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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1217

[Doc. No. AMS–SC–22–0088]

#### Softwood Lumber Research, Promotion, Consumer Education, and Information Order; Adjustment to Membership

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements recommendations from the Softwood Lumber Board (Board) to modify the membership by adding alternate positions for certain seats and a public member. In addition to these Board recommended changes, Harmonized Tariff Schedule (HTS) numbers for softwood lumber are also updated with the latest numbers from the U.S. International Trade Commission. The Board administers the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order) with oversight by the U.S. Department of Agriculture (USDA).

**DATES:** *Effective:* August 19, 2024.

**FOR FURTHER INFORMATION CONTACT:** Katie Cook, Marketing Specialist, Market Development Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244; Telephone: (202) 720–8085; or Email: [Katie.Cook@usda.gov](mailto:Katie.Cook@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule affecting the Order (7 CFR part 1217) is authorized by the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7411–7425).

#### Executive Orders 12866, 13563 and 14094

USDA issues this final rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies

to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This final rule is not a significant regulatory action within the meaning of Executive Order 12866. Accordingly, this action has not been reviewed by the Office of Management and Budget under section 6 of the Executive Order.

#### Executive Order 13175

This action was reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. AMS assessed the impact of this final rule on Indian Tribes and determined this final rule will not have Tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with Tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the changes to the regulations will be shared during an upcoming quarterly call, and Tribal leaders will be informed about the revisions to the regulation. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regard to the changes to the Order.

#### Executive Order 12988

This final rule was reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. Section 524 of the Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under sec. 519 of the Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order,

or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

#### Background

Under the Order, which became effective on August 3, 2011, the Board administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen softwood lumber's competitive position and expand domestic markets for softwood lumber. This program is financed by assessments on domestic manufacturers and importers of softwood lumber. The Board administers the Order with oversight by the USDA.

This final rule modifies the membership of the Board by adding two domestic manufacturer alternates, one importer alternate, a public member and alternate, and updating HTS numbers. The Board discussed the recommendations over several months and, on May 17, 2023, unanimously recommended the changes to the membership and the update to the HTS numbers. Board members present for the vote represented domestic manufacturers and importers.

#### Adding Alternate Positions and a Public Member to Membership

Section 1217.40 of the Order provides for the membership of the Board and authorizes these changes. The Board is comprised of 10 domestic manufacturers and four importers who manufacture and domestically ship or import 15 million board feet or more of softwood lumber in the United States

during a fiscal period. Currently, the Board struggles to find individuals from under-represented populations who are eligible to serve with the current membership requirements. To mitigate this issue, this final rule adds alternate positions (two for domestic manufacturers; one for importers), a public member, and an alternate public member to the Board.

Unlike most other research and promotion programs, the members on this Board have corporate backgrounds from large, international corporations and serve in leadership positions at their respective companies. Furthermore, according to the Board, about 90% of the manufacturing companies are family owned, therefore these companies typically pass leadership positions on to a family member. It is common industry practice to nominate executive-level employees to serve on the Board, which allows for robust discussions and thoughtful decision making. The Board believes that adding alternates for manufacturers provides succession and development opportunities for prospective nominees.

Adding a public member and alternate also expands the pool of members and allows the Board to tap into broader backgrounds and more diverse perspectives. Ideally, the public member position will be filled by an individual in architecture, construction, engineering, or development sectors, who will participate, voice their opinions, and vote to the benefit to the softwood lumber industry. Much like the alternates for manufacturers, adding an alternate public member creates succession and development opportunities for prospective nominees in the architecture, construction, and engineering industries, as well as an opportunity to provide input and unique perspective on Board actions.

This final rule is the second change to the Board's membership since its inception. In response to industry consolidation in 2019, the membership was reduced from 19 to 14 and more flexibility was added to the Order in terms of certain seats being open to representatives of any size manufacturer or importer. While previous rulemaking sought to decrease membership, this final rule adds certain alternate positions and a public member to help create opportunities for a more diverse and inclusive Board. The Board does not believe they will have difficulty filling the new positions from this final rule because this final rule opens eligibility to a new class of underrepresented and prospective industry members.

