



NATIONAL WOODEN PALLET  
AND CONTAINER ASSOCIATION



RAILWAY TIE ASSOCIATION

August 28, 2015

Promotion and Economics Division Fruit and Vegetable Program  
Agriculture Marketing Service  
USDA 1400 Independence Avenue SW., Room 1406-S, Stop 0244  
Washington, DC 20250-0244

**Re: Proposed Rule – Docket Citation No. 78 FR 67979; 7 CFR 1211; Regulatory Information Number (RIN) 0581-AD24: Comments on June 9, 2015 revised Federal Register Proposed Rule for Hardwood Lumber and Hardwood Plywood Check-off Program.**

The National Wooden Pallet & Container Association (NWPCA) and the Railway Tie Association (RTA) thank the USDA Agricultural Marketing Service (AMS) for taking into account our comments to the proposed Hardwood Lumber and Hardwood Plywood Check-Off Program as it was originally written in the Federal Register on November 13, 2013. We are jointly submitting comments on the June 9, 2015 revised rule due to the shared concerns of the industrial wood products sector regarding elements of the proposal.

NWPCA is the largest organization of wood packaging professionals in the world. Located in Alexandria, Va., NWPCA is an international trade association with more than 645 company members in 28 countries who manufacture, repair and distribute wood pallets, wood containers and reels, or who supply products and services to the industry. The \$11.5 billion wood pallet and wood packaging industry has a 94% market share, and is the critical component for nearly all domestic and export shipments.

RTA is the largest and only organization of wood tie producing professionals and companies in the world. Located in the Atlanta, Ga., area RTA is an international association with more than 3000 members who produce, supply to and utilize hardwood crossties and timber products for the railroad industry. The \$1.5+ billion wood tie and services industry has a 94% market share of new crosstie tie products utilized by the North American and wood tie export markets annually.

Combined, our industries are also the critical component to a healthy, functioning and growing hardwood sawmill industry. Hardwood industry data shows hardwood use for pallet stock now represents 44 percent of all hardwood lumber produced in the United States, compared to 35 percent just 13 years ago. When combined with the hardwood cants used to make railway ties and other industrial uses for hardwoods such as crane mats, more than 60 percent of hardwood lumber production is now going into industrial products.

NWPCA and RTA support the exclusion of industrial products as proposed by USDA-AMS to the program in the June 9, 2015 Order (80 FR 32493, Page 32494):

*For purposes of this Order, hardwood lumber does not include 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.*

While this language provides a general understanding that lumber produced for industrial markets, including pallets and railway ties, are excluded from the assessment, a review of the order shows some ambiguity regarding this exclusion issue. Paragraph 1211.12 (Page 32500 in the order) defines “Hardwood lumber” but is silent on the industrial lumber exclusion. We believe “Hardwood lumber” definition should also specifically excludes industrials in similar fashion, so there is no ambiguity regarding that industrial products will not be assessed under the “Hardwood lumber” category.

We’ve also received input from our joint memberships regarding paragraph 1211.52 (Page 32505), Subparagraph (6), that seems to assess “vertically integrated manufacturers.” It states that the vertically integrated manufacturers “shall pay assessments based on the fair market value of the non-assessed product . . . “. This language appears to subject otherwise unassessed products to an assessment. We have significant concerns and absolutely oppose any assessment of industrial lumber.

We also have a few additional clarifications/concerns for consideration:

- (1) We have concerns regarding the process for exempt manufacturers to maintain their exemption and how this applies to industrial products (80 FR 32493, Page 32496); “exempt manufacturers would still be required to keep records.”
  - a. We seek a specific clarification as to what this would require for manufacturers producing non-assessed products (e.g. industrial lumber/products). We do not believe producers of non-assessed products should be subject to the record-keeping requirements of the Order.
  - b. The recordkeeping requirement, in general, seems to pose a significant burden for small businesses that are not participating in the program as they would still need to maintain detailed records and recordkeeping. It appears to be an “unfunded mandate” and we question the ability to impose requirements on companies that aren’t covered by the Order.
  - c. The annual sales exemption poses another interesting question related to voting as it is possible that currently exempt manufacturers could be covered by the Order at some point in the future. Therefore, their voice should be considered during the voting process. While these votes could certainly be tallied in a different way, it seems quite important that USDA AMS understands the perspective of this potentially covered group.

- (2) We have a continued concern that our industry may be adversely impacted if manufacturers of covered products of the Check-off simply transfer their costs to all downstream users. There are several ways this could occur, directly or indirectly. For example, log prices could increase attributable to the checkoff, or there could be a broad spreading of assessment costs from covered entities across all products sold (exempted or not). Either of the above scenarios would cause a negative impact to the industrial products sector.

As previously pointed out, the industrial grade markets, combined, use more than 60% of hardwood sawmill production. Because our industry is very competitive with narrow margins, our industry remains concerned about absorbing the costs of financing a generic hardwood grade lumber marketing campaign. Competing non-agricultural products (e.g. plastic pallets, steel concrete and composite-based ties) are quite interested in expanding their market share into this historically wooden-owned market, and we would draw USDA AMS' attention to this potential unintended consequence of the Order.

- (3) Our last concern is that if the check-off is approved by referendum, it could be expanded upon at a later time. We welcome additional information as to how any future revised proposals will maintain the revisions NWPCA and RTA have consistently sought in excluding industrial products from the program.

NWPCA and RTA appreciate the consideration given to our previous comments and the exclusion of industrial products. We continue to have serious concerns about several elements of the Order and the potential impact on our combined \$13+ billion industry.

NWPCA and RTA believe that our concerns, and those already submitted by a significant number of responders, suggest that significant work remains to be done. The process should either be terminated or a significantly revised proposal be issued as a result of the input AMS has received. We jointly oppose a proposed rule announcing the referendum as the next step.

Please contact us at any time for a more in depth and detailed conversation.

Sincerely,



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National Wooden Pallet & Container Association  
President / CEO



Jim Gauntt  
Railway Tie Association  
Executive Director