

# 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 1217

[Document Number AMS–SC–20–0014]

#### **Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order; Assessment Rate Increase**

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal invites comments on amending the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order) to increase the assessment rate from \$0.35 to \$0.41 per thousand board feet (mbf). The Order is administered by the Softwood Lumber Board (Board) with oversight by the U.S. Department of Agriculture (USDA). Under the program, 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. This proposal would also add the conversion factor for square meters to board feet and make one conforming change.

**DATES:** Comments must be received by October 13, 2020.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. All comments must be submitted through the Federal e-rulemaking portal at <http://www.regulations.gov> and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the rulemaking record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at <http://www.regulations.gov>.

#### **FOR FURTHER INFORMATION CONTACT:**

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

#### **Executive Orders 12866, 13563, and 13771**

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 falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

#### **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, must 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 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 a proposal to amend the Order by increasing the assessment rate from \$0.35 to \$0.41 per mbf of softwood lumber shipped within or imported into the United States. The Order is administered by the Board with oversight by the USDA. Under the program, 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. The additional funds would enable the Board to maintain its existing programs, while supporting new programs that would help maintain and expand markets for softwood lumber. This proposal would also add the conversion factor for square meters to board feet and make one conforming change.

The Order specifies that the funds to cover the Board’s expenses shall be paid by assessments on manufacturers for the U.S. market, other income of the Board, and other funds available to the Board. Domestic manufacturers pay assessments based on the volume of

softwood lumber shipped within the United States and importers pay assessments based on the volume of softwood lumber imported to the United States. Assessments are collected per mbf of softwood lumber, except that no entity shall pay an assessment on the first 15 million board feet (mmbf) of softwood lumber otherwise subject to assessments in a fiscal year. Domestic manufacturers are required to remit to the Board assessments owed no later than 30 calendar days of the month following the end of the quarter in which the softwood lumber was shipped. Importers are responsible for paying assessments to the Board on softwood lumber imported into the United States through the U.S. Customs and Border Protection (CBP). If CBP does not collect an assessment from the importer, the importer is responsible for paying the assessment to the Board no later than 30 calendar days of the month following the end of the quarter in which the softwood lumber was imported. Domestic manufacturers and importers must also remit to the Board required reports. The Order also provides for exemptions from assessments. Section 1217.53 specifies that U.S. manufacturers and importers that domestically ship and/or import less than 15 mmbf annually, exports of softwood lumber from the United States, and shipments and imports of organic softwood lumber are exempt from the Order's assessment requirements.

Pursuant to § 1217.52, and subject to the exemptions specified in § 1217.53, each domestic manufacturer and importer shall pay an assessment rate of \$0.35 per mbf of softwood lumber, except that no entity shall pay an assessment on the first 15 mmbf of softwood lumber otherwise subject to assessment in a fiscal year. The Board may recommend to the Secretary a change in the assessment rate as it deems appropriate by at least a majority of Board members plus two (exclusive of vacant seats). The assessment rate may not be less than \$0.35 per mbf nor more than \$0.50 per mbf.

The \$0.35 per mbf assessment rate has been in effect since the program's inception in 2011. The Board's fiscal year runs from January 1 through December 31. Board expenditures for the five-year period from 2014–2018 have ranged from a low of \$12.35 million in 2014 to a high of \$15.32 million in 2016; expenditures in 2018

were \$14.23 million. Program expenditures averaged \$12.96 million during those five years, with annual expenditures averaging \$3.29 million (24 percent) for research conducted on wood standards; \$4.06 million (29 percent) on a communications program, which includes continuing education courses for architects and engineers; and \$3.94 million (28 percent) on a construction and design program that provides technical support to architects and structural engineers about using wood. Pursuant to § 1217.50(h), administrative expenditures have been under 8 percent of the assessments collected and other income received by and available to the Board for the fiscal year.