In addition to providing more opportunities to recruit diverse candidates, adding alternates will help the Board meet quorum requirements, which became a greater issue after the Board reduced its membership in 2019. Including alternates allows for an absent member seat or vacant seat to be filled as needed to vote on Board motions. Since alternates will not be broken out by size, they may serve in the stead of any size seat if it is from the same region they represent for the two domestic seats, and any importing region for the importer seat.

With the changes to § 1217.40, the membership of the Board increases from 14 to 15 members and four alternates. The new Board will be composed of 10 domestic manufacturer members and two alternates, four importer members and one alternate, and one public member and one alternate. Further, domestic manufacturers will represent three regions: five members and one alternate representing the South region; four members and one alternate representing the West region; and one member representing the Northeast and Lake States region. Alternates for the domestic manufacturers may represent companies of any size. For importer representation, the four members will be two large importers, one small importer, and one importer of any size, while the alternate may represent importers of any size from any region.

As a point of clarification, current § 1217.41(f) of the Order states that no two members shall be employed by a single corporation, company, partnership, or any other legal entity. This final rule maintains this stipulation for alternates, ensuring the Order is not violated and no two members or alternates may be from the same manufacturer or importer. Although there is consolidation in the industry, there are a sufficient number of companies who will be able to fill the 15 member seats and four alternate seats.

Section 1217.44, which is currently titled "Procedure", is revised to be titled "Alternates"; and it creates the alternate position and explains the role of alternate members on the Board. In the event a member is unable to attend a Board meeting due to death, removal, resignation, disqualification, illness, or any other reason, the alternate from the same group (domestic manufacturer, importer, or public member) and region (if applicable) may serve in the member's stead. For example, if a member is unable to attend a singular meeting, an alternate from the same category could step in and serve as a member, counting towards quorum and

will be eligible to vote. However, if a member is unable to serve permanently, the position becomes vacant, and the Board will nominate persons for the vacant seat using the nomination process set forth in § 1217.41. The alternate will serve until the vacancy is permanently filled.

Currently, § 1217.44 specifies the Board's procedures, § 1217.45 specifies the reimbursement and attendance policies when performing Board business, § 1217.46 specifies the powers and duties of the Board, and § 1217.47 specifies prohibited activities. Current §§ 1217.44 to 1217.47 will be redesignated and become §§ 1217.45 to 1217.48 to accommodate the addition of the role of the newly created alternate member positions in § 1217.44. Redesignated §§ 1217.45 to 1217.47 are also revised to include references to alternates.

### Conforming Changes

Section 1217.5 defines conflict of interest for current Board members or Board employees. This section is revised to include alternate members to the Board and is a conforming change.

Section 1217.41 specifies the nomination procedures. This final rule revises §§ 1217.41(b) and (c) and redesignates § 1217.41(g) to include alternate members and the public member. Section 1217.41(b) specifies that domestic manufacturers, importers, and public members and alternates may submit a short background statement outlining their qualifications to serve on the Board. Section 1217.41(c) states that all members and alternates may seek nomination for all open or vacant seats for which they are eligible. Section 1217.41(e) is added to prescribe nomination procedures specifically for the public member and alternate positions on the Board.

The nomination procedure provides that the Board conduct outreach and solicit nominees for domestic manufacturers, importers, and public members who are interested in serving on the Board. A nominee could seek nomination to the Board for all seats for which they qualify. The Board evaluates all nominees and submits one recommended candidate for each open seat and at least one additional nominee for each open seat to the Secretary for consideration. Any additional qualified persons interested in serving in any of the open seats but not one of the two forwarded by the Board are designated as additional nominees for consideration by the Secretary.

Current § 1217.41(f), which states that no two members shall be employed by

a single legal entity, is redesignated and revised to include alternates.

