



## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 1260**

**[No. AMS-LP-19-0054]**

#### **Beef Promotion and Research Rules and Regulations**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is amending the Beef Promotion and Research Order (Order) by updating the Harmonized Tariff Schedule (HTS) codes for imported cattle, beef, veal, and beef product to conform with recent updates by the U.S. International Trade Commission (USITC) and used by the U.S. Customs and Border Protection to assist in the collection of beef checkoff assessments.

**DATES:** This direct final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], without further action or notice, unless significant adverse comment is received by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comment is received, AMS will publish a timely withdrawal of the amendment in the *Federal Register*.

**ADDRESSES:** Comments should be posted online at [www.regulations.gov](http://www.regulations.gov). Comments received will be posted without change, including any personal information provided. All comments should reference the docket number AMS-LP-19-0054, the date of submission, and the page number of this issue of the Federal Register. Comments may

also be sent to Kahl Sesker, Agricultural Marketing Specialist; Research and Promotion Division; Livestock and Poultry Program, AMS, USDA; Room 2610-S, STOP 0251, 1400 Independence Avenue, SW.; Washington, D.C. 20250-0251; or via fax to (202) 720-1125. Comments will be made available for public inspection at the above address during regular business hours or via the Internet at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Kahl Sesker, Agricultural Marketing Specialist; Research and Promotion Division, Livestock and Poultry Program; AMS, U.S. Department of Agriculture (USDA); Room 2610-S, STOP 0251, 1400 Independence Avenue, S.W.; Washington, D.C. 20250-0251; fax (202) 720-1125; telephone (202) 253-8253; or email [Kahl.Sesker@usda.gov](mailto:Kahl.Sesker@usda.gov).

**SUPPLEMENTARY INFORMATION:**

**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 rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866 and therefore, the Office of Management and Budget (OMB) has waived review of this action. 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 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

Section 11 of the Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2910) provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the U.S. or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

### **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 or significant Tribal implications.

### **Paperwork Reduction Act**

In accordance with OMB regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Part 35), the information collection and recordkeeping requirements contained in the Order and accompanying Rules and Regulations have previously been approved by OMB and were assigned OMB control number 0581-0093.

## **Background**

The Act authorized the establishment of a national beef promotion and research program. Title 7 CFR part 1260, the Beef Promotion and Research Order (the Order), was published in the *Federal Register* on July 18, 1986 (51 FR 21632), and the collection of assessments began on October 1, 1986. The program is administered by the Cattlemen's Beef Promotion and Research Board (Board), appointed by the Secretary of Agriculture (Secretary) from industry nominations, and composed of 99 cattle producers and importers. The program is funded by a \$1-per-head assessment on producers selling cattle in the U.S. as well as an equivalent assessment on importers of cattle, beef, veal, and beef products.

Importers pay assessments on imported cattle, beef, veal, and beef products. U.S. Customs and Border Protection collects and remits these assessments to the Board. The term "importer" is defined as "any person who imports cattle, beef, or beef products from outside the United States" (7 CFR 1260.117). Imported beef or beef products is defined as "products which are imported into the United States which the Secretary determines contain a substantial amount of beef, including those products which have been assigned one or more of the following numbers in the Tariff Schedule of the United States" (7 CFR 1260.121).

The Act requires that assessments on imported beef and beef products and veal and veal products be determined by converting such imports into live animal equivalents to ascertain the corresponding number of head of cattle. Carcass weight is the principal factor in calculating live animal equivalents.

USITC periodically updates HTS codes. Since USITC updates HTS on a regular basis, AMS routinely amends 7 CFR 1260.172(b) to incorporate the updated HTS codes for imported cattle, beef, veal, and beef product into the Order so that importers know what beef products are assessed and their respective assessment rates. Consistent with USITC's recent updates to HTS codes, AMS is updating the HTS codes in the Order through this direct final rule.

### **Regulatory Flexibility Act**

The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened. Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic effect of this action on small entities and has determined that this direct final rule does not have a significant economic impact on a substantial number of small entities.

Effective August 19, 2019, the SBA published an interim final rule (RIN 3245-AH17) that adjusts the monetary-based size standards for inflation. As a result of this rule, the size classification for small beef, veal, and cattle importing firms changed from sales of \$750,000 or less to sales of \$1,000,000 or less. As a result, a supplemental analysis was conducted to determine whether the change in the size standard would lead to a significant change in the number of firms affected by this rule.

According to the U.S. Department of Agriculture's (USDA) National Agricultural Statistics Service's (NASS) 2017 Census of Agriculture, the number of operations in the

United States with cattle totaled 882,692.<sup>1</sup> The most recent (2017) Census of Agriculture data show that roughly 4 percent of producers with cattle, or 31,601 operations, have annual receipts of \$1,000,000 or more.<sup>2</sup> Therefore, the vast majority of cattle producers, 96 percent, would be considered small businesses with the new SBA guidance. It should be noted that producers are only indirectly impacted by the proposed rule.

Cattle, beef, and veal importers are directly impacted by the proposed rule. The original number of importing firms was determined in consultation with the Meat Import Council of America (MICA). AMS estimates that approximately 270 firms that import beef or beef products, and veal and veal products into the United States, and about 198 firms that import live cattle into the United States. The 2012 Economic Census, produced by the U.S. Commerce Department, and accessible through the American Fact Finder website, provides the most recent data on firm size by sales revenue.<sup>3</sup> However, data on the firm size of beef, veal, and cattle importers are not available in this or other economic databases, as there is no NAICS code specific enough for this industry segment.