Board assessment income has ranged from \$12.55 million in 2014 to \$13.74 million in 2018. About 70 percent of the assessment income is from domestic manufacturers and 30 percent is from importers. Additionally, pursuant to § 1217.50(i), the Board maintains a monetary reserve with funds that do not exceed one fiscal period's budget. This proposal would also amend § 1217.52(h) to add the conversion factor for square meters to board feet. Currently, the Order provides a factor used to convert cubic meters of imported softwood lumber into the equivalent volume of thousands of board feet, thus enabling the Board to calculate appropriate assessments. Softwood lumber is also being imported in square meters. Adding a conversion factor for square meters would better reflect current industry practices and facilitate the administration of the program.

Finally, this proposed rule would make a conforming change to § 1217.52(c) to reflect previously revised voting requirements in § 1217.44. In a final rule published in the **Federal Register** on September 25, 2019 (84 FR 50294), voting requirements prescribed in § 1217.44 were revised to specify that recommendations to change the assessment rate require affirmation by at least a majority of Board members plus two (exclusive of vacant seats). Currently, corresponding language in § 1217.52(c) specifies that an affirmative vote of at least two-thirds of Board members is required for assessment rate recommendations. A conforming change in this proposed rule would revise § 1217.52(c) to require affirmation of assessment rate recommendations by a Board majority plus two, thus

harmonizing the language in the two sections related to assessment recommendations.

**Board Recommendation**

The Board met on November 20, 2019 and recommended increasing its assessment rate from \$0.35 to \$0.41 per mbf. The additional funds would enable the Board to maintain its existing programs, while supporting new programs that would help maintain and expand markets for softwood lumber. For the 2016–2018 fiscal years, the Board has used reserve funds to bridge the deficit between income and expenses. In 2019, the Board kept expenditures in line with income and had to make cuts to its programs, primarily its communications program. The Board discussed the deficit spending that occurred from 2016–2018 and the funding cuts in 2019, along with the impacts of inflation, and determined that without the increase it would not be able to maintain its current programs nor be able to address gaps that limit the Board's ability to expand the market for softwood lumber. Continuing at the current funding level would limit its ability to capitalize on new opportunities or address challenges and maintain the impact the Board has achieved for the softwood lumber industry in prior years. Additionally, the current funding level restricts the ability to accelerate softwood lumber's increase in market share and lumber usage in the non-residential sector.

The Board's funding of research on wood standards has facilitated interest in using wood-based building systems in non-traditional markets, such as tall wood building. The 2021 International Code Council building standards will recognize the construction of mass timber buildings up to 18 stories in height. These new opportunities require a more comprehensive approach, particularly in outreach and education initiatives. The Board recognized that its funded programs must go beyond inspiring professionals to think about building with wood. These individuals need resources and technical assistance.

The Board estimated the proposed increased assessment rate of \$0.41 per mbf would generate additional revenues as shown in Table 1. The consumption forecast and assessable board feet figures are shown in billion board feet (bbf).

TABLE 1—ADDITIONAL ASSESSMENT REVENUE AT THE PROPOSED \$0.41 PER MBF ASSESSMENT RATE

|   | 2021  | 2022  | 2023  | 2024  | 2025  |
|---|-------|-------|-------|-------|-------|
| Consumption Forecast (bbf) <sup>1</sup> ..... | 49.69 | 49.39 | 52.72 | 55.64 | 57.52 |

TABLE 1—ADDITIONAL ASSESSMENT REVENUE AT THE PROPOSED \$0.41 PER MBF ASSESSMENT RATE—Continued

|  | 2021         | 2022         | 2023         | 2024         | 2025         |
|--|--------------|--------------|--------------|--------------|--------------|
| Assessable Board Feet (bbf) <sup>2</sup> .....                 | 40.30        | 40.05        | 42.76        | 45.13        | 46.65        |
| Estimated Assessment Revenue (\$0.35/mbf) .....                | \$14,104,640 | \$14,018,162 | \$14,965,761 | \$15,794,788 | \$16,326,618 |
| Estimated Assessment Revenue (\$0.41/mbf) .....                | \$16,522,578 | \$16,421,276 | \$17,531,320 | \$18,502,466 | \$19,125,466 |
| Additional Assessment Revenue at \$0.41/mbf <sup>3</sup> ..... | \$2,417,938  | \$2,403,114  | \$2,565,559  | \$2,707,678  | \$2,798,849  |

<sup>1</sup> Source: Forest Economic Advisors (<https://www.getfea.com/data-center/>); data frequently revised; pulled 2/21/2020.