Section 1217.42 specifies the term of office. Section 1217.42(a) is revised to include alternates and allow members to serve as an alternate when they are ineligible to serve in the member position after two consecutive terms. In addition, § 1217.42(b) staggers the alternate member position terms so not all alternates will term off the Board at the same time. Like their member counterparts, alternate members are permitted to serve two consecutive, 3-year terms as alternates. If an alternate is nominated and appointed as a member, the eligibility starts over. For example, if an alternate member serves two consecutive terms, they are eligible to serve as a member immediately after their service as an alternate.

Section 1217.43 specifies the removal and filling of vacancies on the Board. Section 1217.43(a) is revised to address the addition of alternates to the Board, and states that if any member or alternate ceases to serve in their appointed capacity, whether they leave their position at their manufacturing or importing entity, or if they no longer qualify as a Board member or alternate

in the respective group or region in which they were appointed, that position becomes vacant. Section 1217.43(b) is revised to add alternates, specifying that, similar to members, if an alternate refuses to perform their duties, the Secretary may remove the member or alternate from the Board.

**Board Recommendation To Update HTS Numbers**

Section 1217.52(h) specifies the HTS numbers and assessment rates on imported softwood lumber. This final rule updates the HTS numbers to the latest codes published by the U.S. International Trade Commission.

**Final Regulatory Flexibility Act Analysis**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) is required to examine the impact of the action on small entities. Accordingly, AMS considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the actions so that

small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small firms which engage in “Support Activities for Forestry” (domestic softwood lumber manufacturers and importers) as those having annual receipts of no more than \$11.5 million.<sup>1</sup>

The RISI/Fast Markets Random Lengths Publication’s yearly average framing lumber composite price was \$759 per thousand board feet (mbf) in 2022. Dividing the \$11.5 million threshold that defines a small firm which provides “Support Activities for Forestry” by this price results in a maximum threshold of 15.15 million board feet (mmbf) of softwood lumber per year that a domestic manufacturer or importer may ship to be considered a small entity for purposes of the RFA. Table 1 shows the number of entities and the amount of volume they represent that may be categorized as small or large based on the SBA definition. This table is based on data from Forest Economic Advisors (FEA) and Customs and Border Protection (CBP).

TABLE 1—DOMESTIC MANUFACTURERS AND IMPORTERS BY SBA SIZE STANDARDS, 2022

	Domestic manufacturers		Importers		Totals	
	Entities	Volume (MMBF)	Entities	Volume (MMBF)	Entities	Volume (MMBF)
Small .....	150	950	753	1,034	903	1,984
Large .....	174	36,616	110	14,904	284	51,520
Total .....	324	37,566	863	15,938	1,187	53,504

Sources: Forest Economic Advisors; Customs and Border Protection.

Table 1 shows that there was a combined total of 1,187 domestic manufacturers and importers of softwood lumber in the industry in 2022. Of these, 903 entities, or 76 percent, shipped or imported less than 15.15 mmbf and would be considered small based on the SBA definition. These 903 entities domestically manufactured or imported 1.984 billion board feet (bbf) in 2022, less than 4 percent of total volume. The final rule will not disproportionately burden small domestic manufacturers and importers of softwood lumber.

This final rule revises § 1217.44 to add the alternate position, revise § 1217.40 to specifically add four alternates and a public member on the

Board and make conforming changes throughout the Order. The Order is administered by the Board with oversight by the USDA. In accordance with program requirements, assessments are collected from domestic manufacturers and importers, and used for research and promotion projects designed to strengthen the position of softwood lumber in the marketplace. Adding two domestic manufacturer alternates, one importer alternate, and one public member and one public member alternate positions will provide more opportunities for diverse candidates to serve on the Board.

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

and recordkeeping requirements imposed by the Order were approved previously under OMB control number 0581–0093. This final rule will not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting and recordkeeping burden on domestic manufacturers and importers of softwood lumber.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules

<sup>1</sup> SBA does have a small business size standard for “Sawmills” of 550 employees (see [https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards\\_Effective%20March%2017%2C%202023%20%282%29.pdf](https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf)).

