed by an assessment on hardwood lumber manufacturers and hardwood plywood manufacturers and would be administered by a board of industry members selected by the Secretary of Agriculture (Secretary). The assessment rate varies according to the product manufactured. The purpose of the program would be to strengthen the position of hardwood lumber and hardwood plywood in the marketplace and maintain and expand markets for hardwood lumber and hardwood plywood. A referendum would be held among eligible hardwood lumber manufacturers and hardwood plywood manufacturers to determine whether they favor implementation of the program prior to it going into effect. This rule also announces the Agricultural Marketing Service's (AMS) intent to request approval by the Office of Management and Budget (OMB) of new information collection requirements to implement the program.

**DATES:** Comments must be received by January 13, 2014. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden that would result from this proposal must be received by January 13, 2014.

**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, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should

reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at <http://www.regulations.gov>.

Pursuant to the PRA, comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, should be sent to the above address. In addition, comments concerning the information collection should also be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street NW., Room 725, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:**

Patricia A. Petrella, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406, Stop 0244, Washington, DC 20250–0244; telephone: (301) 334–2891; facsimile (301) 334–2896; or electronic mail: [Patricia.Petrella@ams.usda.gov](mailto:Patricia.Petrella@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued pursuant to the Commodity Promotion, Research and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

**Executive Order 12866 and Executive Order 13563**

Executive Order 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as “non-significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

**Executive Order 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 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, 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 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 invites comments on a proposed industry-funded promotion, research and information program for hardwood lumber and hardwood plywood. Hardwood lumber products are used in residential and commercial construction including flooring, furniture, moldings, doors and kitchen cabinets. Industrial products include pallets, wood dunnage, and railroad ties. The program would be financed by an assessment on hardwood lumber, hardwood lumber products, hardwood lumber value-added products, and hardwood plywood manufacturers and would be administered by a board of industry members selected by the Secretary. The initial assessment rate would be: (1) \$1.00 per \$1,000 in sales of hardwood lumber and hardwood lumber products; (2) \$0.75 per \$1,000 in sales of hardwood lumber value-added products; and (3) \$3.00 per \$1,000 in sales of hardwood plywood. These assessments should generate about \$10 million annually. The program would exempt those hardwood lumber manufacturers with annual sales of less than \$2 million and hardwood plywood manufacturers with annual sales of less than \$10 million. Exports would be exempted from the program and imports would not be covered under the program. The purpose of the program would be to strengthen the position of hardwood lumber, hardwood lumber products, hardwood lumber value-

added products and hardwood plywood in the marketplace and maintain and expand markets for United States hardwood lumber, hardwood lumber products, hardwood lumber value-added products and hardwood plywood.

A referendum would be held among eligible hardwood lumber manufacturers and hardwood plywood manufacturers to determine whether they favor implementation of the program prior to it going into effect. The proposal was submitted to USDA by the Blue Ribbon Committee (BRC), a committee of 14 hardwood lumber and hardwood plywood industry leaders representing small and large manufacturers and geographically distributed throughout the United States.

This rule also announces AMS's intent to request approval by the OMB of new information collection requirements to implement the program.

#### Authority in 1996 Act

The proposed Order is promulgated under the 1996 Act which authorizes USDA to establish agricultural commodity research and promotion orders which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. As defined under section 513(1)(D) of the 1996 Act, agricultural commodities include the products of forestry, which includes hardwood lumber and hardwood plywood.

The 1996 Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the 1996 Act provides permissive terms for orders, and other sections provide for alternatives. For example, section 514 of the 1996 Act provides for orders applicable to (1) producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if imports are subject to assessments). Section 516 states that an order may include an exemption of de minimis quantities of an agricultural commodity. However, the 1996 Act does not define the term de minimis and USDA is not limited to using the definition of de minimis as specified in another law or agreement. The de minimis quantity is defined for a particular program and industry.

Section 516 also includes different payment and reporting schedules; coverage of research, promotion, and information activities to expand,

improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports.

In addition, section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. An order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board or council from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

#### Industry Background

The hardwood lumber industry is comprised of manufacturers of non-structural products used primarily in construction and renovation of homes, transport packaging and industrial applications. Hardwoods are timber from the wood of a cypress tree or a deciduous, broad-leaved tree which could include: aspen, birch, cypress, popular, maple, cherry, walnut and oak. Hardwood lumber products that are used in residential and commercial construction include flooring, furniture, moldings, doors and kitchen cabinets. Industrial hardwood products include pallets, wood dunnage, and railroad ties. Hardwood plywood products are made by applying a high quality hardwood veneer to a backing and used in manufacturing of furniture and wood paneling. Hardwood lumber value-added products that would be assessed under the Order could include such products as solid wood unfinished strip flooring, all-sides surfaced boards, finger-jointed strips ripped to width, and moldings, but does not include multi-component or further manufactured products such as furniture, cabinets, cabinet doors, prefinished or engineered flooring, or dimension or glued components for cabinets or furniture.

Hardwood sawmills also may manufacture other sawn products including crossties, pallet cants, frame stock, and board road. The specific mix of products produced by a hardwood sawmill is influenced by mill location; local, national, and international market conditions; quality and size of logs; species availability; mill design; business practices; and other factors.

Hardwood lumber can be sold green, air dried, or kiln dried. Green and air dried lumber is normally measured and

sold under National Hardwood Lumber Association (NHLA) rules<sup>1</sup> but can be measured and sold under proprietary rules established by an individual firm. Kiln dried lumber can be sold rough or dressed in the same quarter inch thickness increments as green lumber. Since drying normally reduces the width of boards, lumber may be sold on measurement taken before going into the kiln (net measurement prior to kiln drying is commonly referred to as gross tally) or remeasured after the kiln drying process (net tally). Kiln dried lumber is normally measured and also sold under NHLA rules but can be measured and sold under proprietary procedures established by an individual firm.<sup>2</sup>

#### Regional U.S. Timber Production<sup>3</sup>

According to the USDA Forest Service the volume of hardwood lumber produced in 2010 was 7,581 MMBF (million board feet). Some of the main species produced in the United States are red oak, hard maple, white oak, and sweet gum. The major producing States in the east are Pennsylvania, Tennessee, Virginia, North Carolina, and West Virginia. The bulk of timber production in the western United States is confined to Oregon and Washington. Red alder and maple trees dominate the region.

The USDA Forest Service, for 2010 stated total production of hardwood lumber in the eastern region was 3,579 MMBF and in the central region was 4,002 MMBF.

#### U.S. Hardwood Lumber Consumption and Output by Region

According to the industry's Hardwood Market Report (provides weekly reports on North America hardwood lumber and products since 1922), output of hardwood nonstructural products peaked in 1999 at 12.6 MMBF and fell to a record low in 2009 at 5.73 MMBF. Consumption of U.S. hardwoods has declined significantly primarily due to the U.S. housing crisis beginning in 2006. Use of U.S. hardwood products has decreased almost 50 percent since 2009. Demand has improved moderately from the 2009 low point. Hardwood consumption in 2012 was 43.6 percent below the 1999 level.

The U.S. cabinet industry consumed 42.7 percent less lumber in 2010 as compared to 2009 as more imported species and alternative materials replaced U.S. hardwoods. The flooring industry was the largest consumer of

<sup>1</sup> National Hardwood Lumber Association Rules for the Measurement and Inspection of Hardwood and cypress, Effective January 1, 2011 v1.1.

<sup>2</sup> Judd Johnson, Hardwood Market Report, 2011.

<sup>3</sup> USDA Forest Service, Dr. William Luppold, Princeton, WV.

U.S. hardwood lumber, however, use of hardwoods in this sector has declined from 1.5 BBF (billion board feet) in 2005 to 0.6 BBF in 2010 as competing products and imports replace domestic hardwood lumber. The furniture industry has seen a fundamental shift in consumption by U.S. manufacturers. In 1999, the furniture industry consumed 2.6 BBF of hardwood lumber and today only 350 million board feet. This is a decrease of 2.25 BBF. It is estimated that the U.S. has lost 70 percent of the entire furniture manufacturing industry.

#### *Hardwood Lumber Markets*<sup>4</sup>

During the mid-1990's, domestic hardwood lumber consumption surged as use by construction and remodeling (CR) producers increased. The nearly 1.1 BBF increase in lumber usage by the CR group over a 5-year period (1992–1997) was largely the result of increased use of hardwood material in home construction, as well as larger homes being built. Industrial product manufacturers were the largest users of hardwood lumber, consuming nearly 5 BBF in 1997.

Hardwood lumber consumption by the wood household and office and institutional furniture industries increased between 1992 and 1997, but this increase was offset by decreased use in upholstered furniture. The decreased use of lumber by upholstered furniture manufacturers was the result of increased use of plywood in furniture.

Hardwood lumber consumption by the pallet industry also declined more than 400 MMBF between 1997 and 2002. This reduction was not a function of reduced pallet use but of increased recycling of pallets and pallet parts. One factor that encouraged the pallet industry to adopt recycling was increased prices of lower grade oak lumber resulting from increased flooring production.

#### *Competition*<sup>5</sup>

Hardwood lumber competes with several alternative products and imported species. Competitive products used in furniture, cabinets and mill work include composite products such as medium density fiberboard and particle board, composite material, plastic, and imported lumber. Competitive products used in flooring include composite laminated flooring product, products that look like wood, bamboo, and imported hardwood flooring. In addition, competitive

industrial pallet products include recycled pallet parts, composite products, plastic, and cardboard.

