

DATE: September 7, 2015

TO: United States Department of Agriculture

Agricultural Marketing Service

FR: Hardwood Checkoff Blue Ribbon Committee

RE: Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order

Document Number : AMS-FV-11-0074-1067

The following comment is submitted on behalf of the Hardwood Checkoff “Blue Ribbon Committee” (“BRC”) including the following members:

- Jim Howard (Co-Chairman), Atlanta Hardwood Corporation
- Ted Rossi (Co-Chairman), Rossi Lumber
- Victor Barringer, CLC Hardwoods
- Chris Bingaman, Bingaman & Son Lumber, Inc.
- Bill Buchanan, Buchanan Hardwoods
- John Crites, Allegheny Wood Products
- Don Finkell, American OEM
- Jamey French, Northland Forest Products, Inc.
- Pem Jenkins, Turn Bull Lumber
- Jeff Meyer, Baillie Lumber Co., Inc.
- Brad Thompson, Columbia Forest Products
- Chris Zinkhan, The Forestland Group LLC

The BRC commends the US Department of Agriculture, Agricultural Marketing Service, for issuing this revised Hardwood Checkoff proposal and moving the industry closer to a referendum vote. We understand that many hours of consideration and development have been required in order to accommodate the diversity within our industry, particularly reflected in the 2014 comment period, and believe the revised document addresses many of the substantive concerns raised. However we believe further refinement is needed to reduce the scope of the program, simplify compliance, and strengthen support within the hardwood industry.

Background – Current and past Presidents of all national hardwood trade associations developed the proposal.

The Blue Ribbon Committee also called “The Hardwood Checkoff Committee” was first organized five years ago in 2010 after a Hardwood Leaders Summit sponsored and funded by the US Forest Service which brought together 112 leaders in the industry representing all major trade associations identified a hardwood checkoff as among the essential steps needed to ensure the growth and viability of the US hardwood industry. Out of that larger group a committee was formed made up of current and past Presidents of all national trade associations including National Hardwood Lumber Association, Hardwood Manufacturers Association, Appalachian Hardwood Manufacturers Inc., Hardwood Federation, and the National Wood Flooring Association. That committee took on the name Hardwood Checkoff Blue Ribbon Committee replicating the name used by the Softwood Lumber Checkoff Blue Ribbon Committee in existence at the same time.

As noted by USDA, the Committee brought a draft hardwood proposal to USDA in 2011 and extensive industry education and debate on the proposal ensued. Every major trade association and most state-level associations have included the hardwood checkoff on public meeting agendas, allowing extensive open discussion on the particulars of the program. The first presentation of the checkoff proposal took place at one of the widest attended industry meetings, the Indiana Hardwood Lumbermen’s Association before a packed audience in early 2011. At that time the checkoff was a draft and had not been formally submitted to USDA.

Over two years later, in November 2013, USDA published the proposed hardwood checkoff and hundreds of comments were submitted, many supporting the proposal and many others providing suggestions for ways to improve the program.

During that comment period and in the months following, the Blue Ribbon Committee members continued to attend a myriad of industry meetings, making presentations on the details of the proposal as put forward by USDA, and providing answers to questions about the program. We also maintained a dedicated hardwood checkoff website including an on-line calculator for estimating any eligible company’s assessment and direct link to our paid professional staff for anyone with questions. Additionally, we rented a booth at the annual National Hardwood Lumber Association convention which draws the largest foot traffic of any industry event, making ourselves available to many who had questions and many who wanted to sign up as supporters.

Additionally, the BRC in 2014 began issuing an email/fax newsletter one to two times per month to the hundreds of companies identified by USDA as eligible for the program. Trade association magazines and hardwood industry press have also covered the checkoff extensively. Following the November 2013 proposal being issued the largest hardwood industry association featured an open blog in its monthly magazine with circulation of 3500 and on the cover page of its website

which is seen even more extensively. That blog received 18 comments total with several repeated from the same commenter. Immediately following the June 2015 issuance of the revised proposal the blog was re-opened in the magazine and on the association website with only one commenter posting, followed by no responses after nearly three months of being prominently featured (<http://www.nhla.com/nhlablog>). Although we never anticipated a process which would require five years or more of work, we are pleased that so many in the industry have been given the chance to review and understand the checkoff fully and communicate their views. It is time, in our view and apparently many others, for the debate to end and a vote to be taken on the Hardwood Checkoff.