Based on USDA’s understanding of the lumber industry, using this criterion would be impractical as sawmills often use contractors rather than employees to operate and, therefore, many mills would fall under this criterion while being, in

reality, a large business. Therefore, USDA used the definition of a small firm which engages in “Support Activities for Forestry” as a more appropriate criterion for this analysis.

that duplicate, overlap, or conflict with this final rule.

Regarding alternatives, the Board considered not changing the current Board makeup and continuing to have issues meeting quorum and diverse members serving on the Board. The Board decided against this option to avoid meeting delays and continued concerns with nominations.

Regarding outreach efforts, the full Board determined making these changes will give further opportunity for the industry to engage with the Board and expand the availability of positions to those from under-represented communities and populations. This final rule was discussed by the Industry Relations and Governance Committee on June 29, 2022, and the full Board unanimously recommended rulemaking on August 11, 2022. Further discussions among the Board took place on May 17, 2023.

A proposed rulemaking concerning this action was published in the **Federal Register** on February 21, 2024 (89 FR 12987). The proposed rulemaking was distributed to all stakeholders of the Board via a newsletter. A copy of the proposed rulemaking was also made available through the internet by AMS via <https://www.regulations.gov>. A 30-day comment period ending March 22, 2024, was provided for interested persons to respond to the proposal.

#### Comment Analysis

During the proposed rulemaking's 30-day comment period, AMS received two comments, which may be viewed on <https://www.regulations.gov>. One comment did not address the merits of the proposed rulemaking. The second comment was submitted by the Softwood Lumber Board and is in favor of the proposed rulemaking. However, the Board had two points to clarify. Firstly, the Board's intent with adding alternate members is to create succession and development opportunities among perspective nominees, not necessarily junior-level professionals as stated in the proposed rulemaking. Secondly, they elaborated that alternates for domestic manufacturers and importers should not automatically be moved into a member position if there is a vacancy. To keep the Board balanced in terms of large, small, and flexible companies represented, the Board prefers vacant positions to go through a normal nomination process.

AMS agrees with the comments from the Softwood Lumber Board and updated the text in the preamble to this final rule and the regulatory text.

#### List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Agricultural research, Confidential business information, Consumer protection, Forest and forest products, Inventions and patents, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agriculture Marketing Service amends 7 CFR part 1217 as follows:

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

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

**Authority:** 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. Revise § 1217.5 to read as follows:

##### § 1217.5 Conflict of interest.

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

■ 3. In § 1217.40, revise paragraphs (a) and (b) to read as follows:

##### § 1217.40 Establishment and membership.

(a) *Establishment of the Board.* There is hereby established a Softwood Lumber Board to administer the terms and provisions of the Order and promote the use of softwood lumber. The Board shall be composed of manufacturers for the U.S. market who manufacture and domestically ship or import 15 million board feet or more of softwood lumber in the United States during a fiscal period. Seats on the Board shall be apportioned based on the volume of softwood lumber production that is manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. Seats on the Board shall also be apportioned based on size of operation within each geographic region, as specified in paragraphs (b)(1) and (2) of this section. For purposes of this section, “large” means manufacturers for the U.S. market who account for the top two-thirds of the total annual volume of assessable softwood lumber and “small” means those who account for the remaining one-third of the total annual volume of assessable softwood lumber. If there are no eligible nominees for a large or small

seat within a region, that seat may be filled by a nominee representing an eligible manufacturer for the U.S. market of any size. Should the size of a manufacturer for the U.S. market change during a member's or alternate's term of office, that member or alternate may serve for the remainder of the term.