#### *Price and Cost Trends*<sup>6</sup>

Over the last 40 years, trends in interspecies and intergrade hardwood lumber prices have been irregular. In the early 1960s, high and midgrade hard maple commanded high prices while red oak was the least valuable lumber regardless of grade. In the 1980s, high and midgrade oak prices surged, but prices of all grades of maple and yellow-poplar declined. During the 1990s, maple prices increased in all grades while the price of oak increased only in the lower grades. It is important to understand changes in interspecies and intergrade pricing as well as the market forces causing these changes because lumber price reflects the use of these products relative to availability. In addition, species of wood produced in different regions of the country can have different desirable attributes that may be reflected in the price.

The price of hardwood lumber depend on a series of demand and supply interactions in numerous final markets including furniture, pallets, flooring, and kitchen cabinets and on four market levels: final consumer, secondary (furniture etc.), primary (lumber), and timber. Each species and grade designation varies in visual and physical characteristics.

#### *Need for a Program*

According to the proponents, the hardwood lumber industry is experiencing one of the worst markets in history. The U.S. cabinet industry consumed 42.7 percent less lumber in 2010 as compared to 2009 as more species and alternative materials replaced U.S. hardwoods. The flooring industry was the largest consumer of U.S. hardwood lumber. Use of U.S. hardwoods in this sector has declined from 1.5 BBF in 2005 to 0.6 BBF in 2010 as competing products and imports replace domestic lumber. The furniture industry has seen a fundamental shift in consumption by U.S. manufacturers. The proponents reported that in 1999, the furniture industry consumed 2.6 BBF of hardwood lumber and today only 350 million board feet. That is a decrease of 2.25 BBF. Estimates are that the U.S. has lost 70 percent of the entire furniture manufacturing sector.

Additionally, at the request of the U.S. and Canadian governments, the U.S. Endowment for Forestry and

Communities (Endowment) was formed in 2006. The Endowment is a non-profit organization that works with public and private sectors to advance the interests of the forestry community. In the past, the industry attempted voluntary assessment efforts to conduct marketing programs, but they were sporadic, underfunded, and narrowly targeted. Since early 2008 the Endowment has directly invested monies to study and catalyze the potential of commodity checkoffs to help grow the market for wood and wood products.

As a result of the Endowment's efforts, the BRC was subsequently formed to pursue an industry research and promotion program. The BRC is comprised of 14 members representing the United States. The BRC submitted an initial proposal for a program to USDA in June 2011.

The BRC proposed a program that would be financed by an assessment on hardwood lumber manufacturers and hardwood plywood manufacturers and administered by a board of industry members selected by the Secretary. The initial assessment rate would be: (1) \$1.00 per \$1,000 in sales of hardwood lumber and hardwood lumber products; (2) \$0.75 per \$1,000 in sales of hardwood lumber value-added products; and (3) \$3.00 per \$1,000 in sales of hardwood plywood. These assessments should generate about \$10 million annually. The program would exempt those hardwood lumber manufacturers with annual sales of less than \$2 million and hardwood plywood manufacturers with annual sales of less than \$10 million. Exports from the United States would also be exempt from assessments. The purpose of the program would be to strengthen the position of hardwood lumber and hardwood plywood in the marketplace and maintain and expand markets for hardwood lumber and hardwood plywood. A referendum would be held among eligible hardwood manufacturers and hardwood plywood manufacturers to determine whether they favor implementation of the program prior to it going into effect. A majority of eligible manufacturers by volume of the commodity represented in the referendum would have to support the program for it to be implemented. The specific provisions of the program are discussed below.

#### *Provisions of Proposed Program*

##### *Definitions*

Pursuant to section 513 of the 1996 Act, §§ 1211.1 through 1211.37 of the proposed Order define certain terms that would be used throughout the

<sup>4</sup> Forest Products Journal, Volume 58, No. 5, Forest Products Society.

<sup>5</sup> Dr. William G. Luppold, Ph.D. USDA Forest Service, 2012.

<sup>6</sup> Dr. William G. Luppold, Ph.D. and Matthew S. Baumgardner, Examination of Lumber Price Trends for Major Hardwood Species, 2007.

Order. Several of the terms are common to all research and promotion programs authorized under the 1996 Act while other terms are specific to the proposed hardwood lumber Order.

Section 1211.1 would define the term "Act" to mean the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

Section 1211.2 would define the term "Blue Ribbon Committee" to mean the committee representing businesses that manufacture hardwood lumber in the United States formed to pursue an industry research, promotion, and information program. As specified in proposed § 1211.42, the BRC would conduct the initial nominations for the Hardwood Lumber and Hardwood Plywood Board and submit them to the Secretary. This would be the only role of the BRC under the program.

Section 1211.3 would define the term "Board" or "Hardwood Lumber and Hardwood Plywood Board" to mean the administrative body established pursuant to § 1211.41, or such other name as recommended by the Board and approved by the Secretary.

Section 1211.4 would define the term "Brokered sale" to mean a product that is purchased from a person and resold to a different person without taking physical possession of the product. This term is necessary for assessment purposes because in order to be liable for the assessment collection the individual must take possession of the product.

Section 1211.5 would define the term "Concentration yard" to mean an operation with kilns that purchases hardwood lumber from sawmills, or wholesalers or by means of a brokered sale and may grade, sort, dry and/or surface the lumber. It excludes distribution yards which do not have kilns.

Section 1211.7 would define the term "Covered hardwood" to mean hardwood lumber, hardwood lumber products, hardwood value-added lumber products, and hardwood plywood to which an assessment has been or may be levied pursuant to the Order.

Section 1211.9 would define the term "Fair market value" to mean, with respect to covered hardwood, the value of the lumber as reported by a credible and reliable source. Such source shall be determined by the Secretary from recommendations from the Board.

Section 1211.10 would define the term "Fiscal period" or "Fiscal year" to mean a calendar year from January 1 through December 31, or such other

period as recommended by the Board and approved by the Secretary.

Section 1211.11 would define the term "Green lumber" to mean hardwood lumber that has not been kiln dried.

Section 1211.12 would define the term "Hardwood lumber" to mean timber from the wood of a cypress tree or a deciduous, broad leafed tree that could include but not limited to: aspen, birch, cypress, popular, maple, cherry, walnut and oak that has been sawn into boards or blocks by a sawmill in the United States.

Section 1211.13 would define the term "Hardwood lumber manufacturer" to mean a person who cuts raw hardwood logs into hardwood lumber, hardwood lumber products, or a person who kiln dries green hardwood lumber to create hardwood lumber, hardwood lumber products or hardwood lumber value-added products.

Section 1211.14 would define the term "Hardwood lumber products" to mean hardwood lumber that has been transformed from timber or green lumber into products that remain boards or blocks such as surfaced boards, ties, cants, or pallet stock (the hardwood lumber contained in pallet stock is assessed if produced and transferred within the same company). The transfer definition is discussed under section 1211.36. For purposes of this order, the term hardwood lumber products does not include products which are transformed from boards or blocks of lumber into other products, such as furniture, cabinetry, and constructed pallets because the proponents proposed to assess the raw or green hardwood lumber used in certain but not all products. Further, hardwood lumber is used in many finished products which could become difficult to administer.

Section 1211.15 would define the term "Hardwood lumber value-added product manufacturer" to mean a person who has a sawmill or who uses kilns to dry hardwood lumber that is then used to manufacture hardwood lumber value-added products.

Section 1211.16 would define the term "Hardwood lumber value-added products" to mean products which remain in the general shape of boards, but have undergone additional processing beyond surfacing or cutting to a particular size. Hardwood lumber value-added products include solid wood strip flooring, all-sides surfaced boards, finger-jointed strips ripped to width, and moldings but does not include multi-component or further manufactured finished products such as furniture, cabinets, pallets, or componentry for cabinets or furniture.

Section 1211.17 would define the term "Hardwood plywood" to mean a panel product, the decorative face of which is made from hardwood lumber or veneer, intended for interior use composed of an assembly of layers or piles of veneer or veneers in combination with lumber core, particleboard, medium density fiberboard core, hardwood core, or special core or special back material joined with an adhesive.

Section 1211.18 would define the term "Hardwood plywood manufacturers" to mean a person who utilizes hardwood logs or veneer to create hardwood plywood.

Section 1211.19 would define the term "Information" to mean activities or programs designed to disseminate the results of research, new and existing marketing programs, new and existing marketing strategies, new and existing uses and applications, and to enhance the image of hardwood lumber and hardwood plywood and the forests from which it comes. This would include consumer information, which would mean any action taken to provide information to, and broaden the understanding of, the general public regarding covered hardwood. This would also include industry information, which would mean information and programs that would enhance the image of the hardwood lumber and hardwood plywood industry.

Section 1211.20 would define the term "Kiln dried" to mean hardwood lumber that has been seasoned in a kiln by means of artificial heat, humidity and circulation.

Section 1211.21 would define the term "Market or Marketing" to mean the sale or other disposition of covered hardwood in interstate, foreign, or intrastate commerce.

Section 1211.22 would define the term "Manufacturer" to mean domestic manufacturers of covered hardwood lumber as defined in this Order.

Section 1211.23 would define the term "Manufacturing" to mean the process of transforming logs into hardwood lumber, or the process of creating hardwood lumber products, value-added hardwood lumber products, or hardwood plywood.

Section 1211.24 would define the term "Member" to mean a member appointed by the Secretary to the Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Board.

Section 1211.25 would define the term "Order" to mean an order issued by the Secretary under Section 514 of the Act that provides for a program of

generic promotion, research, and information of covered hardwood under the Act.

Section 1211.26 would define the terms “part” and “subpart.” The term “part” would mean the Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order would be a “subpart” of the part.

Section 1211.27 would define the term “Person” to mean any individual, group of individuals, partnership, corporation, association, joint stock company, cooperative, or any other legal entity.

Section 1211.28 would define the terms “Programs, plans and projects” to mean research, promotion, and information programs, plans, or projects established under the Order.