Changes suggested to definitions

- Definition of “Hardwood Lumber Products”. (1) We would ask that green (G) hardwood lumber and green air dried (G/AD) products be removed from this definition and from eligibility under the program altogether. Thus, the term hardwood lumber products would mean kiln-dried “KD lumber” that has been transformed into products that remain boards meeting or exceeding the level of “Grade 3A Common” as defined by the National Hardwood Lumber Association Rules or equivalent standard. This would include lumber kiln-dried at a production site or through contracted kiln-dry services. We believe this change will simplify the program significantly and address the concerns raised particularly by the small mills which are predominantly in the G/AD sector. The eligible class would be reduced from over a thousand mills to approximately 375 mills which have dry kilns or contract dry kiln capacity for sale of kiln-dried lumber, a more readily identifiable category of mills and more in keeping with the scale of the other forest industry checkoff programs. The revenue raised under the program would be lowered accordingly but would still allow a program to be developed at an effective level focused on the highest valued lumber produced.

Definition of “Hardwood Lumber Products” (2) We would ask to include “all kiln dried rough lumber, surfaced or ripped boards” in the definition of Hardwood Lumber Products”. These products were formerly included in the value-added category assessed at \$.75 per \$1,000 and would now be assessed at the recommended flat rate of \$.50 per \$1,000 (see “Assessments”). We would note that these are not new categories and each has been included in both the November 2013 proposal and the June 2015 re-proposal. The effect of this change would be to limit the products previously described as “value-added”, using terms widely understood in the industry, and reducing the assessment from \$.75 to \$.50 per \$1,000 in sales. Any individual in the kiln-drying sector of the hardwood lumber business will readily recognize and account for the product categories as described, facilitating a much simpler and more expedient compliance process.

- **Hardwood Value Added Products:** We ask that no specific value-added section be included in the Hardwood checkoff. With this amendment neither “Hardwood lumber Value-added Manufacturer” nor “Hardwood Lumber Value-Added Products” would need to be covered in the definitions, nor would the assessment of \$.75 per \$1,000 of production be included in the program. Specifically, this would remove solid wood unfinished strip flooring and moldings from the proposed program altogether. We continue to believe that unfinished flooring products would especially benefit from a Checkoff program since few of these companies have the marketing and promotion capability of the prefinished sectors. The unfinished flooring producers as well as many other hardwood industry sectors will share in the market improvements we expect to result from the program. However the comment record shows that many unfinished flooring companies would prefer to be excluded from the checkoff along with the prefinished sector and we are responding to those objections by proposing their removal.
- **Sale** –We would ask that brokered sales continue to be excluded from this definition but we would suggest adding this clarification which is more in keeping with kiln-dried production and sales. Specifically, we suggest this clarification be added to the definition: “Lumber which is also sold by wholesalers and mills which use contract kiln drying facilities would be subject to the same assessment as all other kiln-dried products (\$.50 per \$1,000 in sales.” We believe this is a simpler and more succinct approach to defining the customary sales processes related to the eligible sector of the hardwood industry, and will allow for an uncomplicated and expedient compliance process.
- **Definition of “Hardwood Lumber Section 1211.12.** We ask that Alder and Pacific Coast Maple be specifically removed from the list of eligible hardwood species. These two species are primarily grown in the western US. These species have never been specifically listed in the proposal or re-proposal of the Hardwood Checkoff. While we recognize that the list of species in the order is not meant to be exclusive, no commenter has asked that either of these western species be specifically added, unlike yellow poplar which was added after specific requests were made to do so. Until recently neither of these species were included in the NHLA grading rules (and historically have been sold under proprietary company grades customary in the western US). Under the current NHLA rules neither species is defined under the “3A common” term used in the proposed order to delineate grade lumber. Both Alder and Pacific Coast Maple have long traded under rules included in “Western Ponderosa Pine Rules”. The opposition expressed by many western hardwood companies and the Western Hardwood Association which represents their interests has led us to believe that Alder and Pacific Coast Maple should remain outside the scope of the hardwood checkoff and the eligible list remain as defined in this proposal. Further, we recommend that the western region (“District 5”), despite this change and the reduced amount of lumber eligible in that region, maintain one Board

seat on the checkoff board since there will continue to be eligible companies and product manufactured in that region.