The 2012 Economic Census does have information on the broader marketing chain, specifically the size distribution of meat and meat product wholesalers (NAICS 42447).<sup>4</sup> These data show that 18 percent of firms in the industry classification of meat and meat product wholesalers are now considered small businesses under the new size standard.

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1 <https://www.nass.usda.gov/AgCensus/index.php>

2 <https://quickstats.nass.usda.gov/results/EC7DF8E2-6791-347F-BC4F-3F81988D7DDB>

3 <https://factfinder.census.gov>

4 Source: U.S. Census Bureau, 2012 Economic Census, Search code EC1242SSSZ1\_with\_ann

Recent import trade data was also considered for understanding the overall dynamics of this industry segment. The Foreign Agricultural Service reports monthly trade data for traded agricultural products by product type. An analysis of these data over a five-year period show only minor changes in the annual import values for both beef and veal importers and cattle importers, suggesting little change in the sector overall.

This direct final rule imposes no significant burden on the industry. Importers are already required to pay assessments. This action merely updates HTS codes in the Order that USITC has changed for imported cattle, beef, veal, and beef products. Accordingly, AMS has determined that this action does not have a significant impact on a substantial number of small entities.

USITC periodically updates HTS codes. Since USITC updates HTS on a regular basis, AMS routinely amends 7 CFR 1260.172(b) to incorporate the updated HTS codes for imported cattle, beef, veal, and beef product into the Order so that importers know what beef products are assessed and their respective assessment rates.

#### **List of Subjects in 7 CFR Part 1260**

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, AMS amends 7 CFR part 1260 as follows:

#### **PART 1260 – BEEF PROMOTION AND RESEARCH**

1. The authority citation for 7 CFR part 1260 continues to read as follows:

**Authority:** 7 U.S.C. 2901-2911 and 7 U.S.C. 7401.

2. Amend § 1260.172 by revising paragraph (b)(2) to read as follows:

**§ 1260.172 Assessments.**

\* \* \* \* \*

(b) \* \* \*

(2) The assessment rates for imported cattle, beef, veal, beef products, are as follows:

Table 1 to paragraph (b)(2) – Imported Live Cattle

HTS Code	Assessment rate per head
0102.21.0010	\$1.00
0102.21.0020	\$1.00
0102.21.0030	\$1.00
0102.21.0050	\$1.00
0102.29.2011	\$1.00
0102.29.2012	\$1.00
0102.29.4024	\$1.00
0102.29.4028	\$1.00
0102.29.4034	\$1.00
0102.29.4038	\$1.00
0102.29.4054	\$1.00
0102.29.4058	\$1.00
0102.29.4062	\$1.00
0102.29.4064	\$1.00
0102.29.4066	\$1.00
0102.29.4068	\$1.00
0102.29.4072	\$1.00
0102.29.4074	\$1.00
0102.29.4082	\$1.00
0102.29.4084	\$1.00

Table 2 to paragraph (b)(2) – Imported Beef and Beef Products

HTS Code	Assessment rate per kg
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0201.10.0510	.01431558
0201.10.0590	.00379102
0201.10.1010	.01431558
0201.10.1090	.00379102
0201.10.5010	.01431558
0201.10.5090	.00511787
0201.20.0200	.00530743
0201.20.0400	.00511787
0201.20.0600	.00379102
0201.20.1000	.00530743
0201.20.3000	.00511787
0201.20.5015	.01431558
0201.20.5025	.00379102
0201.20.5035	.00379102
0201.20.5045	.00379102
0201.20.5055	.00379102
0201.20.5065	.00379102
0201.20.5075	.00379102
0201.20.5085	.00379102
0201.20.8090	.00379102
0201.30.0200	.00530743
0201.30.0400	.00511787
0201.30.0600	.00379102
0201.30.1000	.00530743
0201.30.3000	.00511787
0201.30.5015	.02090075
0201.30.5025	.00511787
0201.30.5035	.00511787
0201.30.5045	.00511787
0201.30.5055	.00511787
0201.30.5065	.00511787
0201.30.5075	.00511787
0201.30.5085	.00511787
0201.30.8090	.00511787
0202.10.0510	.01431558
0202.10.0590	.00379102
0202.10.1010	.01431558
0202.10.1090	.00370102
0202.10.5010	.01431558
0202.10.5090	.00379102
0202.20.0200	.00530743
0202.20.0400	.00511787
0202.20.0600	.00379102

0202.20.1000	.00530743
0202.20.3000	.00511787
0202.20.5025	.00379102
0202.20.5035	.00379102
0202.20.5045	.00379102
0202.20.5055	.00379102
0202.20.5065	.00379102
0202.20.5075	.00379102
0202.20.5085	.00379102
0202.20.8000	.00379102
0202.30.0200	.00530743
0202.30.0400	.00511787
0202.30.0600	.00527837
0202.30.1000	.00530743
0202.30.3000	.00511787
0202.30.5015	.02090075
0202.30.5025	.00511787
0202.30.5035	.00511787
0202.30.5045	.00511787
0202.30.5055	.00511787
0202.30.5065	.00511787
0202.30.5075	.00511787
0202.30.5085	.00511787
0202.30.8000	.00379102
0206.10.0000	.00379102
0206.21.0000	.00379102
0206.22.0000	.00379102
0206.29.0000	.00379102
0210.20.0000	.00615701
1601.00.4010	.00473877
1601.00.4090	.00473877
1601.00.6020	.00473877
1602.50.0500	.00771610
1602.50.0720	.00663428
1602.50.0740	.00663428
1602.50.0800	.00663428
1602.50.2120	.00701388
1602.50.2140	.00701388
1602.50.6000	.00720293

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Dated: December 20, 2019.

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Administrator,  
Agricultural Marketing Service.

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