Section 1211.29 would define the term “promotion” to mean any action taken, including paid advertising, public relations and other communications, and promoting the results of research, that presents a favorable image of covered hardwood to the public and to any and all consumers, with the intent of improving the perception, markets and competitive position of covered hardwood lumber and stimulating sales of covered hardwood lumber.

Section 1211.30 would define the term “research” to mean any activity that advances the position of covered hardwood in the marketplace that includes any type of test, study, or analysis designed to advance the knowledge, image, desirability, use, marketability, production, product development, or quality of covered hardwood. This term includes the communication of the results of any research conducted under this Order.

Section 1211.31 would define the term “Sales” to mean the total dollar purchases of covered hardwood that are purchased from a hardwood lumber or plywood manufacturer subject to the assessment. “Sales” for purposes of the assessment does not include freight or discounts, and brokered sales are not included within the meaning of sale.

Section 1211.37 would define the term “Transfer” to mean when a vertically integrated manufacturing plant in which post-manufacturing operations turns covered hardwoods into a non-assessed product while remaining under the control of the same person. This function regularly occurs in the industry. Such a vertically integrated manufacturing plant shall assign a sales price based on the fair market value of the covered hardwood

at the time it leaves the initial manufacturing operation to determine the assessment to be paid. Fair market value is defined in section 1211.9 of the proposed order.

Sections 1211.6, 1211.8, 1211.25, 1211.27, 1211.28, 1211.32, 1211.33, 1211.34, 1211.35, and 1211.37 would define the terms “Conflict of interest,” “Department or UDSA,” “Order,” “Person,” “Programs, plans and projects,” “Secretary,” “State,” “Suspend,” “Terminate,” and “United States,” respectively. The definitions are the same as those specified in section 513 of the Act.

#### **Establishment of the Board**

Pursuant to section 515 of the 1996 Act, §§ 1211.41 through 1211.49 of the proposed Order would detail the establishment and membership of the proposed Hardwood Lumber and Hardwood Plywood, Promotion, Research and Information Board, nominations and appointments, the term of office, removal and vacancies, procedure, reimbursement and attendance, powers and duties, contracting, and prohibited activities.

Section 1211.41 would specify the Board establishment and membership. The Board would be composed of 28 members comprised of owners or employees of hardwood lumber manufacturers or hardwood plywood manufacturers for the U.S. market who manufacture and domestically sell \$2 million or more of hardwood lumber, products and/or value-added products, or \$10 million or more of hardwood plywood in the United States during a fiscal period. Seats on the Board would be apportioned based on the volume of covered hardwood produced and sold in the geographical areas. For the purposes of the geographical distribution of the Board membership, the proponents used State data from the 2008 Current Industrial Report. That report has been discontinued and State estimates were also discontinued four years ago. In the future the Board could use data from the U.S. Forest Service’s Timber Product Output Program or other source approved by the Secretary.

The Board would be composed of 28 members. Twenty-two members would be hardwood lumber manufacturers and would be allocated to districts in the United States based on the volume of hardwood lumber produced in and sold from the respective district. Of the 22 members, six would be from District 1, four members would be from District 2, five members would be from District 3, six members would be from District 4, and one member would be from District 5. One member would be a hardwood

lumber value-added manufacturer that manufactures flooring products. This would allow the unfinished flooring industry to be represented on the Board. This seat can be from any State within the United States. Five members would be hardwood plywood manufacturers. Of the five members designated as hardwood plywood manufacturers, three members would be from the States that are west of the Mississippi River and two members would be from the States east of the Mississippi River.

The BRC also opted to have no alternate Board members. This would encourage industry members who seek representation and serve on the Board to be committed to their service and participate in all Board meetings.

Every 5 years the Board must review the geographical distribution of the volume of covered hardwood produced and sold within the United States by hardwood lumber manufacturers and hardwood plywood manufacturers. If warranted, the Board would recommend to the Secretary that the Board membership be reapportioned appropriately to reflect such changes. The distribution of volumes between districts also shall be considered. Any changes in Board composition would be implemented by the Secretary through notice and comment rulemaking.

Section 1211.42 of the proposed Order would specify Board nominations and appointments. The initial nominations would be submitted to the Secretary by the BRC. This would be the only role of the BRC under the program. The BRC would publicize the nomination process, using trade press or other means it deems appropriate, and outreach to all hardwood lumber, hardwood lumber products and hardwood lumber value-added manufacturers who sold \$2 million or more of any assessed products per fiscal year. The BRC would also publicize the nomination process to hardwood plywood manufacturers who sold \$10 million or more of hardwood plywood per fiscal year. The BRC could use regional caucuses, mail or other methods to solicit potential nominees and would work with USDA to help ensure that all interested persons are apprised of the nomination process. The BRC could also solicit nominees through existing regional hardwood lumber, hardwood lumber products, hardwood lumber value-added products and hardwood plywood organizations. The BRC would submit the nominations to the Secretary and recommend two nominees for each Board position. The nominations to the Board should reasonably represent large, medium, and small-sized operations. In addition to

the BRC nominations for the initial board, nominees may be submitted directly to USDA if accompanied by the signatures of at least 20 persons who would pay assessments under the Order. The BRC suggested that 20 signatures would be appropriate to show support for such nominee. In addition, nominees for the initial Board may provide a short background statement outlining their qualifications and desire to serve on the Board. The Secretary would select the members of the Board from the submitted nominations.

Regarding subsequent nominations, the Board would solicit nominations as described in the previous paragraph, except that nominations may not be submitted directly to the Secretary by third parties after the initial Board nominations. Nominees would have the opportunity to provide the Board a short background statement outlining their qualifications and desire to serve on the Board.

Manufacturers who manufacture covered hardwood in more than one district could seek nomination in only the district in which they manufacture the majority of their volume of covered hardwood. The names of manufacturer nominees would be placed on a ballot by district. The ballots along with the background statements would be mailed to manufacturers in each respective district for a vote. Manufacturers who manufacture covered hardwood in more than one district could only vote in the district in which they manufacture the majority of their hardwood lumber or hardwood plywood. The votes would be tabulated for each district with the nominee receiving the highest number of votes at the top of the list in descending order by vote. The top two candidates for each position would be submitted to the Secretary. No two members would be employed by a single corporation, company, partnership, or any other legal entity in the United States.

The Board would submit nominations to the Secretary at least 6 months before the new Board term begins. The Secretary would select the members of the Board from the nominations submitted by the Board.

In order to provide the Board flexibility, the Board could recommend to the Secretary modifications to its nomination procedures. Any such modifications would be implemented through notice and comment rulemaking by the Secretary.

Section 1211.43 of the proposed Order would specify the term of office. With the exception of the initial Board, each Board member would serve a three-year term or until the Secretary

selected his or her successor. Each term of office would begin on January 1 and end on December 31. No member could serve more than two consecutive terms, excluding any term of office less than three years. For the initial board, the terms of Board members would be staggered for two, three, and four years so that the subsequent terms of office of approximately one-third of the Board expire in any given year.

Section 1211.44 of the proposed Order would specify criteria for the removal of members and for filling vacancies. If a Board member ceased to own or work for or be affiliated with a manufacturer or ceased to do business in the district he or she represented, such position would become vacant. Additionally, the Board could recommend to the Secretary that a member be removed from office if the member consistently refused to perform his or her duties or engaged in dishonest acts or willful misconduct. The Secretary can remove the member if he or she finds that the Board's recommendation shows adequate cause. The Secretary may remove a member of the Board without Board recommendation, upon showing of adequate cause, including the failure to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act. If a position became vacant, nominations to fill the vacancy would be conducted using the nominations process as proposed in § 1211.42 of the Order. A vacancy would not be required to be filled if the unexpired term is less than six months.

Section 1211.45 of the proposed Order would specify procedures of the Board. A majority of the Board members (15) would constitute a quorum. A member may attend a meeting by electronic means and be considered present for purposes of a quorum. All votes at a convened Board meeting or any committees will be cast in person or by electronic or telephoning if participating in the meeting in this manner. Proxy voting would not be permitted. A motion would carry if supported by more than a majority of those Board members present or participating by electronic means.

The proposed Order would also provide for the Board to take action, in lieu of voting at a properly convened meeting, by mail, telephone, electronic mail, facsimile, or any other electronic means when the chairperson believes it is necessary. Actions taken under these procedures would be valid only if all members and the Secretary were

notified of the meeting and all members were provided the opportunity to vote and if supported by more than 50 percent of Board members present or participating by electronic or other means. Additionally, all votes would have to be confirmed in writing and recorded in Board minutes.

The proposed Order would specify that Board members would serve without compensation. However, Board members would be reimbursed for reasonable travel expenses, as approved by the Board, incurred when performing Board business.

Section 1211.47 of the proposed Order would specify powers and duties of the Board. These are similar in promotion programs authorized under the 1996 Act. They include, among other things, to administer the Order and collect assessments; to develop bylaws and recommend regulations necessary to administer the Order; to select a chairperson and other Board officers; to create an executive committee and form other committees and subcommittees as necessary; to hire staff or contractors; to provide appropriate notice of meetings to the industry and USDA and keep minutes of such meetings; to develop programs and enter into contracts to implement programs subject to USDA approval; to submit a budget to USDA for approval 60 calendar days prior to the start of the fiscal year; to borrow funds necessary to cover startup costs of the Order; to invest Board funds pursuant to the Act; to have its books audited by an outside certified public accountant at the end of each fiscal period and at other times as requested by the Secretary; to report its activities to manufacturers for the U.S. market; to make public an accounting of funds received and expended; to receive, investigate and report to the Secretary complaints of violations of the Order or regulations; to act as an intermediary between the Secretary and any manufacturer, to recommend changes to the assessment rate as provided in this part; to borrow funds necessary for startup expenses of the Order; and to recommend amendments to the Order as appropriate.