(b) *Composition of the Board.* The Board shall be composed of 15 members and four alternates, as follows:

(1) *Domestic manufacturers.* Domestic manufacturers must reside in the United States. Ten members and two alternates shall represent domestic manufacturers who reside in the following three regions:

(i) Five members and one alternate shall represent manufacturers of softwood lumber in the U.S. South Region, which consists of the states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. Of these five members, two members must represent large, two members must represent small, and one member may represent domestic manufacturers of any size. The region's alternate may represent domestic manufacturers of any size;

(ii) Four members and one alternate shall represent manufacturers of softwood lumber in the U.S. West Region, which consists of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Of these four members, two members must represent large, one member must represent small, and one member may represent domestic manufacturers of any size. The region's alternate may represent domestic manufacturers of any size; and

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

(2) *Importers.* Four members and one alternate shall represent importers. Of these four members, two members must represent large, one member must represent small, and one member may represent importers of any size. The alternate may represent importers of any

size from any region. At least three of the members must import softwood lumber from the following regions:

- (i) Two members must import softwood lumber from the Canadian West Region, which consists of the provinces of British Columbia and Alberta; and
- (ii) One member must import softwood lumber from the Canadian East Region, which consists of the Canadian territories and all other Canadian provinces not listed in paragraph (b)(2)(i) of this section that import softwood lumber into the United States.

(3) *Public Member.* One member and one alternate of the Board shall represent the public. The public member and alternate may not be manufacturers for the U.S. market as defined in section 1217.14.

\* \* \* \* \*

- 4. Amend § 1217.41 by:
  - a. Revising paragraphs (b) and (c);
  - b. Redesignating paragraphs (e) through (g) as paragraphs (f) through (h), respectively;
  - c. Adding new paragraph (e); and
  - d. Revising redesignated paragraph (g).

The revisions and addition read as follows:

**§ 1217.41 Nominations and appointments.**

\* \* \* \* \*

(b) Domestic manufacturers, importer, and public member nominees, for both member and alternate positions, may provide the Board a short background statement outlining their qualifications to serve on the Board;

(c) Domestic manufacturer, importer, public member and all alternate nominees may seek nomination to the Board for all open or vacant seats for which the nominees are eligible;

\* \* \* \* \*

(e) Nominations for the public member shall be made by the Board. The Board shall submit the names of at least two nominees for the public member seat and at least two nominees for the public member alternate seat to the Secretary.

\* \* \* \* \*

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

\* \* \* \* \*

- 5. Revise § 1217.42 to read as follows:

**§ 1217.42 Term of office.**

(a) Board members and alternates 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. No member or alternate may serve more than two consecutive terms, excluding any term of office less than three years. A Board member may serve as an alternate during the years he or she is ineligible to serve in a member position.

(b) For the initial Board alternates, their terms shall be staggered for two, three, and four years. Determination of which alternates shall serve a term of two, three, or four years shall be recommended to the Secretary by the Board.

- 6. Revise § 1217.43 to read as follows:

**§ 1217.43 Removal and vacancies.**

(a) In the event that any member or alternate of the Board ceases to work for or be affiliated with the domestic manufacturer or importer, or ceases to do business in the group or region from which the member or alternate was appointed to the Board, such position shall automatically become vacant.

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

(c) If a position becomes vacant, nominations to fill the vacancy may be conducted using the nominations process set forth in § 1217.41 or the Board may nominate eligible persons. A vacancy will not be required to be filled if the unexpired term is less than 6 months.

**§§ 1217.44 through 1217.47 [Redesignated as § 1217.45 through 1217.48]**

- 7. Redesignate paragraphs §§ 1217.44 through 1217.47 as §§ 1217.45 through 1217.48, respectively.

- 8. Add new § 1217.44 to read as follows:

**§ 1217.44 Alternates.**

An alternate member of the Board, during the absence of a member from the same group (domestic manufacturer, importer, or public member) and region

(as applicable) may serve in the place and stead of such member and perform such duties as assigned. In the event that both a member of the Board and the alternate are unable to attend a meeting, the Board may not designate any other alternate from a different group or region to serve in such member's or alternate's place and stead for the meeting.

- 9. Revise newly redesignated § 1217.45 to read as follows:

**§ 1217.45 Procedure.**

(a) A majority of Board members (exclusive of vacant seats) will constitute a quorum so long as at least two of the members present are importer members and five of the members present are domestic manufacturers. An alternate will be counted for the purpose of determining a quorum only if a member from his or her group and region is absent or disqualified from participating. If participation by telephone or other means is permitted, members participating by such means shall count as present in determining quorum or other voting requirements set forth in this section.

