

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1222

[Document Number AMS-FV-14-0082]

#### Paper and Paper-Based Packaging Promotion, Research and Information Order; Late Payment and Interest Charges on Past Due Assessments

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposal invites comments on prescribing late payment and interest charges on past due assessments under the Paper and Paper-Based Packaging Promotion, Research and Information Order (Order). The Order is administered by the Paper and Packaging Board (Board) with oversight by the U.S. Department of Agriculture (USDA). Under the Order, assessments are collected from manufacturers and importers and used for projects to promote paper and paper-based packaging. This proposal would implement authority contained in the Order that allows the Board to collect late payment and interest charges on past due assessments. Two additional changes are proposed to reflect current practices and update the Order and regulations. This action would contribute to effective administration of the program and was unanimously recommended by the Board.

**DATES:** Comments must be received by October 19, 2015.

**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 document 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. Comments may also be viewed at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Marlene Betts, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; telephone: (202) 720-9915; or electronic mail: [Marlene.Betts@ams.usda.gov](mailto:Marlene.Betts@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal is issued under the Order (7 CFR part 1222). The Order is authorized under 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 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. This action has been designated as a "non-significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has waived the review process.

#### Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

#### Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of

the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 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, the 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 proposal invites comments on prescribing late payment and interest charges on past due assessments under the Order. The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from manufacturers and importers and used for projects to promote paper and paper-based packaging. This proposal would implement authority contained in the Order and the 1996 Act that allows the Board to collect late payment and interest charges on past due assessments. This action was unanimously recommended by the Board and would contribute to effective administration of the program.

Section 1222.52(a) of the Order specifies that the Board's programs and expenses shall be paid by assessments on manufacturers and importers and other income or funds available to the Board. Paragraph (g) of that section specifies further that when a manufacturer or importer fails to pay the assessment 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 must be prescribed in regulations issued by the Secretary. All late assessments would be subject to the specified late payment charge and interest.

The Order became effective on January 23, 2014. Assessment collection began on March 1, 2014. Manufacturers and importers must pay their assessments owed to the Board by the 30th calendar day of the month following the end of the quarter in which the paper and paper-based packaging was manufactured or imported. For example, assessments for paper manufactured or imported during the months of January, February and March are due to the Board by April 30.

Entities that domestically manufacture or import to the United States less than 100,000 short tons of paper and paper-based packaging in a year are exempt from paying assessments. If an entity is both a manufacturer and an importer, the entity's combined quantity of paper and paper-based packaging manufactured and imported during a marketing year counts toward the 100,000 short ton exemption.

Assessment funds are used for promotion activities that are intended to benefit all industry members. Thus, it is important that all assessed entities pay their assessments in a timely manner. Entities who fail to pay their assessments on time would be able to reap the benefits of Board programs at the expense of others. In addition, they would be able to utilize funds for their own use that should otherwise be paid to the Board to finance Board programs.

### Board Recommendation

At a meeting held September 25, 2014, the Board unanimously recommended implementing the Order authority regarding late payment and interest charges. Specifically, the Board recommended that a late payment charge be imposed on any manufacturer or importer who fails to make timely remittance to the Board of the total assessments for which such manufacturer or importer is liable. The late payment charge would be imposed on any assessments not received within 60 calendar days of the date they are due. This one-time late payment charge would be equal to 10 percent of the assessments due before interest charges have accrued.

The Board also recommended that an interest rate of 1½ percent per month be added to the outstanding balance, including any late payment charge and accrued interest, of any accounts for

which payment has not been received within 60 calendar days after the assessments are due. Interest would continue to accrue monthly until the outstanding balance is paid to the Board.

This action is expected to help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities. Accordingly, a new Subpart C would be added to the Order for provisions implementing the paper and paper-based packaging Order, and a new § 1222.520 would be added to Subpart C.