Section 1211.48 of the proposed Order would specify contract responsibilities of the Board. Also, this section would include procedures for developing contracts with vendors and items that each contract should include. All contracts entered into by the Board must be approved by the Secretary before becoming effective.

Section 1211.49 of the proposed Order would specify prohibited activities that are common to all promotion programs authorized under

the 1996 Act. In summary, the Board nor its employees and agents could engage in actions that would be a conflict of interest; use Board funds to lobby (influencing legislation or governmental action or policy, by local, state, Federal, and foreign governments or subdivision thereof, other than recommending to the Secretary amendments to the Order); and engage in any advertising or activities that may be false, misleading or disparaging to another agricultural commodity.

#### Expenses and Assessments

Pursuant to sections 516 and 517 of the 1996 Act, §§ 1211.50 through 1211.53 of the proposed Order detail requirements regarding the Board's budget and expenses, financial statements, assessments, and exemption from assessments. At least 60 calendar days before the start of the fiscal period and as necessary during the year, the Board would submit a budget to USDA for approval covering its projected expenses. The budget must include a summary of anticipated revenue and expenses for each program along with a breakdown of staff and administrative expenses. Except for the initial budget, the Board's budgets should include at least one preceding fiscal period's budget for comparative purposes.

Each budget must provide for adequate funds to cover the Board's anticipated expenses. Any amendment or addition to an approved budget must be approved by USDA, including shifting of funds from one program, plan or project to another. The Board would be authorized to incur reasonable expenses for its maintenance and functioning. During its first year of operation, the Board could borrow funds for startup costs and capital outlay. Any borrowed funds would be subject to the same fiscal, budget, and

audit controls as other funds of the Board.

The Board could also accept voluntary contributions. Any contributions received by the Board would be free from encumbrances by the donor and the Board would retain control over use of the funds. The Board would also be required to reimburse USDA for all costs incurred by USDA in overseeing the Order's operations, including all costs associated with referenda.

The Board would be limited to spending no more than 15 percent of its available funds for administration, maintenance, and the functioning of the Board. This limitation would begin three fiscal years after the date of the establishment of the Board. Reimbursements to USDA would not be considered administrative costs. As an example, if the Board received \$15 million in assessments during fiscal year 5, and had available \$1 million in reserve funds, the Board's available funds would be \$16 million. In this scenario, the Board would be limited to spending no more than \$2.4 million (.15 × \$16 million) on administrative costs. The Board could also maintain a monetary reserve and carry over excess funds from one fiscal period to the next. However, such reserve funds could not exceed one fiscal year's budgeted expenses. For example, if the Board's budgeted expenses for a fiscal year were \$15 million, it could carry over no more than \$15 million in reserve. With approval of the Secretary, reserve funds could be used to pay expenses.

The Board could invest its revenue collected under the Order in the following: (1) Obligations of the United States or any agency of the United States; (2) General obligations of any State or any political subdivision of a State; (3) Interest bearing accounts or

certificates of deposit of financial institutions that are members of the Federal Reserve; and (4) Obligations fully guaranteed as to principal interest by the United States.

The Board would be required to submit to USDA financial statements on a quarterly basis, or at any other time as requested by the Secretary. Financial statements should include, at a minimum, a balance sheet, an income statement, and an expense budget.

#### Assessments

The Board's programs and expenses would be funded through assessments on covered hardwood, other income, and other funds available to the Board. The Order would provide for an initial assessment rate of: (1) \$1.00 per \$1,000 in sales of hardwood lumber and hardwood lumber products; (2) \$0.75 per \$1,000 in sales of hardwood lumber value-added products; and (3) \$3.00 per \$1,000 in sales of hardwood plywood. Hardwood plywood is a higher value-added product than the other lumber categories, and therefore is assessed at a higher level.

The intent is to assess the green (raw) hardwood lumber. Sales rather than production or volume provides a better measurement to apply assessments because of the regional differences in the production of the different species of wood. There are no consistent uniform measurements or sizes of green hardwood lumber because of the many different species of hardwood and its uses. In addition, the quantity of hardwood lumber contained in assessed hardwood lumber products and value-added products varies according to the products manufactured.

The following table summarizes the assessment rates mentioned above:

	Description	Assessment rate	Allowable deductions
Hardwood lumber .....	—hardwood logs turned into lumber (raw green lumber).	\$1/\$1,000 in sales .....	N/A.
Hardwood lumber product ...	—stays a board or block (a little more processed than green lumber).	\$1/\$1,000 in sales .....	—deduct the hardwood lumber purchase.
Hardwood value-added products.	—flooring and molding (stays the shape of a board but has undergone additional processing—does NOT include multi-component or further manufactured products such as furniture, cabinets, cabinet doors, prefinished or engineered flooring, pallets, or dimension or glued components for cabinets or furniture..	\$0.75/\$1,000 in sales .....	—deduct the hardwood lumber purchase.
Hardwood plywood .....	—plywood .....	\$3/\$1,000 in sales .....	N/A.

Manufacturers like sawmills cut (raw) green hardwood logs into hardwood lumber that remain boards or blocks or sometimes kiln dry green hardwood lumber to create hardwood lumber that

can be further processed into hardwood lumber products by them or other manufacturers. This green hardwood lumber would be assessed at \$1.00 per

\$1,000 in sales of covered hardwood lumber.

Other manufacturers like concentration yards cut or buy (raw) green hardwood logs and kiln dry the green hardwood lumber to further

manufacture hardwood lumber products. Sawmills can also further manufacture boards or blocks into hardwood lumber products. These hardwood lumber products include: Products that remain hardwood lumber boards or blocks such as surface boards, ties, cants, strips, crane mat material or pallet stock (the hardwood lumber contained in pallet stock is assessed if produced and transferred within the same company). The hardwood lumber products manufactured (covered hardwood) would be assessed at \$1.00 per \$1,000 in sales of hardwood minus the dollar value of any green hardwood lumber purchases. For example, if a concentration yard has annual sales of hardwood lumber products of \$5 million and has annual green hardwood lumber purchases of \$1 million, the calculated assessment would be \$4 million. The \$1 million dollars of green hardwood lumber purchases is

subtracted from the annual sales of hardwood lumber products because a manufacturer has already paid the assessment on the green hardwood lumber.

A hardwood lumber value-added product manufacturer who operates a sawmill or a concentration yard that manufactures hardwood lumber value-added products would be assessed as follows: Total assessment would be \$0.75 for every \$1,000 in value-added product sales, plus \$1 for every \$1,000 in green and kiln dried lumber sales, minus \$1 for every \$1,000 in green and kiln dried lumber purchases. This computation is necessary to capture the purchases and sales of green hardwood lumber by this manufacturer that may be used to manufacture hardwood value-added products. Hardwood lumber value-added products include solid wood unfinished strip flooring, all-sides surfaced boards, moldings; and

these products would be assessed at a lesser amount to take into account the amount of hardwood lumber contained in the finished product. In addition, the assessed value of any green hardwood lumber purchases made would be subtracted since that assessment has already been paid by a manufacturer. For example, if a hardwood lumber value-added products manufacturer has annual sales of hardwood lumber value-added products of \$16 million, \$4 million in sales of green hardwood lumber, and annual green hardwood lumber purchases of \$10 million, the calculated assessment would be \$6,000 (\$16 million  $\times$  .75 plus \$4 million  $\times$  1.0 minus \$10 million  $\times$  1.0 equals \$6 million divided by \$1000 equals \$6,000 in assessment owed). The following worksheet illustrates how assessments are calculated:

See computation example below:

Annual SALES of hardwood lumber value-added products

Multiply (a) by .75 for every \$1,000 in sales

Annual SALES of hardwood lumber (raw) green and kiln dried lumber

Multiply (c) by \$1 for every \$1,000 in (raw) green and kiln dried lumber

Add (b) and (d)

Annual PURCHASES of hardwood lumber (raw) green and kiln dried lumber

Multiply (f) by \$1 for every \$1,000 purchases of hardwood lumber (raw) green and kiln dried lumber

Subtract (g) from (e) = TOTAL ASSESSMENT DUE

(a)	_____
(b)	_____
(c)	_____
(d)	_____
(e)	_____
(f)	_____
(g)	_____
Due	_____

The assessment rate for kiln dried and pallet sales that are manufactured by vertically integrated pallet manufacturers would be based on the fair market value of the green, kiln dried and pallet sales that the vertically integrated manufacturer cut and transferred or sold to themselves. Subtracted from that value is dollar sales of green or kiln dried lumber. Finally, subtracted from that value are annual green hardwood purchases times \$.001. This formula is necessary to take into account covered hardwood lumber that is cut and transferred within the same company and covered hardwood lumber purchases from other manufacturers used in the manufacturing of pallets. Pallets may be manufactured using covered hardwood from different manufacturers. Pallet manufactured products include hardwood pallet lumber, cants, crane mats and pallet stock produced and transferred within the same company.

For example, if an integrated pallet manufacturer has a fair market value of

hardwood pallet lumber sales of \$10 million, \$5 million in sales of hardwood lumber, and annual hardwood lumber purchases of \$4 million; the calculated assessment would be \$1,000 (\$10 million minus \$5 million minus \$4 million multiplied by \$.001).

The fair market value of lumber would be determined by a credible and reliable source. Such source shall be determined by the Secretary from recommendations from the Board. The proponents have indicated there are currently two companies that could compute the fair market values of hardwood lumber that the Board could recommend to the Secretary to define this value.

Brokered sales of hardwood lumber or hardwood lumber products are excluded from the calculation of assessments as the proponents determined these transactions would be difficult to administer under the program.

