

August 10, 2015

Desk Office for Agriculture
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building
725 17th Street, NW, Room 725
Washington, DC 20503

Re: Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order, Document Number AMS-FV-11-0074; PR-A2 RIN 0581-AD24; OMB number 0581-NEW

To Whom It May Concern:

These comments are submitted pursuant to the Paperwork Reduction Act on the information collection issues. These comments are provided by the U.S. Hardwood Lumber Industry Coalition in opposition to the new proposed Hardwood Checkoff Order and Referendum, as set forth in the Federal Register. (80 Federal Register 32493 and 80 federal Register 32488) Due, in part, to the paperwork burden that will be imposed, if adopted. This Coalition is comprised of small, medium and large manufacturers of hardwood lumber. The paperwork and information collection requirements are significant requiring extensive time, effort and recordkeeping to attempt to comply, all of which brings a considerable increased cost of doing business.

USDA states that there are 2,804 hardwood manufactures, of which 85 to 90 percent are small businesses. As small businesses, these companies have small record keeping and accounting staffs, if any. USDA admits that it received comments from small companies averring that the original proposed rule would increase their costs. (80 FR 32498) This new proposal is significantly more burdensome than the original in terms of increasing cost to small businesses due to the vastly expanded record keeping requirements necessitated by the various exemptions and assessment rates based on product end use and company structure.

Under the revised proposal, there are four categories of products, including hardwood lumber, hardwood lumber products, hardwood value added products and plywood. Then there are two categories for each type of product, assessed product and non-assessed product. The non-assessed products for the non-plywood categories include at least eight exemptions, including industrial products which remain in board or block form such as ties, cants, crane mat material and pallet stock or products which are transformed from boards or blocks of lumber into other products such as furniture, tight cooperage, cabinetry and constructed pallets. Moreover, prefinished floor is also exempt, contrasted with unfinished strip flooring which is subject to assessment. The assessed products are subject to three different assessment rates, depending on the product category. Hardwood lumber and hardwood lumber products are assessed at \$1 per \$1,000 in sales, while hardwood value added products are assessed at \$0.75 per \$1,000 in sales. Plywood is assessed at \$3 per \$1,000 in sales. For hardwood lumber products and hardwood value added products, a deduction is allowed for the value of green lumber purchases.

A single manufacturer could produce all three non-plywood products. Under the proposal, each type of product would require extensive recordkeeping for the purposes of assessment. Any products that were used for one of the nine exempt purposes would require recordkeeping by product type in order to verify that those end use products were indeed products exempt from assessment. An assessed product would likewise be recorded separately as a product subject to assessment. Considering the need for records on these requirements, three categories of hardwood (i.e. all but plywood) would have to be categorized under one of 10 (eight exempt categories by end use, pre-finished flooring, or one category for assessed products). This results in at least 30 new categories of recordkeeping for small and medium sized manufacturers covered by this order.

Among the three non-plywood categories subject to assessment (hardwood lumber, hardwood lumber products, and hardwood value added products) which go into assessed products such as solid wood unfinished strip flooring, all-sides surfaced boards, finger-jointed strips ripped to width and moldings, there would be one of two assessment rates (the \$1 per \$1,000 for hardwood lumber and hardwood lumber products and the \$0.75 per \$1,000 for hardwood lumber value added products). However, for both hardwood lumber products and hardwood value added products, deductions for the costs of purchased green lumber would be allowed, which adds two more record keeping requirements, bringing the total to 32 separately maintain categories.

Also for the four categories of assessed product, including plywood, there are exemptions by the method of sale. Brokered sales are completely exempt from assessment. Further, the rule states that sales for the purposes of assessment would not include discounts. It is a standard industry practice to provide net discounts for cash sales, however, for the purposes of reporting sales for the calculation of the checkoff assessment a manufacturer would have to add in the value of the discount, which is in fact adding sales revenue not received, meaning a company would pay an assessment on revenue it did not earn for the purposes of complying with the checkoff. Moreover, for the purposes of the checkoff, the four categories of assessed products would also have to be recorded by three categories of sales method (sale subject to assessment, sales adjusted for discounts, and brokered sales). This necessitates 12 more categories of recordkeeping and tracking. That brings the total to 44 new recordkeeping requirements.

Further, for hardwood lumber, any manufacturer who is vertically integrated (a term that remains undefined in the revised proposal) and transfers lumber from one business unit to another would be subject to pay an assessment on product that is otherwise defined as non-assessed product at a rate of \$0.001 times the net of the fair market value of the non-assessed product minus the fair market value of the lumber used, minus the fair market value of the any hardwood lumber purchases. This would add three levels of entries to the bookkeeping requirements (as records must be kept not on sales revenue but rather fair market value) for each of the at least eight categories of exempted products, plus the additional category of pre-finished flooring. That adds another potential 27 categories of recordkeeping requirements, bringing the cumulative total to 71 new required categories of records. This would prove to be an extraordinary burden and significant cost to small businesses.