Amendments included in the re-proposal

We believe the amendments included in the June 9 re-proposal represent a compromise among various viewpoints on the checkoff. Many of those who raised concerns in the 2014 comment period have chosen not to comment on this proposal. As we analyze the comments filed we have noted a lack of comment on issues raised in the first round and can assume the amendments adequately address the concerns of those commenters. Specifically,

- Confirming the coverage of export sales in the checkoff. It was never our intention to exclude export sales and USDA did issue a clarifying letter to the effect soon after the November 2013 issuance. The June 9 proposal officially makes this change and we support it.
- Reducing paperwork on small mills. USDA has reduced the requirement to a one-time request to be excluded which stands until the mill itself declares its eligibility to the Checkoff Board. We have surveyed other checkoffs (many with thousands of eligible participants) and have confirmed that this approach does not require extensive record-keeping and is rarely if ever a point of concern by small – or large – companies in the particular industry. (See “Paperwork and Recordkeeping Impact” below.) USDA has put forward a program which will bring tremendous benefits to hundreds of small hardwood mills; benefits which will far outweigh any paperwork required on their part. We appreciate this change which will allow companies to “opt in” at will instead of a yearly “opt out”. We confirm our support for an exemption for small hardwood lumber manufacturers with sales of any assessed product combined to be less than \$2 million.
- Removing industrial lumber from the program. We believe that a hardwood checkoff will benefit all sectors of the industry. (To that end, we were pleased to see forest landowners and many other third parties speak out in favor of the checkoff although they will not be eligible for the program). As we noted in our request to remove industrials we believe the program may be best suited if limited to grade lumber, and we are now limiting that further to kiln-dried lumber only.
- Change in the referendum procedure. We heard from many companies and read numerous comments in the record indicating that eligible companies would support the proposal if every eligible company were granted an equal vote in the referendum in addition to the vote by volume. The USDA’s addition of a one-company-one-vote

responds to those requests and makes a compelling case that the referendum vote will provide a more expansive voting process giving even the smallest eligible company the same weight as the largest. The combined one-company-one-vote along with a volume vote was also used in implementing the two other forest products checkoffs, paper and softwood, both of which have de minimis criteria, with voting eligibility limited to those eligible to pay at the time of the vote. We especially note that this change removes any reason to delay a vote since the lead issue raised by most commenters has been addressed. Every corner of this industry has had a chance to review, respond and comment via scores of widely attended public meetings, blog posts, editorials, press releases and of course, the Federal Register. This is an industry ready to take a vote.

Questions Regarding Other Aspects of the Proposal

USDA seeks comments on the following questions:

What are the benefits and the drawbacks for including hardwood lumber and hardwood plywood together in the same research and promotion program?

The BRC originally envisioned a checkoff program designed to increase market opportunity for an intentionally broad base of American hardwood suppliers and we were pleased to have USDA support this inclusion in the original proposal and the re-proposal. However we have continued to confront opposition to this combination both in our listening tour and in the public comments submitted for the record. Some in the industry view plywood as a competitor to lumber and stated their intention to vote against the program as long as plywood was included. To that end, we are recommending that hardwood plywood be removed from this program altogether. We believe there are many benefits to including plywood but will accede to those who do not see these advantages in hopes that with that change they will now join on in support of the program.

What impact would excluding hardwood plywood have on the expected amount of assessments to be collected under the proposed program?

It is estimated that the lost revenue to the checkoff program budget would be in the \$ 2 – 2.5 million level, putting a Hardwood Checkoff at approximately \$3 to \$4 million dollars per year.

What impact would excluding hardwood plywood have on the proposed Board structure?

As drafted, the board would include five representatives from hardwood plywood manufacturers out of a total of 28 board members. We propose that the 28-member Board remain unchanged and the five seats originally intended for plywood representatives and the one seat intended for unfinished flooring be allocated among the 6 regions on an equitable basis to be determined by USDA with input from the US Forest Service.