Hardwood plywood manufacturers would pay at a rate of \$3.00 per \$1,000

in sales of hardwood lumber plywood. Hardwood plywood is a higher value-added product than the other lumber categories and is assessed at higher level. For example, if a hardwood plywood manufacturer has \$25 million in sales of hardwood plywood the assessment would be \$75,000.

Manufacturers would pay assessments based on sales of hardwood lumber, hardwood lumber products, hardwood lumber value-added products and hardwood plywood. The Board can recommend to the Secretary a change in the assessment rate. Any such change would be implemented through notice and comment rulemaking by the Secretary. Manufacturers would be required to pay their assessments owed to the Board on a quarterly basis, on a form that the Board shall develop, no later than the 30th calendar day of the month following the end of the quarter in which the hardwood lumber, hardwood lumber products, value-added, or hardwood plywood was marketed. Thus, the January to

December fiscal year would have four quarters ending the last day of March, June, September, and December, respectively. Assessments would be due April 30th, July 30th, October 30th, and January 30th. As an example, assessments for lumber marketed in January would be due to the Board by April 30th. The Order would provide authority for the Board to impose a late payment charge and interest for assessments overdue to the Board by 60 calendar days. The late payment charge and rate of interest would be prescribed in the Order's regulations issued by the Secretary.

#### *Exemptions*

The Order would provide for two exemptions. First, hardwood lumber manufacturers, hardwood lumber product manufacturers and hardwood lumber value-added products manufacturers with combined annual sales of less than \$2 million of any covered hardwood during a fiscal year would be exempt from paying assessments. In addition, hardwood plywood manufacturers with annual sales of less than \$10 million during a fiscal year are exempt from paying assessments.

Manufacturers would apply to the Board for an exemption prior to the start of the fiscal year. This would be an annual exemption; entities would have to reapply each year. Manufacturers would have to certify that they expect to market less than the respective sales for each covered entity under the proposed Order for the applicable fiscal year. The Board could request past sales data to support the exemption request. The Board would then issue, if deemed appropriate, a certificate of exemption to the eligible manufacturer.

Once approved, manufacturers would not have to pay assessments to the Board for the applicable fiscal year unless they exceed the threshold.

Hardwood lumber manufacturers and hardwood plywood manufacturers who did not apply to the Board for an exemption and had sales of less than \$2 million or sales less than \$10 million, respectively, during the fiscal year would receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year. Board staff would determine the assessments paid and refund the manufacturer accordingly. On the other hand, hardwood lumber manufacturers and hardwood plywood manufacturers who receive an exemption certificate but have sales more than \$2 million and \$10 million, respectively, during the fiscal year would have to pay the Board the applicable assessments owed within

30 calendar days after the end of the fiscal year and submit any necessary reports to the Board.

The Board could recommend additional procedures to administer the exemption as appropriate. Any procedures would be implemented through notice and comment rulemaking by the Secretary.

A manufacturer of covered hardwood lumber who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, only manufactures covered hardwood lumber that is eligible to be labeled as 100 percent organic under the NOP and is not a split operation would be exempt from payment of assessments.

#### **Promotion, Research and Information**

Pursuant to section 516 of the 1996 Act, §§ 1211.60 through 1211.62 of the proposed Order would detail requirements regarding promotion, research and information programs, plans and projects authorized under the Order and approved by the Secretary. The Board would develop and submit to the Secretary for approval programs, plans and projects regarding promotion, research, education, and other activities, including consumer and industry information and advertising designed to, among other things, build markets for covered hardwood. The Board would be required to evaluate each plan and program to ensure that it contributes to an effective promotion program. Research projects could include the energy efficiency and preferability of covered hardwood. Covered Hardwood of all origins would have to be treated equally by the Board, and no program, plan, or project could be false, misleading, or disparage against another agricultural commodity.

The Order would also require that, at least once every five years, the Board fund an independent evaluation of the effectiveness of the Order and programs conducted by the Board. Finally, the Order would specify that any patents, copyrights, trademarks, inventions, product formulations and publications developed through the use of funds received by the Board would be the property of the U.S. Government, as represented by the Board. These along with any rents, royalties and the like from their use would be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and could be licensed with approval of the Secretary.

#### **Reports, Books and Records**

Pursuant to section 515 of the 1996 Act, §§ 1211.70 through 1211.72 specify the reporting and recordkeeping

requirements under the proposed Order as well as requirements regarding confidentiality of information.

Hardwood lumber and plywood manufacturers would be required to submit periodically to the Board certain information as the Board may recommend with approval of the Secretary. Specifically, manufacturers would submit a report to the Board that would include, but not be limited to, the manufacturer's name, address, and telephone number; the annual sales of covered hardwood lumber and hardwood plywood; and the sales of covered hardwood lumber and hardwood plywood for which assessments were paid. Hardwood lumber and plywood manufacturers would submit this report at the same time they remit their assessments to the Board. Hardwood lumber and plywood manufacturers who received a certificate of exemption from the Board would not have to submit such a report to the Board. However, exempt hardwood lumber manufacturers and hardwood plywood manufacturers who have sales over the exemption threshold of \$2 million and \$10 million, respectively, during the fiscal year would have to pay the Board the applicable assessments owed within 30 calendar days after the end of the fiscal year and submit any necessary reports to the Board.

Additionally, hardwood manufacturers including those who are exempt, would be required to maintain books and records needed to verify any required reports. Such books and records must be made available during normal business hours for inspection by the Board's or USDA's employees or agents. Hardwood manufacturers would be required to maintain such books and records for two years beyond the applicable fiscal period.

The Order would also require that all information obtained from persons subject to the Order as a result of proposed recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of the Board and USDA. Such information could only be disclosed if the Secretary considered it relevant, and the information were revealed in a judicial proceeding or administrative hearing brought at the direction or at the request of the Secretary or to which the Secretary or any officer of USDA were a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to the Order, if the statements did not identify the information furnished by any person, or

the publication, by direction of the Secretary, of the name of any person violating the Order and a statement of the particular provisions of the Order violated.

### Miscellaneous Provisions

#### Referenda

Pursuant to section 518 of the 1996 Act, § 1211.81(a) of the proposed Order specifies that the program would not go into effect unless it is approved by a majority of hardwood manufacturers and hardwood plywood manufacturers who represent a majority of the volume of covered hardwood lumber represented in the referendum who, during a representative period determined by the Secretary, were engaged in the manufacturing of covered hardwood lumber.

Section 1211.81(b) of the proposed Order specifies criteria for subsequent referenda. Under the Order, a referendum would be held to ascertain whether the program should continue, be amended, or be terminated. This section specifies that a referendum would be held 5 years after the Order becomes effective, and every 7 years thereafter, to determine whether hardwood lumber manufacturers and hardwood plywood manufacturers favor continuation of the Order. The Order would continue if favored by hardwood manufacturers and hardwood plywood manufacturers who represent a majority of the volume of covered hardwood lumber represented in the referendum who, during a representative period determined by the Secretary, was engaged in the manufacturing of covered hardwood lumber.

Additionally, a referendum could be conducted at the request of the Secretary. A referendum could also be conducted at the request of 10 percent or more of the number of persons eligible to vote in a referendum under the Order. Finally, a referendum could be conducted at any time as determined by the Secretary.

#### Other Miscellaneous Provisions

Sections 1211.80 and §§ 1211.82 through 1211.88 describe the rights of the Secretary; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after termination; address personal liability, separability, and amendments; and provide OMB control numbers. These provisions are common to all research and promotion program authorized under the 1996 Act.

In addition, the Secretary shall suspend or terminate an order or a provision of an order if Secretary finds

that an order or a provision of an order obstructs or does not tend to effectuate the purpose of this subtitle, or if the Secretary determines that the order or a provision of an order is not favored by persons voting in a referendum.

#### 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 small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (manufacturers) as those having annual receipts of no more than \$7.0 million. According to information submitted by the proponents, it is estimated that there are 2,804 hardwood lumber manufacturers and 36 hardwood plywood manufacturers in the United States annually. This number represents separate business entities and includes exempted and assessed entities under the Order; one business entity may include multiple sawmills. It is estimated that 85 to 90 percent of the manufacturers are small businesses.

This rule invites comments on a proposed industry-funded promotion, research, and information program for hardwood lumber and hardwood plywood. Hardwood lumber products are used in residential and commercial construction includes flooring, furniture, moldings, doors and kitchen cabinets. Industrial products include pallets, wood dunnage, and railroad ties. The program would be financed by an assessment on hardwood lumber, hardwood lumber products, hardwood lumber value-added, and hardwood plywood manufacturers and would be administered by a board of industry members selected by the Secretary. The initial assessment rate would be: (1) \$1.00 per \$1,000 in sales of hardwood lumber and hardwood lumber products; (2) \$0.75 per \$1,000 in sales of hardwood lumber value-added products; and (3) \$3.00 per \$1,000 in sales of hardwood plywood. These assessments should generate about \$10 million annually. The program would exempt small hardwood lumber manufacturers with annual sales of less than \$2 million and small hardwood

plywood manufacturers with annual sales of less than \$10 million. Exports would be exempted from the program and imports would not be covered under the program. The purpose of the program would be to strengthen the position of covered hardwood in the marketplace and maintain and expand markets for United States covered hardwood. By strengthening demand, a research and promotion program benefits all businesses both small and large. A referendum would be held among eligible hardwood lumber manufacturers and hardwood plywood manufacturers to determine whether they favor implementation of the program prior to it going into effect. The program is authorized under the 1996 Act. In addition, the numbers used in the RFA analysis herein represent the total universe of manufacturers known to USDA and not those who may be eligible to vote in the referendum.