There are also exemptions for organic production, which requires certification. Moreover, there is a *de minimis* exemption for manufacturers under \$2 million in annual revenues.

AMS claims that based on the comments received in response to the November 13 proposed rule they are reducing the information collection requirements for the *de minimis* exemption. They further claim those companies seeking an exemption from paying assessments based on the \$2 million annual sales threshold would only have to submit an application once, not every year. While it is true that only one piece of paper needs to be filed, the recordkeeping burden to provide the correct information to USDA would be increased dramatically. Indeed, in order to submit that single *de minimis* application, all the steps above would be required to determine total sales revenues of assessed product in order to claim that exemption.

Furthermore, companies that fall under the *de minimis* exemption are not eligible to vote in the referendum. Thus, to determine if a company is even eligible to vote in the proposed referendum, an extensive review applying all the record keeping steps outlined above would have to be applied to sales from a previous period. That period would be subject to designation by USDA. The process to verify whether a company is eligible to vote in the referendum would have to be completed within a 30-45 day period prior to the referendum. This is an unreasonable burden for most small companies.

Moreover, many of the exemptions based on the end use of the hardwood lumber and hardwood lumber products and hardwood value added products could require traceability records beyond a manufacturer's control. The manufacturer does not necessarily know what the end use product will be at the time it sells hardwood lumber, hardwood lumber products and/or hardwood value added products to a customer. This is the case when the customer is a distributor. Claiming an allowable exemption could require manufacturers to have access to its customers' inventory databases, or its customers' customers' databases in order to trace the specific inventory it sold through the value chain. This is an unreasonable and potentially unworkable burden.

Again, the proposed rules require maintaining records on regular basis that are not currently kept. Extensive time will be required to comply with the requirements to calculate volume of sales to each customer and which products the customer buys and how the sale was made. In many cases, new computer systems would be required as new accounting systems are installed in an effort to attempt to comply. New inventory systems would also be required. These new record keeping requirements will result in new responsibilities for staff and new accounting procedures which significantly increase costs. In some cases part time staff will need to be hired. This is all necessitated by the proposed rule in order for a company to determine if it is exempt under the \$2 million annual threshold *de minimis* rule. This determination is necessary to determine whether it can vote in the referendum, and/or whether it owes assessments. A company with \$20 million in sales that sells all its products in exempt categories would be considered exempt under the *de minimis* rule and could not vote.

No one can reasonably argue that the revised rule will not require a considerable amount of time and expense for compliance. It is important to note, that despite USDA's claim, this is not a

onetime requirement. Each and every year, it will be necessary for many companies to recalculate all the necessary computations for each product to determine if it is a covered item or excluded item and to determine annual sales volume of assessed and non-assessed products. Then it will be necessary to calculate if that business is required to pay the assessment or not required to pay the assessment. Failure to require an annual valuation of a company's sales of assessed products would undermine the integrity of the checkoff program.

It is reasonably estimated that the increased cost of these record keeping requirements could total \$7.9 million to the hardwood manufacturing industry. This regulatory compliance cost certainly would exceed the amount of revenue raised by the checkoff program available for research, promotion and education. The original proposal set forth in the Federal Register (78 Fed. Reg. 68298) stated "these assessments should generate about \$10 million annually." The revised order, however, provides numerous exemptions to the original assessments, including industrial products which account for up to 60 percent of all hardwood utilization. The revised order will not raise \$10 million dollars annually.

USDA's New Proposal Is Confusing and Difficult To Interpret Since The Hardwood Industry Is Not Organized In A Manner To Conform With The Proposal's Requirement To Keep Several Sets Of Accounting Records And Books.

The new USDA proposal is very difficult to understand with its many new and different requirements which do not reflect standard industry practices. In order to comply with a number of the requirements, companies essentially are required to keep two different sets of accounting records. This requirement is arbitrary and unreasonable and demonstrates that USDA does not know the business practices of the industry they are attempting to regulate.

Most, if not all, companies in the hardwood industry keep one set of books that are used to manage their businesses and for income tax purposes. This is especially true in this industry where there are a large number of small businesses who will now be required to keep new records in the manner dictated by USDA.

In order to try to comply with the proposed order, every business will have to start keeping records that reflect which products are excluded from the order and the amount of these sales. Each business will have to keep books that reflect which products are covered by the new proposal and the amount of these sales. This is not an easy task since there are so many exclusions as described above. These exclusions are both by product and by method of sale. It is also necessary to keep track of the value of the covered product sales and the excluded sales. This further complicates the record keeping.