(b) All votes at meetings of the Board, executive committee, and other committees will be cast in person or by electronic voting or other means as the Board and Secretary deem appropriate to allow members participating by telephone or other electronic means to cast votes. Voting by proxy will not be allowed.

(c) Each member of the Board will be entitled to one vote on any matter put to the Board and the motion will carry if supported by a majority of Board members (exclusive of vacant seats), except for recommendations to change the assessment rate or to adopt a budget, both of which require affirmation by at least a majority of Board members plus two (exclusive of vacant seats).

(d) The Board must give its members, alternates, and the Secretary timely notice of all Board, executive committee, and other committee meetings.

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

(1) All members, alternates, and the Secretary are notified.

(2) Members and alternates acting in a member's stead are provided the opportunity to vote. A majority of Board

members or alternates acting in the member's stead (exclusive of vacant seats) vote in favor of the action (unless a vote of a majority of Board members plus two (exclusive of vacant seats) is required under the Order); and

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

■ 10. Revise redesignated § 1217.46 to read as follows:

**§ 1217.46 Reimbursement and attendance.**

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

■ 11. Revise redesignated § 1217.47 to read as follows:

**§ 1217.47 Powers and duties.**

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 as may be necessary for the functioning of the Board and such rules, regulations as may be necessary to administer 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 may be necessary;

(d) To create an executive committee of five members of the Board comprised of the chairperson and four other members elected by the Board. The duties of the executive committee shall be specified in bylaws that are recommended by the Board and approved by the Secretary;

(e) To create other committees or subcommittees, which may include individuals other than Board members, as the Board deems necessary from its membership and other representatives it deems appropriate;

(f) To employ or contract with such persons, other than the members or alternates, as it may deem necessary to assist the Board in carrying out its duties, and to determine the compensation and define the duties of each;

(g) To notify manufacturers for the U.S. market of all Board meetings through press releases or other means and to give the Secretary the same notice of Board meetings, executive committee, and subcommittee meetings that is given to members and alternates in order that the Secretary's representative(s) may attend such

meetings, and to keep and report minutes of each meeting to the Secretary;

(h) 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 the softwood lumber industry's position in the marketplace and to maintain, develop, and expand markets for softwood lumber. The payment of costs for such activities shall be with funds collected pursuant to the Order, including funds collected pursuant to § 1217.50(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.

(i) 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;

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

(k) To invest assessments collected and other funds received pursuant to the Order and use earnings from invested assessments to pay for activities carried out pursuant to the Order;

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

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

(n) To periodically prepare and make public and to make available to manufacturers for the U.S. market reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended;

(o) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and to submit to the Secretary such information pertaining to this part or subpart as he or she may request;

(p) To act as an intermediary between the Secretary and any manufacturer for the U.S. market;

(q) To receive, investigate and report to the Secretary complaints of violations of the Order; and

(r) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans or activities to effectuate the purposes of the Act.

■ 12. Revise redesignated § 1217.48 to read as follows:

**§ 1217.48 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 would be 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 or subdivision thereof, other than recommending to the Secretary amendments to the Order; and

(c) No program, plan or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Softwood lumber of all geographic origins shall be treated equally.

■ 13. In § 1217.52, revise paragraph (h) to read as follows:

**§ 1217.52 Assessments.**

\* \* \* \* \*

(h) The HTSUS categories and assessment rates on imported softwood lumber are listed in the following table. The assessment rates are computed using the following conversion factors: One cubic meter (m<sup>3</sup>) equals 0.423776001 thousand board feet, and one square meter (m<sup>2</sup>) equals 0.010763104 thousand board feet. Accordingly, the assessment rate per cubic meter and square meter is as follows.