Regarding the economic impact of the proposed Order on affected entities, hardwood lumber, hardwood lumber products, hardwood lumber value-added product, and hardwood plywood manufacturers would be required to pay assessments to the Board. As previously mentioned, the initial assessment rate would be: (1) \$1.00 per \$1,000 in sales of hardwood lumber and hardwood lumber products; (2) \$0.75 per \$1,000 in sales of hardwood lumber value-added products; and (3) \$3.00 per \$1,000 in sales of hardwood plywood. The percentage of revenue represented by the assessment rate would be 0.01 percent for sales of hardwood lumber and hardwood lumber products, 0.0075 percent for sales of hardwood lumber value-added products, and 0.03 percent for sales of hardwood plywood. Assessment revenue is expected to be around \$10 million dollars. Thus, the percentage revenue represented by the assessment rate would be well under one percent of sales. Any change in the assessment rate may be changed only upon approval of the Board and only after the Secretary has conducted rulemaking.

The Order would provide for two exemptions. First, hardwood lumber manufacturers, hardwood lumber product manufacturers and hardwood lumber value-added products manufacturers with annual sales less than \$2 million of any assessed covered hardwood combined during a fiscal year would be exempt from paying assessments. In addition, hardwood plywood manufacturers with annual sales of less than \$10 million during a fiscal year are exempt from paying assessments. It would be a burden on

small entities to assess the smaller manufacturers under this program.

Regarding the impact on the industry as a whole, the proposed program is expected to grow markets for covered hardwood by increasing the market share of covered hardwood in residential, commercial and industrial product areas. While the benefits of the proposed program are difficult to quantify, the benefits are expected to outweigh the program's costs of approximately \$10 million per year, which is less than one percent of sales. Academic researchers have estimated benefit-to-cost ratios for promotion programs across a broad range of commodities in the range of 4:1 to 6:1, indicating that for each dollar of promotion at least 4 to 6 times that amount is generated in new revenues, profit, or "economic surplus" to the industry.<sup>7</sup>

Regarding alternatives, the proponents, the BRC, considered various options to the proposed range in assessment rates and various products to be assessed. The BRC believes that \$10 million in assessment income is the threshold for an effective program that could help to improve the market for covered hardwood.

The exemption levels reflect what the industry considers a very small business that would be economically affected if covered under the program. In addition, the proponents considered the exemption levels and decided the exemption levels were adequate in order to allow them to obtain sufficient funds to operate an effective program.

The industry explored the merits of a voluntary promotion program. One program, the Hardwood Council, united several major hardwood associations behind a marketing program and collected enough funds to establish a Web site and a limited number of marketing programs. Funding for this program declined as competing demands arose with the supporting associations. In 2009, a renewed effort was put forth organizing the Unified Hardwood Promotion campaign which was funded by various companies and trade associations which resulted in the development of a hardwood logo and tagline. However, given the fragmented nature of the industry and about 3,000 small companies to reach, the level of funding needed was not achieved.

This action would impose additional reporting and recordkeeping burden on manufacturers of hardwood lumber, hardwood lumber products, hardwood

lumber value-added products, and hardwood plywood manufacturers. Hardwood lumber manufacturers and hardwood plywood manufacturers interested in serving on the Board would be asked to submit a nomination form to the Board indicating their desire to serve or nominating another industry member to serve on the Board. Interested persons could also submit an additional background statement outlining their qualifications to serve on the Board. Hardwood lumber manufacturers and hardwood plywood manufacturers would have the opportunity to cast a ballot and vote for candidates to serve on the Board. Hardwood lumber manufacturers and hardwood plywood manufacturers' nominees to the Board would have to submit a nomination form to the Secretary to ensure they are qualified to serve on the Board.

Additionally, the Order would provide for an exemption for hardwood lumber, hardwood lumber products, and hardwood lumber value-added products manufacturers for the U.S. market with annual sales less than \$2 million of any assessed product combined during a fiscal year. In addition, hardwood plywood manufacturers with annual sales of less than \$10 million during a fiscal year are exempt from paying assessments. Hardwood lumber manufacturers, hardwood lumber product manufacturers, hardwood lumber value-added products manufacturers and hardwood plywood manufacturers would also be asked to submit a report regarding their sales that would accompany their assessments paid to the Board. Hardwood lumber manufacturers and hardwood plywood manufacturers who would qualify as 100 percent organic under the NOP could submit a request to the Board for an exemption from assessments.

Finally, hardwood lumber manufacturers and hardwood plywood manufacturers who want to participate in the referendum to vote on whether the Order should become effective would have to complete a ballot for submission to the Secretary. These forms are being submitted to the OMB for approval under OMB Control No. 0581-NEW. Specific burdens for the forms are detailed later in this document in the section titled Paperwork Reduction Act. 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 rule.

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

Regarding outreach efforts, the Blue Ribbon Committee was formed about one year ago and met in person and by conference call more than 10 times each. They have developed a Web site that has been available to the public that details a description of the program under development, related hardwood press articles, timeframes for program development, and Powerpoint presentations used to brief various hardwood lumber audiences. This information can be found at: [www.hardwoodcheckoff.com](http://www.hardwoodcheckoff.com). Members of the BRC have presented the hardwood checkoff program across the country at various industry meetings attended by as many as 300 industry participants. In depth articles describing the program have been published in industry media.

While USDA has performed this initial RFA analysis regarding the impact of the proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis, we invite comments concerning potential effects. USDA is also requesting comments regarding the number and size of entities covered under the proposed Order.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request an approval of a new information collection and recordkeeping requirements for the proposed lumber program.

*Title:* Advisory Committee or Research and Promotion Background Information.

*OMB Number for background form AD-755:* (Approved under OMB No. 0505-0001).

*Expiration Date of Approval:* 5/31/2015.

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

*OMB Number:* 0581-NEW.

*Expiration Date of Approval:* 3 years from approval date.

*Type of Request:* New information collection for research and promotion programs.

*Abstract:* The information collection requirements in the request are essential to carry out the intent of the 1996 Act. The information collection concerns a proposal received by USDA for a

<sup>7</sup> Ward, Ronald, Commodity Checkoff Programs and Generic Advertising Choices, 2nd Quarter 2006, 21/(2)).

national research and promotion program for the hardwood lumber industry. The program would be financed by an assessment on hardwood lumber manufacturers and hardwood plywood manufacturers and would be administered by a board of industry members selected by the Secretary. The program would provide for an exemption for hardwood lumber, hardwood lumber products, hardwood lumber value-added products manufactured for the U.S. market with annual sales less than \$2 million of any assessed product combined during a fiscal year. In addition, hardwood plywood manufacturers with annual sales of less than \$10 million during a fiscal year are exempt from paying assessments. A referendum would be held among eligible hardwood lumber manufacturers and hardwood plywood manufacturers to determine whether they favor implementation of the program prior to it going into effect. The purpose of the program would be to help build the market for hardwood lumber.

In summary, the information collection requirements under the program concern Board nominations, the collection of assessments, and referenda. For Board nominations, hardwood lumber manufacturers and hardwood plywood manufacturers interested in serving on the Board would be asked to submit a "Nomination Form" to the Board indicating their desire to serve or to nominate another industry member to serve on the Board. Interested persons could also submit a background statement outlining qualifications to serve on the Board. Except for the initial Board nominations, hardwood lumber manufacturers and hardwood plywood manufacturers would submit a "Nomination Ballot" to the Board where they would vote for candidates to serve on the Board. Nominees would also have to submit a background information form, "AD-755," to the Secretary to ensure they are qualified to serve on the Board.

Regarding assessments, hardwood manufacturers and hardwood plywood manufacturers who have sales under the exemption threshold of \$2 million and \$10 million, respectively, during the fiscal year could submit a request, "Application for Exemption from Assessments," to the Board for an exemption from paying assessments. Hardwood lumber manufacturers and plywood manufacturers would be asked to submit a "Sales Report" that would accompany their assessments paid to the Board and report the sales of hardwood lumber or hardwood

plywood sold during the applicable period, and the quantity for which assessments were paid. Hardwood lumber manufacturers and hardwood plywood manufacturers who sold less than the exemption threshold of \$2 million and \$10 million, respectively, during the fiscal year are exempt from paying assessments would not be required to submit this report. Finally, hardwood lumber manufacturers and hardwood plywood manufacturers who would qualify as 100 percent organic under the NOP could submit an "Organic Exemption Form" to the Board and request an exemption from assessments.

There would also be an additional burden on hardwood lumber manufacturers and hardwood plywood manufacturers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Information collection requirements that are included in this proposal include:

#### (1) Nomination Form

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

*Respondents:* Hardwood lumber manufacturers and hardwood plywood manufacturers.

*Estimated Number of Respondents:* 56.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 14 hours.

#### (2) Background Statement

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

*Respondents:* Hardwood lumber manufacturers and hardwood plywood manufacturers.

*Estimated Number of Respondents:* 56.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 14 hours.

#### (3) Nomination Ballot

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

*Respondents:* Hardwood lumber manufacturers and hardwood plywood manufacturers.

*Estimated Number of Respondents:* 250.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 62.5 hours.

#### (4) Background Information Form AD-755 (OMB Form No. 0505-0001)

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 0.5 hour per response for each Board nominee.

*Respondents:* Hardwood lumber manufacturers and hardwood plywood manufacturers.

*Estimated number of Respondents:* 19 (56 for initial nominations to the Board, 0 for the second year, and up to 19 annually thereafter).

*Estimated number of Responses per Respondent:* 1 every 3 years. (0.3)

*Estimated Total Annual Burden on Respondents:* 28 hours for the initial nominations to the Board, 0 hours for the second year of operation, and up to 9.5 hours annually thereafter.