This proposal would also make two additional changes to the Order. This proposed rule would revise the term Board as defined in § 1222.2 from the Paper and Paper-Based Packaging Board to the Paper and Packaging Board. This change would simplify the term and bring the Order in line with current industry use. Conforming changes would also be made to § 1222.40(a) and the heading immediately prior to this section where the term is also referenced. In addition, in § 1222.108, the OMB control number would be changed from 0581-NEW to 0581-0281, the control number assigned by the OMB.

### 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 such 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 and importers) as those having annual receipts of no more than \$7.0 million.

According to the Board, there are 69 manufacturers in the United States that produce the types of paper and paper-based packaging covered under the Order. Using an average price of \$806 per short ton,<sup>1</sup> a manufacturer who

produces less than about 8,680 short tons of paper and paper-based packaging per year would be considered a small entity. It is estimated that no more than four manufacturers produced less than 8,680 short tons per year. Thus, the majority of manufacturers would not be considered small businesses.

Based on U.S. Customs and Border Protection (Customs) data, it is estimated that in 2014 there were 2,800 importers of paper and paper-based packaging. Ninety importers, or about 3 percent, imported more than \$7.0 million worth of paper and paper-based packaging. Thus, the majority of importers would be considered small entities. However, all of the 20 entities that imported 100,000 short tons or more (the Order's exemption threshold) also imported more than \$7.0 million worth of paper and paper-based packaging. Therefore, none of the 20 importers covered under the Order would be considered small businesses.

Based on domestic production of approximately 66.1 million short tons in 2014 and an average price of \$806 per short ton, the domestic paper and paper-based packaging industry is valued at approximately \$53.3 billion. According to Customs data, the value of paper and paper-based packaging imports in 2014 was about \$5.9 billion.

This proposal invites comments on prescribing late payment and interest charges on past due assessments under the Order. The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from manufacturers and importers and used for projects to promote paper and paper-based packaging. This rule would add a new § 1222.520 that would specify a late payment charge of 10 percent of the assessments due and interest at a rate of 1½ percent per month on the outstanding balance, including any late payment charge and accrued interest. This section would be included in a new Subpart C—Provisions for Implementing the Paper and Paper-Based Packaging Promotion, Research and Information Order. This action was unanimously recommended by the Board and is authorized under § 1222.52(g) of the Order and section 517(e) of the 1996 Act. In addition, two additional changes are proposed to reflect current practices and update the Order and regulations. These changes are: (1) Revising the name of the Board

<sup>1</sup> Industry sources do not publish information on average price for paper and paper-based packaging. A reasonable estimate for average price of paper and paper-based packaging is the value per ton of paper

and paper-based packaging exports. According to U.S. Census data, the average value of paper and paper-based packaging exports in 2014 was approximately \$806 per short ton.

from the Paper and Paper-Based Packaging Board to the Paper and Packaging Board; and (2) the OMB control number would be changed from 0581-NEW to 0581-0281, the control number assigned by the OMB.

Regarding the economic impact of this proposed rule on affected entities, this action would impose no costs on manufacturers and importers who pay their assessments on time. It would merely provide an incentive for entities to remit their assessments in a timely manner. For all entities who are delinquent in paying assessments, both large and small, the charges would be applied the same. As for the impact on the industry as a whole, this action would help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities.

Additionally, as previously mentioned, the Order provides for an exemption for entities that domestically manufacture or import less than 100,000 short tons annually. It is estimated that 24 out of the 69 domestic manufacturers, or 35 percent, produce less than 100,000 short tons per year and are thus exempt from paying assessments under the Order. Of the 2,800 importers of paper and paper packaging, it is estimated that 2,780, or 99 percent, import less than 100,000 short tons per year and are also exempt from paying assessments. Thus, about 45 domestic manufacturers and 20 importers pay assessments under the Order.