For example, if a company sells unfinished flooring to a customer, the value of the sale is covered. However, if the sale is made through a broker, it is not covered. If the sale is for pre-finished flooring, it is not covered. If the sale is for unfinished flooring and includes a two percent discount for cash payment within 10 days, the then value of the sale plus the two percent value of the discount (which was not received in the sale price) is subject to assessment. If the

manufacturer is vertically integrated, and transfers the hardwood processed into flooring to another business unit for finishing, then a different assessment is applied. That is based on the fair market value of the pre-finished flooring, minus the fair market value of the lumber transferred and thus the non-assessed pre-finished flooring, which is by definition exempt from assessment, is still subject to an assessment. The bookkeeper will have a time consuming job trying to keep track of all this information in an accurate manner.

Adding to the confusion is the definition of hardwood lumber products. This definition refers to a private trade association standard (National Hardwood Lumber Association Grade 3A Common) that changes regularly, or to unknown proprietary standards used by individual companies. It is presumed that if the product does not meet the standard, whether the trade association standard or the unknown private treaty standard, then the product will be exempt. This further adds to the record keeping confusion and burden.

In order to attempt to do all this, it first will be necessary for the bookkeeping and recordkeeping personnel to learn all the requirements of the new proposed order, so they will know how to keep track of sales under the new order. New booking records will have to be established. Just the training costs are estimated to be \$2,000 per company (based on two employees, for five days, at a rate of \$200 per day, based on an hourly wage of \$25 per employee).

It is estimated that, at a minimum, it will require at least two to four full days each quarter by a full time employee to attempt to comply with the new mandated record keeping requirements. This equates to eight to 16 full days per year for very small saw mills. As the size of the hardwood manufacturer increases, more time and staff will be required. The new costs are estimated to be in the range of \$1,600 to \$3,200 based on hourly wages of \$25 for this level of employee.

Additional employees will need to be hired which will also increase costs. Currently an entry level bookkeeper for a hardwood manufacturer in North Carolina is paid \$15 per hour.

In many cases, the new recordkeeping requirements under the revised rule will necessitate new computer programs. It is estimated that the average cost of such an inventory management system enhancement would be \$30,000. This estimate was provided by a professional information technology firm that provides inventory management software and systems integration. It is based on the following assumptions: three professionals (Front End Developer, Back End Developer, Analyst/Database Expert) providing 320 total hours of service at \$90-\$100 per hour, for a total of \$28,000 to \$32,000 for the project. This is assuming a system would be developed using Microsoft.net technology, with a cloud-based database and a basic User Interface.

These new estimated costs, multiplied by the number of companies in the industry likely to incur them (based on size) totals \$7.9 million in the first year. It is unlikely that any benefit from any promotion created by this proposed rule will offset these increased costs of operation imposed on

these businesses. The costs of the regulatory burden likely will be greater than the actual checkoff revenues raised by the industry.

This paper work requirement is made all the harder since it is not possible to easily determine what a hardwood product is. The definition of “hardwood lumber products” found at section 1211.14 is not possible of comprehension. First it recites all the products that are excluded from coverage. Then it defines hardwood lumber products as “hardwood lumber” that has been transformed into products that remain boards which meet a standard set forth by a private trade association that could change these standards regularly or equivalent proprietary standards that are private and unknown. How can a bookkeeper possibly be expected to know whether or not their company’s product is covered by this proposed order? This definition is most confusing.

USDA’s Assessment Of The Paperwork Burden Is Unrealistic And Mistaken

It is not possible to determine how USDA came up with the estimate of time required to do all the record keeping necessary to comply with the proposed order. However, clearly, the USDA estimate is mistaken, understated and wrong. It documents that USDA does not understand this industry and that this proposed checkoff is a product of the Agricultural Marketing Service and not reflective of the industry’s perspective

These comments are in response to the specific items listed on page 32499.

(a) The information collection required is necessary to comply with the proposed orders rules. This information is necessary to have and maintain for USDA to audit each company to see if that company has complied with the new rules. However, this information will not provide anything necessary for the industry to promote its products. This information collection is simply an added burden to this industry which will make it harder for companies to succeed.

It is correct that USDA proposed changing the rule with respect to a one time filing for a *de minimis* exemption based on the \$2 million annual threshold, however, in doing so, USDA substantially increased the record keeping requirements to make this one time filing, but refuses to acknowledge it. The new proposal will allow a large hardwood manufacturer to avoid participating due to the exemptions.

(b) USDA’s estimate of the burden being imposed, especially on the small companies, is not close to being reasonably accurate. It is grossly understated. USDA cannot accurately make this estimate since it does not understand this industry.

(c) The best and most useful way to address the required information collection is to withdraw this proposed order.

(d) The effective way to minimize the burden is to revise the proposed order so that it is understandable and conforms to industry standards and practices. That is best done by

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withdrawing this proposal which was developed by the USDA's Agricultural Marketing Service and returning it to the industry to let them decide how to proceed, if at all. It is unreasonable to assume that all the many small sawmills have reliable electronic communication other than the telephone. Consider that many of these small mills are in remote, rural areas.

If you have any questions, please let us know and the answers will be provided. We look forward to learning that the proposed promotion research and information order has been withdrawn.

Respectfully submitted,

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