<sup>2</sup> Assumes 18.9 percent exemption rate.

<sup>3</sup> Difference of estimated assessment revenue at \$0.41/mbf and estimated assessment revenue at \$0.35/mbf.

The additional funds would support programs targeting contractors and developers to address installer training and skills development; establish an education program that would target architecture and engineering students, as well as professionals; and restore the Board's communications program budget so that by 2025 it would be equivalent to 2018 expenditures. Therefore, the Board recommended increasing the assessment rate in the Order from \$0.35 to \$0.41 per mbf. USDA accepts and agrees with the Board's reasoning for increasing the assessment rate. Accordingly, USDA proposes to amend § 1217.52(b) to specify a \$0.41 per mbf assessment rate.

### Initial 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 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 the actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural service firms (domestic manufacturers

and importers) as those having annual receipts of no more than \$8 million.<sup>1</sup>

The Random Lengths Publications, Inc.'s yearly average framing lumber composite price was \$356 per mbf in 2019. Dividing the \$8 million threshold that defines an agricultural service firm as small by this price results in a maximum threshold of 22.5 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 2 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.

TABLE 2—DOMESTIC MANUFACTURERS AND IMPORTERS BY SBA SIZE STANDARDS, 2019

|             | Domestic manufacturers |               | Importers |               | Totals   |               |
|-------------|------------------------|---------------|-----------|---------------|----------|---------------|
|             | Entities               | Volume (MMBF) | Entities  | Volume (MMBF) | Entities | Volume (MMBF) |
| Small ..... | 226                    | 1,991         | 774       | 1,257         | 1,000    | 3,248         |
| Large ..... | 290                    | 32,229        | 106       | 32,582        | 396      | 64,811        |
| Total ..... | 516                    | 34,220        | 880       | 33,839        | 1,396    | 68,059        |

Sources: Forest Economic Advisors; Customs and Border Protection.

As shown in Table 2, there are a total of 1,396 domestic manufacturers and importers of softwood lumber based on 2019 data. Of these, 1,000 entities, or 72 percent, shipped or imported less than 22.5 mmbf and would be considered small under the SBA definition. These 1,000 entities domestically manufactured or imported 3.25 billion board feet (bbf) in 2019, less than 5 percent of total volume.

While this action would increase the assessment obligation on domestic manufacturers and importers from \$0.35 per mbf to \$0.41 per mbf, the impact on these entities would be minimal and uniform. The current assessment rate of \$0.35 per mbf represents 0.1 percent of the Random Lengths 2019 average

framing lumber composite price of \$356 per mbf. The proposed assessment rate of \$0.41 per mbf is 0.12 percent of this price. The increase in assessment rate represents an increase in cost to domestic manufacturers and importers of two-thousandth of one percentage point relative to their average received price. This cost, though minimal, would also be offset by the benefits derived from the program.

The 1996 Farm Bill requires that Research and Promotion programs be evaluated every five years with the specific goal of measuring the economic impact of commodity promotion on demand for the commodity. The Board completed its first five-year evaluation of program effectiveness in 2016. The

five-year evaluation, conducted by Prime Consulting, found that softwood lumber use per square foot increased nearly 23 percent among architects and structural engineers from the program's inception in 2011 to 2015. The evaluation also found a cumulative return on investment (ROI) of more than \$15 in increased sales of softwood lumber per \$1 spent on promotion by the program between 2012 and 2015. The cumulative ROI was updated in 2019 to reflect the time period of 2012 to 2018. The result was a return of more than \$23 in increased sales per \$1 spent on promotion.