The alternative to this proposed action would be to maintain the status quo and not impose late payment and interest charges on past due assessments. However, the Board determined that implementing these charges would help facilitate program administration by encouraging entities to pay their assessments in a timely manner. The Board reviewed the late payment and interest charges applied by other research and promotion programs and concluded that a 10 percent late payment charge and interest at a rate of 1½ percent per month on the outstanding balance would be appropriate.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581-0281. This proposed rule would not result in a change to the information collection and recordkeeping requirements previously

approved and would impose no additional reporting and recordkeeping burden on manufacturers and importers of paper and paper-based packaging.

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 that duplicate, overlap, or conflict with this proposed 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 Board met on September 25, 2014, and unanimously made its recommendation. The Board's meetings, including meetings held via teleconference, are open to the public and interested persons are invited to participate and express their views.

We have performed this initial RFA regarding the impact of this proposed action on small entities and we invite comments concerning potential effects of this action on small businesses.

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

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

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

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Paper and paper-based packaging promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1222 is proposed to be amended as follows:

#### PART 1222—PAPER AND PAPER-BASED PACKAGING PROMOTION, RESEARCH AND INFORMATION ORDER

- 1. The authority citation for 7 CFR part 1222 continues to read as follows:

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

- 2. Section 1222.2 is revised to read as follows:

#### § 1222.2 Board.

*Board* means the Paper and Packaging Board established pursuant to § 1222.40, or such other name as recommended by the Board and approved by the Department.

- 3. Revise the undesignated center heading preceding § 1222.40 to read as follows:

#### PAPER AND PACKAGING BOARD

- 4. Amend § 1222.40 by revising the first sentence of paragraph (a) to read as follows:

#### § 1222.40 Establishment and membership.

(a) *Establishment of the Board.* There is hereby established a Paper and Packaging Board to administer the terms and provisions of this Order. \* \* \*

\* \* \* \* \*

- 5. Section 1222.108 is revised to read as follows:

#### § 1222.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. is OMB control number 0581-0281.

- 7. Add subpart C, consisting of § 1222.520, to read as follows:

#### Subpart C—Provisions Implementing the Paper and Paper-Based Packaging Promotion, Research and Information Order

Sec.

1222.520 Late payment and interest charges for past due assessments.

#### § 1222.520 Late payment and interest charges for past due assessments.

(a) A late payment charge shall be imposed on any manufacturer or importer who fails to make timely remittance to the Board of the total assessments for which such manufacturer or importer is liable. The late payment shall be imposed on any assessments not received within 60 calendar days of the date they are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued.

(b) In addition to the late payment charge, 1½ percent per month interest on the outstanding balance, including any late payment and accrued interest, will be added to any accounts for which payment has not been received by the Board within 60 calendar days after the assessments are due. Such interest will continue to accrue monthly until the outstanding balance is paid to the Board.

Dated: August 13, 2015.

**Rex A. Barnes,**

*Associate Administrator.*

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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Part 381

[Docket No. FSIS-2015-0026]

#### Classes of Poultry

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to amend the definition and standard of identity for the “roaster” or “roasting chicken” poultry class to better reflect the characteristics of “roaster” chickens in the market today. “Roasters” or “roasting chickens” are described in terms of the age and ready-to-cook (RTC) carcass weight of the bird. Genetic changes and management techniques have continued to reduce the grow-out period and increased the RTC weight for this poultry class. Therefore, FSIS is proposing to amend the “roaster” definition to remove the 8-week minimum age criterion and increase the RTC carcass weight from 5 pounds to 5.5 pounds. This action is being taken in response to a petition submitted by the National Chicken Council.

**DATES:** Comments must be received on or before October 19, 2015.

**ADDRESSES:** FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

*Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments. This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments.

*Mail, including CD-ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8-163A, Washington, DC 20250-3700.

*Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E Street SW., Room 8-163A, Washington, DC 20250-3700.

