



## **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:** Final rule.

**SUMMARY:** This rule amends 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). This rule will also add the conversion factor for square meters to board feet and makes one conforming change.

**DATES:** Effective Date: April 1, 2021.

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**SUPPLEMENTARY INFORMATION:** This final rule 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 and 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 falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

**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 will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

**Executive Order 12988**

This rule 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 rule amends 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 will enable the Board to maintain its existing programs, while supporting new programs that will help maintain and expand markets for softwood lumber. This rule will 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 assessment rate may not be less than \$0.35 per mbf nor more than \$0.50 per mbf. Section 1217.44(c) prescribes that 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 \$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 rule will 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 will better reflect current industry practices and facilitate the administration of the program.

Finally, this rule will 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 rule will 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 will enable the Board to maintain its existing programs, while supporting new programs that will 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 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
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 ( <a href="https://www.getfea.com/data-center">https://www.getfea.com/data-center</a> ); 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 will support programs targeting contractors and developers to address installer training and skills development; establish an education program that will target architecture and engineering students, as well as professionals; and restore the Board's communications program budget so that by 2025 it will be equivalent to 2018 expenditures. Therefore, the Board recommended increasing the assessment rate in the Order from \$0.35 to \$0.41 per mbf.

### **Final Regulatory Flexibility Act Analysis**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing

Service (AMS) is required to examine the impact of the action on small entities. Accordingly, AMS 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.

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<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.

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 increases the assessment obligation on domestic manufacturers and importers from \$0.35 per mbf to \$0.41 per mbf, the impact on these entities will 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 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, will 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 rule amends § 1217.52(b) to increase the assessment rate from \$0.35 to \$0.41 per 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 increased rate will enable the Board to maintain its existing programs, while supporting new programs that will help maintain and expand markets for softwood lumber. This rule also amends § 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.

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.

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 rule will not result in a change to the information collection and recordkeeping requirements

previously approved and will 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 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.

A proposed rule concerning this action was published in the **Federal Register** on August 13, 2020 (85 FR 49281). A 60-day comment period ending October 13, 2020, was provided to allow interested persons to submit comments.

#### **Analysis of Comments**

Twenty-nine comments were received in response to the proposed rule. Of those 29 comments, 22 supported the proposed assessment increase, six opposed the action, and one was outside the scope of the rulemaking.

Overall, commenters in support of the proposal expressed that increasing market share by developing new markets and uses for softwood lumber products while addressing the continued pressures from competitors is

paramount to the continued success of the softwood lumber industry. They contend this may only be accomplished by the increased investment in the softwood lumber program. One commenter, who identified as a small sawmill, argued that the proposed increase was not enough, and an assessment rate of \$0.50 per mfb or more was warranted to continue promoting and developing new markets and uses for softwood lumber products. Commenters expressed the need for continued work on wood standards and the adoption of using wood-based products in non-traditional markets. They emphasized the importance of educational programs and continued technical assistance for builders, designers, developers, architects and engineers. Several commenters discussed the benefit of being able to work collaboratively as an industry to drive demand for softwood lumber, noting that the efforts of the program are critical to the long-term success of the softwood lumber industry. Commenters noted the return on investment and incremental demand results from the most recent program evaluation as evidence of the success of the program thus far. And two commenters mentioned the results of the 2018 continuance referendum (78 percent of manufacturers and importers voting, who represented 94 percent of the volume of softwood lumber, were in favor of continuing the program) to demonstrate the continued support of the industry for the program.

Out of the six comments in opposition, three commenters noted that the industry is currently seeing record demand and historically high prices, and that the need for an increase in the assessment to fund programming geared towards creating additional demand is not necessary. Two commenters noted that the Board should be able to create demand at the current funding levels. One commenter simply opposed the increase, but did not provide further detail. In its discussion of the proposed increase, the Board determined that continuing at the current funding level would limit its ability to maintain the impact it has achieved for the softwood lumber industry in prior years. It reviewed its revenues and expenditures for the past several fiscal periods and agreed 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. Additionally, it believed current funding levels restricts its ability to accelerate softwood lumber's increase in market share and lumber usage in the non-traditional markets. In formulating the proposed increase, the Board reviewed several different rate options, including not increasing the rate, but ultimately decided that additional funds generated by the increase are needed to maintain and expand markets for softwood lumber. None of the commenters provided comments on the addition of the conversion factor and the conforming

change. Accordingly, no changes will be made to the rule as proposed, based on the comments received.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board, the comments received, and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

**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 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.

2. Amend § 1217.52 by revising paragraphs (b), (c), and (h) 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.

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(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)

Softwood lumber (by HTSUS number)	Assessment \$/cubic meter	Assessment \$/square meter
4407.11.00	0.1737	0.004412
4407.12.00	0.1737	0.004412
4407.19.05	0.1737	0.004412
4407.19.06	0.1737	0.004412
4407.19.10	0.1737	0.004412
4409.10.05	0.1737	0.004412
4409.10.10	0.1737	0.004412
4409.10.20	0.1737	0.004412
4409.10.90	0.1737	0.004412
4418.99.10	0.1737	0.004412

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