#### (5) Application for Exemption from Assessments

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hour per hardwood lumber manufacturer or hardwood plywood manufacturer reporting on hardwood lumber or hardwood plywood sold. Upon approval of an application, hardwood lumber or hardwood plywood manufacturers would receive exemption certification.

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

*Estimated number of Respondents:* 1490.

*Estimated number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 372.5 hours.

#### (6) Sales Report

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hour per manufacturer.

*Respondents:* Hardwood lumber manufacturers who sales are more than \$2 million (1340) and hardwood plywood manufacturers who sales are more than \$10 million (10).

*Estimated number of Respondents:* 1350.

*Estimated number of Responses per Respondent:* 4.

*Estimated Total Annual Burden on Respondents:* 2,700 hours.

*(7) Organic Exemption Form*

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per exemption form.

*Respondents:* Organic hardwood lumber manufacturers and hardwood plywood manufacturers.

*Estimated Number of Respondents:* 1.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 0.5 hour.

*(8) Refund of Assessments Paid on Hardwood Lumber*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hour.

*Respondents:* Hardwood lumber manufacturers and hardwood plywood manufacturers.

*Estimated Number of Respondents:* 1.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 0.25 hour.

*(9) A Requirement To Maintain Records Sufficient To Verify Reports Submitted Under the Order*

*Estimate of Burden:* Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per record keeper maintaining such records.

*Recordkeepers:* Hardwood lumber and plywood manufacturers 2,840.

*Estimated number of recordkeepers:* 2,840.

*Estimated total recordkeeping hours:* 1,420 hours.

As noted above, under the proposed program, hardwood lumber manufacturers and hardwood plywood manufacturers would be required to pay assessments and file reports with and submit assessments to the Board. While the proposed Order would impose certain recordkeeping requirements on hardwood lumber manufacturers and hardwood plywood manufacturers, information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the fiscal year of their applicability.

An estimated 2,840 respondents would provide information to the Board. The estimated cost of providing the information to the Board by respondents would be \$152,196. This total has been estimated by multiplying 4,612 total hours required for reporting and recordkeeping by \$38, the average mean hourly earnings of various occupations involved in keeping this information.

Data for computation of this hourly wage were obtained from the U.S. Department of Labor, Bureau of Labor Statistics, publication, "May 2011 National Occupational Employment and Wage Estimates in the United States", updated March 29, 2012.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other programs administered by USDA and other state programs.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the 1996 Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information quarterly would coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. The requirement to keep records for two years is consistent with normal industry practices. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual hardwood lumber manufacturers and hardwood plywood manufacturers who are subject to the provisions of the 1996 Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

**Request for Public Comment Under the Paperwork Reduction Act**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the proposed Order and USDA's oversight of the proposed Order, including whether the information would have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) the accuracy of USDA's estimate of the principal manufacturing areas in the United States for hardwood lumber and plywood; (d) the accuracy of USDA's

estimate of the number of hardwood lumber manufacturers and hardwood plywood manufacturers of hardwood lumber that would be covered under the program; (e) ways to enhance the quality, utility, and clarity of the information to be collected; and (f) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

**Request for Public Comment in Accordance With Executive Order 13175**

This rule invites comments on its effect of the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Comments should be directed as to whether this regulation would or would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

USDA made minor modifications to the proponent's proposal to conform with other similar national research and promotion programs implemented under the 1996 Act.

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

As previously mentioned, for the proposed Order to become effective, it must be approved by hardwood manufacturers and hardwood plywood manufacturers who represent a majority of the volume of covered hardwood lumber represented in the referendum who, during a representative period determined by the Secretary, were engaged in the manufacturing of covered hardwood lumber.

Referendum procedures will be published separately in this issue of the **Federal Register**.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this rule by the date specified will be considered prior to finalizing this action.

#### List of Subjects in 7 CFR Part 1211

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

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended by adding part 1211 to read as follows:

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

#### Subpart A—Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order

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##### Reports, Books and Records

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#### Subpart B—[Reserved]

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

#### Subpart A—Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order

##### Definitions

###### § 1211.1 Act.

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

###### § 1211.2 Blue Ribbon Committee.

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

###### § 1211.3 Board.

*Board or Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Board* means

the administrative body established pursuant to this part. It may be referred to by such other name as the Board recommends and the Secretary approves.

###### § 1211.4 Brokered sale.

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

###### § 1211.5 Concentration yard.

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

###### § 1211.6 Conflict of interest.

*Conflict of interest* means a situation in which a member or employee of the Board has a direct or indirect financial interest in an entity that performs a service for, or enters into a contract with, the Board for anything of economic value.

###### § 1211.7 Covered hardwood.

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

###### § 1211.8 Department or USDA.

*Department or USDA* means the United States Department of Agriculture or any officer or employee of the Department to whom authority has been delegated, or to whom authority may hereafter be delegated, to act for the Secretary.

###### § 1211.9 Fair market value.

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

###### § 1211.10 Fiscal period or fiscal year.

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

###### § 1211.11 Green hardwood lumber.

*Green hardwood lumber* means hardwood lumber that has not been kiln dried.

###### § 1211.12 Hardwood lumber.

*Hardwood lumber* means timber from the wood of a cypress tree or a

deciduous, broad-leaved tree (including but not limited to aspen, birch, cypress, poplar, maple, cherry, walnut and oak) that has been sawn into boards or blocks by a sawmill in the United States.

**§ 1211.13 Hardwood lumber manufacturer.**

*Hardwood lumber manufacturer* means a person who cuts (raw) green hardwood logs into hardwood lumber or hardwood lumber products or a person who kiln dries green hardwood lumber to create hardwood lumber, hardwood lumber products or hardwood lumber value-added products in the United States.

**§ 1211.14 Hardwood lumber products.**

*Hardwood lumber products* means hardwood lumber that has been transformed into surfaced boards, ties, cants, strips, or pallet stock. For purposes of this Order, hardwood lumber products do not mean products which are transformed from boards or blocks of lumber into products such as furniture, cabinetry, and pallets.

**§ 1211.15 Hardwood lumber value-added product manufacturer.**

*Hardwood lumber value-added product manufacturer* means a person who operates a sawmill or a kiln to dry hardwood lumber that is then used to manufacture hardwood lumber value-added products.

**§ 1211.16 Hardwood lumber value-added products.**

*Hardwood lumber value-added products* means products which remain in the general shape of hardwood lumber boards, but have undergone additional processing beyond surfacing or cutting to a particular size. Hardwood lumber value-added products include products such as solid wood unfinished strip flooring, all-sides surfaced boards, finger-jointed strips ripped to width, and moldings. It does not include multi-component or further manufactured products such as furniture, cabinets, cabinet doors, prefinished or engineered flooring, pallets, or dimension or glued components for cabinets or furniture.

**§ 1211.17 Hardwood plywood.**

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

**§ 1211.18 Hardwood plywood manufacturer.**

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

**§ 1211.19 Information.**

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

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

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

**§ 1211.20 Kiln dried.**

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

**§ 1211.21 Market or marketing.**

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

**§ 1211.22 Manufacturer.**

*Manufacturer* means domestic manufacturers of covered hardwood lumber as defined in this Order.

**§ 1211.23 Manufacturing.**

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

**§ 1211.24 Member.**

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

**§ 1211.25 Order.**

*Order* means an order issued by the Secretary under Section 514 of the Act that provides for a program of generic promotion, research and information of covered hardwood under the Act.

**§ 1211.26 Part and subpart.**

*Part* means the Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The order shall be a *subpart* of such part.

**§ 1211.27 Person.**

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

**§ 1211.28 Programs, plans and projects.**

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

**§ 1211.29 Promotion.**

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

**§ 1211.30 Research.**

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

**§ 1211.31 Sale.**

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

**§ 1211.32 Secretary.**

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

**§ 1211.33 State.**

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

**§ 1211.34 Suspend.**

*Suspend* means to issue a rule under 5 U.S.C. 553, to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

**§ 1211.35 Terminate.**

*Terminate* means to issue a rule under 5 U.S.C. 553, to cancel permanently the operation of an order or part thereof beginning on a date specified in the rule.

**§ 1211.36 Transfer.**

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

**§ 1211.37 United States or U.S.**

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

**Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Board****§ 1211.41 Establishment and membership.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ 1211.42 Nominations and appointments.**

(a) Initial nominations will be submitted to the Secretary by the Blue Ribbon Committee (BRC). Before considering any nominations, the BRC shall publicize the nomination process, using trade press or other means it deems appropriate, and shall outreach to all manufacturers with annual sales of more than \$2 million of covered hardwood lumber and with annual sales of more than \$10 million of hardwood plywood per fiscal year in order to generate nominees that reflect the different operations within the hardwood lumber industry. The BRC may use regional caucuses, mail or other methods to elicit potential nominees. The BRC shall submit the nominations to the Secretary and recommend two nominees for each Board position specified. In addition, nominees for the initial Board may be submitted directly to the Secretary if accompanied by the signatures of at least 20 persons who pay assessments or will pay assessments under the Order. From the nominations submitted by the BRC or directly to the Secretary, the Secretary shall select the members of the Board.

(b) Subsequent nominations shall be conducted as follows:

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

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

(3) Manufacturers who manufacture covered hardwood lumber in more than one district may seek nomination only in the district in which they manufacture the majority of the volume of their covered hardwood lumber. The names of hardwood manufacturer nominees shall be placed on a ballot by district. The ballots along with the background statements shall be mailed to manufacturers in each respective district for a vote. Manufacturers who manufacture covered hardwood lumber in more than one district may only vote in the district in which they manufacture the majority of the volume of their covered hardwood lumber. The Board must submit nominations to the Secretary at least six months before the new Board term begins. Before considering any nominations, the Board shall publicize the nomination process, using trade press or other means it

deems appropriate, and shall outreach to all sizes of manufacturers of covered hardwood in order to generate nominees that reflect the different size of operations within the hardwood lumber industry. The Board may use district caucuses or other methods to elicit potential nominees. The votes shall be tabulated for each district with the nominee receiving the highest number of votes at the top of the list in descending order by vote. The top two candidates for each position shall be submitted to the Secretary.