TABLE 1 TO PARAGRAPH (h)

Softwood lumber (by HTSUS number)	Assessment \$/cubic meter	Assessment \$/square meter
4407.11.00 .....	0.1737	0.004412
4407.12.00 .....	0.1737	0.004412
4407.13.00 .....	0.1737	0.004412
4407.14.00 .....	0.1737	0.004412
4407.19.00 .....	0.1737	0.004412
4409.10.05 .....	0.1737	0.004412
4409.10.10 .....	0.1737	0.004412
4409.10.20 .....	0.1737	0.004412
4409.10.90 .....	0.1737	0.004412
4418.99.10 .....	0.1737	0.004412

\* \* \* \* \*

**Erin Morris,**

Associate Administrator, Agricultural Marketing Service.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 25**

[Docket No. FAA–2023–2412; Special Conditions No. 25–868–SC]

**Special Conditions: Airbus Model A321neo Extra-Long Range (XLR) Airplane; Cabin Evacuation—Protection From Fuel Tank Explosion Due to External Fuel-Fed Ground Fire**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Airbus Model A321neo XLR airplane. This airplane will have a novel or unusual design feature when compared to the technology envisaged by the airworthiness standards for transport category airplanes. This design feature is an integral rear center tank (RCT). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for fire-safety performance of fuel-tank skin or structure in a post-crash external fuel-fed ground fire. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Effective July 18, 2024.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Background**

On September 16, 2019, Airbus applied for an amendment to Type Certificate No. A28NM to include the new Model A321neo XLR series airplane. The Airbus Model A321neo XLR series airplane, which is a derivative of the Model A321neo Airbus Cabin Flex (ACF) currently approved under Type Certificate No. A28NM, is a twin-engine transport category aircraft that seats up to 244 passengers and has a maximum takeoff weight of 222,667 lbs.

**Type Certification Basis**

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus must show that the Model A321neo XLR series airplane meets the applicable provisions of the regulations listed in Type Certificate No. A28NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (e.g., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A321neo XLR series airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A321neo XLR series airplane must comply with the fuel venting and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

**Novel or Unusual Design Features**

The Airbus Model A321neo XLR series airplane will incorporate the following novel or unusual design feature:

An integral RCT.

**Discussion**

The Airbus Model A321neo XLR series airplane incorporates an integral RCT. This tank is a “center” fuel tank, that would, if approved, be located in the airplane fuselage rather than in its wings. The tank is a “rear” tank, that would be located aft of the center wing fuel tank and behind the wheel bay; it would be in an area of the lower section of the fuselage, partially replacing the aft cargo compartment of the airplane from which this model is derived. The top of the tank would be directly below the floor of the passenger cabin. The fuel tank would be “integral” to the airplane, in that its walls would be part of the airplane structure. The exterior skin of the airplane fuselage would constitute part of the walls of the fuel tank, and these areas are usually separate boundaries (not integral) on other fuselage fuel tanks. An integral fuel tank may be referred to as a conformal fuselage structural fuel tank since boundaries of the fuel tank “conform” with the airplane exterior. The integral RCT is installed in a location that may be exposed to the direct effects of post-crash ground, or pool, fuel-fed fires. An external fuel-fed ground fire or external fuel-fed pool fire is also referred to as ‘external ground fire’.

The airworthiness standards applicable to the Model A321neo XLR do not contain specific standards for post-crash fire-safety performance of fuel-tank skin or structure. In addition, the integral RCT on the A321neo XLR was not envisaged by the FAA when promulgating requirements related to occupant protection when fuel tanks are exposed to external fuel-fed fires. The FAA considered fuel tank designs in widespread use on transport airplanes, including main fuel tanks and auxiliary fuel tanks when promulgating requirements related to occupant protection. Auxiliary fuel tanks are normally located in the center wing and within cargo holds, and in such cases are sometimes referred to as an auxiliary center tank (ACT).

Airplane manufacturers commonly incorporate a center wing fuel tank as an auxiliary fuel tank to make fuel available for increasing the flight range of the airplane. Continued expansion of range performance requirements has resulted in airplane designs using other