This proposal invites comments on amending § 1217.52(b) to increase the assessment rate from \$0.35 to \$0.41 per

<sup>1</sup> SBA does have a small business size standard for "Sawmills" of 500 employees (see [https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards\\_Effective%20Aug%202019%2C%202019\\_Rev.pdf](https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%202019%2C%202019_Rev.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 agricultural service firm as a more appropriate criterion for this analysis.

mbf. The Order is administered by the Board with oversight by the USDA. Under the program, 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. The additional funds collected at the proposed rate would enable the Board to maintain its existing programs, while supporting new programs that would help maintain and expand markets for softwood lumber. This proposal would also amend § 1217.52(h) to add the conversion factor for square meters to board feet and make one conforming change to section 1217.52(c) regarding voting requirements.

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 0581-0093. 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 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 that duplicate, overlap, or conflict with this proposed rule.

Regarding alternatives, the Board considered maintaining the current assessment rate. However, a majority of Board members determined that an increase was needed to adequately support existing programs and fund new initiatives. The Board discussed increasing the assessment at its meeting in November 2018, but after much consideration it determined it was not the right time for the industry to make such a recommendation. In 2019, with the reduction of assessment revenue and the program cuts that were made, the Board again considered the merits of increasing the assessment rate. This was discussed at several Board committee meetings, including meetings of the Executive Committee on September 17, 2019 and November 19, 2019, and the Finance Committee on November 19, 2019. The Board also considered rates of \$0.39 and \$0.50 per mbf. After much discussion at committee meetings and with the full Board, the Board recommended increasing the rate from \$0.35 to \$0.41 per mbf.

AMS has performed this initial RFA analysis regarding the impact of this proposed action on small entities and invites comments concerning potential effects of this action.

USDA has determined that this proposed rule 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 1217

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Softwood Lumber promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1217, is proposed to be amended as follows:

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

■ 1. The authority citation for 7 CFR part 1217 continues to read as follows:

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

§ 1217.52 [Amended]

■ 2. In § 1217.52, paragraphs (b), (c), and (h) are revised to read as follows:

§ 1217.52 Assessments.

\* \* \* \* \*

(b) Subject to the exemptions specified in § 1217.53, each manufacturer for the U.S. market shall pay an assessment to the Board at the rate of \$0.41 per thousand board feet of softwood lumber, except that no person shall pay an assessment on the first 15 million board feet of softwood lumber otherwise subject to assessment in a fiscal year. Domestic manufacturers shall pay assessments based on the volume of softwood lumber shipped within the United States and importers shall pay assessments based on the volume of softwood lumber imported to the United States.

(c) At least 24 months after the Order becomes effective and periodically thereafter, the Board shall review and may recommend to the Secretary, upon an affirmative vote by at least a majority of Board members plus two (exclusive of vacant seats), a change in the assessment rate. In no event may the rate be less than \$0.35 per thousand board feet nor more than \$0.50 per

thousand board feet. A change in the assessment rate is subject to rulemaking by the Secretary.

\* \* \* \* \*

(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 (m3) equals 0.423776001 thousand board feet, and one square meter (m2) equals 0.010763104 thousand board feet. Accordingly, the assessment rate per cubic meter and square meter is as follows.

TABLE 1 TO PARAGRAPH (H)

Table with 3 columns: Softwood lumber (by HTUS No.), Assessment \$/cubic meter, Assessment \$/square meter. Rows list various HTUS numbers and their corresponding assessment rates.

\* \* \* \* \*

Bruce Summers, Administrator.

[FR Doc. 2020-16554 Filed 8-12-20; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE-2020-BT-TP-0002]

RIN 1904-AE85

Energy Conservation Program: Test Procedure for Showerheads

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The U.S. Department of Energy (“DOE”) proposes to amend the existing test procedure for showerheads to revise the definition of a showerhead consistent with the most recent standard developed by the American Society of Mechanical Engineers (“ASME”) in 2018. DOE’s current definition considers all of the individual showerheads (which DOE has termed variously as sprays, openings, or nozzles) in a product containing multiple showerheads together for