Assessments

Questions from USDA:

- a. *Should the assessment computation be revised?*
- b. *Should the proposed rates of assessment on any of the four types of covered hardwood be revised? If so, to what level and what would be the impact on the projected amount of assessments to be collected under the proposed program?*

We are proposing significant changes in the assessments under the program – all aimed at reducing the amount paid by all eligible parties and simplifying the required computations needed to comply. First, as we have stated, we are requesting that green mills, value-added products, and plywood be removed from the program altogether. Thus, no calculation is required by any of these companies, nor are records required to demonstrate eligibility status. A company either sells kiln-dried lumber or does not. Also, the credit calculation for purchased lumber would be removed since no green lumber would have been previously charged. Secondly, the discounted calculation for value-added products would be removed altogether since those products would no longer be covered.

Vertically Integrated Manufacturers – We ask that this Section 6 be removed from the order altogether. No checkoff assessment would be applied to any lumber transferred within a company between business units. The point of the assessment would be at the point of sale of kiln-dried lumber to another separate entity, irrespective of the end use intended for the kiln-dried lumber.

Note: As further clarification, at the request of our customers in the kitchen cabinet business, we would like to clarify that “any veneering of wood to a substrate done by cabinet and furniture manufacturers is a value-added intermediate step to making a finished product, and not a panel for sale and thus would be exempted.

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Also, we are proposing that one flat rate of \$.50 per \$1,000 of sales be set for the assessment, reducing the amount paid by all and greatly simplifying the calculation of the assessment.
Again, no credit would be needed since green wood purchased would not have been assessed.

We confirm our support for an exemption from assessment for manufacturers with sales of any assessed product combined to be less than \$2 million.

Impact on the total revenues collected under the program

The original hardwood checkoff proposal would have collected over \$10 million, depending upon market conditions. We continue to believe this is an appropriate amount for promotion, research and education programs in an industry estimated to be in the \$10 to \$12 billion range. The changes we are recommending would significantly reduce that amount, resulting in a roughly \$3 to \$4 million annual program. While some commenters have questioned the effectiveness of this amount, we would point out that even this lowered amount is **over 10 times** what has ever been collected through voluntary programs in the past. The Hardwood Council,

the only dedicated promotion fund in the industry is now defunct but at its height collected only \$300,000 in a given year. A special Red Oak Promotion program raised approximately the same amount but was forced to cease operation when funds ran out after only a few years in existence. A \$3 million program would be a huge step for the hardwood industry. We also would note that our fellow wood industries checkoffs, particularly paper and softwood, have paved the way on many programs which a new hardwood checkoff could leverage with a much smaller investment and shorter lead time. We would note that all three wood checkoffs – paper, softwood, and Christmas trees, have submitted comments in support of a hardwood checkoff and urging the industry to join with them in expanding markets for wood products.

Paperwork and Record Keeping Impact

We believe that USDA’s estimates related to the time required for complying with this proposal are accurate (“Paperwork Reduction Act”), and an improvement over the original proposal. Additionally, with the change we are proposing to remove green mills, plywood, and flooring from coverage under the order and the simplification of the assessment formula, the paperwork will be significantly reduced.

We appreciate USDA making the changes in qualifying for an exemption to minimize the filings and recordkeeping required to comply. We would anticipate that the Hardwood Checkoff Board would devise a form similar to that used by most other checkoff programs, allowing for an exemption to be applied for and accepted in the first year of operation. That exemption would stand until the company itself approaches the Board to indicate their exceeding the exemption level. This is similar to the process followed by most other checkoff programs. To determine whether other checkoffs face opposition or complaints about the recordkeeping burden of their programs we conducted an informal survey of ten other checkoffs and found the following:

Checkoff 1 – exemption for handlers of less than 500,000 lbs/Organic/exports – Use a simple form/compliance time is minimal - Complaints: zero

Checkoff 2 – exemption for 100 lbs or less and through certified farmers markets – Compliance recordkeeping is not an issue

Checkoff 3 – exemption for 4million pounds or less – Complaints from small operators: zero

Checkoff 4 – 150,000 lbs or less – Paperwork is not an issue

Checkoff 5 – 30,000 barrel exemption – Complaints: zero

Checkoff 6 – less than 5 acres/organics exempted – Complaints: zero (Many split operations (exempt/non-exempt) choose to pay 100% into the checkoff

Checkoff 7 – 2,000 lbs or less each year – Complaints: zero

Checkoff 8 – exemption covers 12-14% of consumption – Complaints: zero

Checkoff 9 – exemption for producers under 75,000 units – simple exemption form – complaints: zero