*Instructions:* All items submitted by mail or electronic mail must include the

Agency name and docket number FSIS-2015-0026. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

*Docket:* For access to background documents or comments received, go to the FSIS Docket Room at Patriot’s Plaza 3, 355 E St. SW., Room 8-136A, Washington, DC between 8:00 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Rosalyn Murphy-Jenkins, Director, FSIS Labeling and Program Delivery Division, Phone: (301) 504-0878, Fax: (202) 245-4795.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Poultry Products Inspection Act (PPIA) prohibits the distribution of poultry products that are adulterated or misbranded (21 U.S.C. 458). The PPIA also authorizes the Secretary of Agriculture to prescribe, among other things, definitions and standards of identity or composition for poultry products whenever the Secretary determines that such action is necessary for the protection of the public (21 U.S.C. 457(b)). Poultry classes were established by USDA to aid in labeling poultry. The classes were based primarily on the age and sex of the bird. FSIS uses poultry class standards to ensure that poultry products are labeled in a truthful and non-misleading manner.

On November 3, 2011, FSIS published a final rule to amend the definitions and standards for the U.S. classes of poultry listed in 9 CFR 381.170(a)(1)(76 FR 68058). The 2011 final rule lowered the age definitions for five classes of poultry and removed the word “usually” from the age designation descriptions, so that the age designations are clear and enforceable (76 FR 68058, 68062). In addition to lowering the age definition for the “roaster” class, the final rule also defined a “roaster” based on a ready-to-cook (RTC) carcass weight.

A “roaster” or “roasting chicken” (hereafter referred to as “roasters”) is defined in 9 CFR 381.170(1)(a)(iii) as “a young chicken (between 8 and 12 weeks of age), of either sex, with a ready-to-cook carcass weight of 5 pounds or more, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that is somewhat less flexible than that of a broiler or fryer.” This definition was informed by data collected by the USDA Agricultural Marketing Service (AMS) from the segment of the industry that routinely

produces “roasters,” comments received in response to a September 3, 2003, proposed rule to amend the poultry classes (68 FR 55902), and comments received in response to a 2009 supplemental proposed rule in which the Agency re-proposed to amend the “roaster” standard to establish an age range from 8 to 12 weeks and to provide for a RTC carcass weight (74 FR 3337, July 13, 2009). The 2011 final rule became effective on January 1, 2014, the uniform compliance date for FSIS labeling regulations issued between January 1 2011 and December 31, 2012 (75 FR 71344, November 23, 2010).

**NCC Petition**

On November 18, 2013—before the January 1, 2014, effective date for the final rule—the National Chicken Council (NCC) submitted a petition requesting that FSIS amend the definition and standard of identity for the “roaster” chicken class to remove the 8-week minimum age requirement and to increase the RTC carcass weight to 5.5 pounds. The petition is available on the FSIS Web site at <http://www.fsis.usda.gov/wps/wcm/connect/adf54579-7a18-4ab2-a9b5-88f1eef65332/Petition-National-Chicken-Council.pdf?MOD=AJPERES>.

The petition specifically asked FSIS to amend 9 CFR 381.170(a)(1)(iii) to define a “roaster” as a young chicken (less than 12 weeks of age) of either sex, with an RTC carcass weight of 5.5 pounds or more, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that may be somewhat less flexible than that of a “broiler” or “fryer.” The petition also requested that FSIS, as necessary, exercise enforcement discretion or stay the effective date of the “roaster” definition scheduled to go into effect on January 1, 2014.

According to the petition, the “roaster” standard established in the 2011 final rule would detract from the orderly and efficient marketing of classes of poultry because companies would be unable to label and market chickens with the RTC weight and other physical attributes of a “roaster” as “roasters” because of the minimum age requirement. The NCC asserted that improvements in breeding and poultry management techniques that have continued since FSIS published the November 2011 final rule have enabled producers to raise chickens with the characteristics of roasters in under 8 weeks.

NCC submitted additional data in support of its petition on December 16,