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

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

#### **§ 1211.43 Term of office.**

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

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

#### **§ 1211.44 Removal and vacancies.**

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

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

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

#### **§ 1211.45 Procedure.**

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

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

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

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

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

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

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

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

#### **§ 1211.46 Reimbursement and attendance.**

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

#### **§ 1211.47 Powers and duties of the Board.**

The Board shall have the following powers and duties:

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

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

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

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

(e) To employ or contract persons, other than the Board members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons or to contract such services from an organization and to enter into contracts or agreements in order to carry out authorized functions;

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

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

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

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

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

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

(h) To prepare and submit to the Secretary for approval 60 calendar days in advance of the beginning of a fiscal period, rates of assessment and a budget of the anticipated expenses to be incurred in the administration of the Order, including the probable cost of each promotion, research and

information activity proposed to be developed or carried out by the Board;

(i) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

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

(k) To cause its books to be audited by a certified public accountant at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit to the Secretary;

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

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

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

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

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

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

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

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

lumber value-added products and hardwood plywood industries.

#### **§ 1211.48 Prohibited activities.**

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that is a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to this part; and

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

#### **Expenses and Assessments**

#### **§ 1211.50 Budget and expenses.**

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

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

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

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

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

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The Board may incur such expenses, including provision for a reserve, as are reasonable and likely to be incurred for maintenance and functioning of the Board, and to enable

it to exercise its powers and perform its duties in accordance with the provisions of the Order. Such expenses shall be paid from funds received by the Board.

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

(f) The Board may accept voluntary contributions, and is encouraged to seek other appropriate funding sources to carry out activities authorized by the Order. Such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use. The Board may receive funds from outside sources (i.e., Federal or State grants, Foreign Agricultural Service funds), with approval of the Secretary, for specific authorized projects.

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

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

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

(j) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this part in:

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

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

(3) Interest bearing accounts or certificates of deposit of financial

institutions that are members of the Federal Reserve System;

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

(5) Other investments as authorized by the Secretary.

#### § 1211.51 Financial statements.

(a) Upon the Secretary's request, the Board shall prepare and submit financial statements to the Secretary on a monthly or quarterly basis, or at any other time as requested by the Secretary. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show

expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

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

#### Assessments

#### § 1211.52 Assessments.

(a) The Board's programs and expenses shall be paid by assessments

on manufacturers of covered hardwood, other income of the Board, and other funds available to the Board. This section authorizes hardwood lumber manufacturers to be assessed on hardwood plywood and hardwood lumber, both in its green (raw) form and as it is kiln dried to create hardwood lumber products and hardwood lumber value-added products.

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

	Description	Assessment rate	Allowable deductions
Hardwood lumber .....	—hardwood logs turned into lumber (raw green lumber).	\$1/\$1,000 in sales .....	N/A.
Hardwood lumber product ...	—stays a board or block (a little more processed than green lumber).	\$1/\$1,000 in sales .....	—deduct the hardwood lumber purchase.
Hardwood lumber value-added products.	—flooring and molding (stays the shape of a board but has undergone additional processing—does NOT include multi-component or further manufactured products such as furniture, cabinets, cabinet doors, prefinished or engineered flooring, pallets, or dimension or glued components for cabinets or furniture.	\$0.75/\$1,000 in sales .....	—deduct the hardwood lumber purchase.
Hardwood plywood .....	—plywood .....	\$3/\$1,000 in sales .....	N/A.

(1) Hardwood lumber manufacturers that cut (raw) green hardwood logs into hardwood lumber or kiln dry hardwood lumber to create hardwood lumber that can be further processed into hardwood lumber products shall pay at the rate of \$1.00 per \$1,000.00 in sales of (raw) green hardwood lumber.

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

(3) Hardwood lumber value-added product manufacturers shall pay a rate of \$0.75 per \$1,000.00 in sales of hardwood lumber value-added products: *Provided*, That, hardwood lumber value-added product manufacturers would deduct covered hardwood lumber purchases from their sales figures to take into account the assessment that was already paid on the (raw) green covered hardwood lumber.

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

(5) Brokered sales of hardwood lumber or hardwood lumber products are excluded from the calculation of assessments. For an integrated pallet manufacturer that manufactures hardwood lumber then transfers within the same company to manufacture constructed pallets or crane mats, the

hardwood lumber manufacturer shall pay at this rate on fair market value of the hardwood pallet lumber, pallet cants, pallet stock or crane mat material produced and transferred within the same company. The assessment rate would be based on the amount of green, kiln dried and pallet sales that they cut and transferred or sold to themselves. The dollar sales of green or kiln dried lumber is subtracted from the above value. Also subtracted from that value are annual green hardwood purchases times \$.001. This formula is necessary to take into account covered hardwood lumber that is cut and transferred within the same company and covered hardwood lumber purchases from other manufacturers used in the manufacturing of pallets. Brokered sales of covered hardwood are excluded from the calculation of assessments.

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

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

(e) If the assessment is not paid within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest. The late payment charge and rate of interest shall be recommended by the Board to the Secretary through informal rulemaking. Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

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

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

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

**§ 1211.53 Exemption from assessment.**

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

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

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

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

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

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

(e) *Organic.*

(1) Organic Act means section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

(2) A hardwood lumber or hardwood plywood manufacturer who operates under an approved National Organic

Program (NOP) (7 CFR part 205) system plan, only manufactures and has annual sales of covered hardwood lumber that is eligible to be labeled as 100 percent organic under the NOP and is not a split operation shall be exempt from payment of assessments. To obtain an organic exemption, an eligible manufacturer shall submit a request for exemption to the Board, on a form provided by the Board, at any time initially and annually thereafter on or before the start of the fiscal year as long as such manufacturer continues to be eligible for the exemption. The request shall include the following: The manufacturer's name and address; a copy of the organic operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary. The Board shall have 30 calendar days to approve the exemption request. If the exemption is not granted, the Board will notify the applicant and provide reasons for the denial within the same time frame.

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

**Promotion, Research and Information****§ 1211.60 Programs, plans, and projects.**

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

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

(c) The Board shall periodically review or evaluate each program, plan, or project implemented under this subpart to ensure that it contributes to an effective program of promotion, research or information. If the Board finds that any such program, plan, or project does not contribute to an effective program of promotion, research or information, then the Board shall terminate such program, plan, or project.

**§ 1211.61 Independent evaluation.**

Within four years of the first Board meeting and at least once every five years thereafter, the Board shall authorize and fund an independent evaluation of the effectiveness of the Order and programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary and make available to the public the results of each periodic independent evaluation conducted under this section.

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

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this part shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this part, § 1211.83 shall apply to determine disposition of all such property.

**Reports, Books and Records****§ 1211.70 Reports.**

(a) Each hardwood lumber manufacturer and hardwood lumber plywood manufacturer will be required to provide periodically to the Board staff such information as the Board, with the approval of the Secretary, may require. Such information may include, but not be limited to:

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

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

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

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

**§ 1211.71 Books and records.**

Each manufacturer, including those exempt under § 1211.53, shall maintain any books and records necessary to carry out the provisions of this subpart and regulations issued thereunder, including such records as are necessary to verify any required reports. Such books and records must be made available during normal business hours

for inspection by the Board's or Secretary's employees or agents. A manufacturer must maintain the books and records for two years beyond the fiscal period to which they apply.

#### **§ 1211.72 Confidentiality of information.**

All information obtained from books, records, or reports under the Act, this subpart and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or other manufacturers. Only those persons having a specific need for such information solely to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or at the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

#### **Miscellaneous**

#### **§ 1211.80 Right of the Secretary.**

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

#### **§ 1211.81 Referenda.**

(a) *Initial referendum.* The Order shall not become effective unless the Order is approved by a majority of the volume of covered hardwood lumber, represented in the referendums by those who, during a representative period determined by the Secretary, are engaged in the manufacture of covered hardwood lumber.

(b) *Subsequent referenda.* Five years after the initial meeting of the Board, the Secretary shall hold a referendum to

determine whether hardwood lumber and hardwood plywood manufacturers favor the continuation of the Order. Thereafter, the Secretary shall conduct a referendum at least every seven years. The Order shall continue if it is favored by a majority of the volume of covered hardwood lumber, represented in the referendum by those who, during a representative period determined by the Secretary, are engaged in the manufacture of covered hardwood lumber. The Secretary will also conduct a referendum if requested by the Board or if 10 percent or more of all non-exempt hardwood lumber manufacturers, hardwood plywood manufacturers paying an assessment. In addition, the Secretary may hold a referendum at any time.

#### **§ 1211.82 Suspension and termination.**

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

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

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

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

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

#### **§ 1211.83 Proceedings after termination.**

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds

unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such persons' title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to one or more hardwood lumber and hardwood plywood industry organizations in the interest of continuing hardwood lumber and hardwood plywood promotion, Research and information programs.

#### **§ 1211.84 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination or amendment of this part or any subpart thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this part; or

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

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other persons with respect to any such violation.

#### **§ 1211.85 Personal liability.**

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

**§ 1211.86 Separability.**

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

**§ 1211.87 Amendments.**

Amendments to this subpart may be proposed from time to time by the Board

or by any interested person affected by the provisions of the Act, including the Secretary.

**§ 1211.88 OMB control number.**

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

statement) and OMB control number 0581—NEW.

**Subpart B—[Reserved]**

Dated: November 6, 2013.

**Rex A. Barnes,**

*Associate Administrator.*

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