Checkoff 10 – organics are exempted - no one has asked for an exemption

Support for the Hardwood Checkoff from all parts of the industry

We are pleased that so many companies and individuals have commented in favor of the proposed hardwood checkoff on the public record. Many of these supporting commenters are heads of companies and related individuals who will benefit from the program. Many are the employees themselves or involved in some aspect of the hardwood-business chain. Additionally, the forest landowners, those who supply our wood resources have united behind this program, recognizing that stronger markets for hardwood products help keep land in trees and bring greater value to their products. Their comments make a strong case to USDA on the value of checkoff programs in expanding forest resources. The record also includes consumers and professionals who have seen firsthand the dearth of information on wood products and the trend in the marketplace towards substitutes. We conservatively estimate that the number of individuals represented by the organizations commenting in favor of the Hardwood Checkoff, including our own thousands of employees, number well over 100,000 individuals.

Trade Associations

As outlined in our previous comments, we have presented the checkoff to hardwood trade associations across the country, often more than once. We wish to thank the many trade associations whose volunteer leaders and professional staff have spent time and resources for the past five years in allowing the idea of a hardwood checkoff to be considered and discussed extensively, often taking valuable agenda time from other pressing issues. It is difficult to identify all of the hardwood trade and forestry associations which exist at the federal, state and regional levels but we would conservatively estimate nearly 50 in all. From the outset we asked that associations not take a vote on the checkoff as the program was being developed on an ad hoc basis led by individuals who had been and continue to be leaders in most of these associations. At virtually every meeting we attended there were requests from a few opponents for the associations to take a vote on the checkoff. We were pleased that the overwhelming majority of the associations chose to reject those requests and to recognize the Checkoff effort as an independent pursuit, providing instead a fair platform for the proposed program to be reviewed and analyzed. Also, in many cases the associations are involved in activities which would not qualify for checkoff funding such as lobbying activities and thus the checkoff would be of limited impact or interest to them.

Opposition has been registered by three hardwood state associations, Virginia, Ohio, and Missouri. Our companies have been members, sponsors and supporters of all three of these organizations since their founding and we plan to continue to support their important work. In developing our proposed changes in the proposal we have given much thought to ways in which we would garner the support of the members of these organizations based upon the objections they have raised in their public comments. We are pleased to note that their messages have nearly all been directed at a particular version of the proposal rather than opposing any hardwood checkoff, allowing room for compromise. To that end, it is our hope that the significant reduction in the eligible class – particularly the removal of green sawmills, unfinished flooring, moldings, and plywood - and the simplification and reductions we are calling for in the assessment formula will bring about the changes envisioned by these few opposing organizations and result in a checkoff program deserving of their support.

Only one regional organization, the Western Hardwood Association, has registered opposition to the proposal. While we do not have as many members in this association we are pleased to have been partners with WHA in many endeavors and respect the work done by this organization to advance our industry. Again, we have given much consideration as to changes which would bring support from WHA and its members. We believe the removal of two species unique to the western US, Alder and Pacific Coast Maple, will allow companies specializing in these products to pursue programs tailored to their needs, likely under the direction of the WHA. Despite the fact that this change will significantly reduce the amount of western hardwoods covered under the Checkoff, we would ask that the dedicated Board seat for that region remain. We would urge the WHA and its members to consider building a program for these species which could be added to a Hardwood Checkoff in the referendum to be held after the first five years of operation.

We also would note that the hardwood trade associations stand to gain tremendously with the enhanced investments in promotion and research. We would expect many of the Board members and other representatives of these associations to become active members of the new Hardwood Checkoff Board and work to make the program a success. To assure that the interests of our state trade associations are adequately reflected in the checkoff program we would recommend that no less than 10 percent of checkoff revenues collected each year under the program be devoted to state association programs. Implementation and allocation will be determined by the new Checkoff Board.

In Conclusion

We appreciate the time and resources committed by USDA to this effort on behalf of the US hardwood industry for the past five years. We believe that once this comment period has closed the USDA will have received more than adequate input from those interested in and those directly affected by the program. The changes we are requesting in all cases would reduce the

scope of the program and simplify its implementation. We respectfully urge the USDA to move expeditiously to issuing a final proposal and announcing a referendum vote.

Thank you,

Hardwood Checkoff Blue Ribbon Committee