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## **Agricultural Marketing Service**

### **7 CFR Part 1214**

**[Doc. No. AMS-SC-24-0004]**

### **Christmas Tree Promotion, Research, and Information Order**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposal invites comments on changes to the Christmas Tree Promotion, Research, and Information Order (Order). These changes include amending the Board's name from "Christmas Tree Promotion Board" to "Real Christmas Tree Board", increasing the administrative expenses cap from 10 to 15 percent, allowing importers to request refunds of assessments paid on trees that were shipped to the United States but were not sold, and increasing the mandatory period to maintain books and records relating to the Order. Many of these changes are administrative in nature. This action would also make several non-substantive clarifications and changes to modernize the Board's procedures.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments may be mailed to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or submitted electronically by Email: [SM.USDA.MRP.AMS.MDDComment@usda.gov](mailto:SM.USDA.MRP.AMS.MDDComment@usda.gov); or via Internet at <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the *Federal Register*. All comments will be made available for public inspection in the Office of the Docket Clerk during

regular business hours or can be viewed at <https://www.regulations.gov>. 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 the comments will be made public.

**FOR FURTHER INFORMATION CONTACT:** George Webster, Marketing Specialist, Market Development Division, Specialty Crops Program, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; Telephone: (202) 720-8085; or Email: [George.Webster@usda.gov](mailto:George.Webster@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposed rule affecting the Order (7 CFR part 1214) is authorized by the Commodity Promotion, Research, and Information Act of 1996 (the Act) (7 U.S.C. 7411-7425).

### **Executive Orders 12866 and 13563**

USDA is issuing this proposed rule in conformance with 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 proposed action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866, and therefore, has not been reviewed.

### **Executive Order 13175**

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. AMS has assessed the impact of this proposed rule on Indian Tribes and determined that this rule

would not have Tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with Tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the proposed changes to the regulations will be shared during an upcoming quarterly call, and Tribal leaders will be informed about the proposed revisions to the regulation and the opportunity to submit comments. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regard to these proposed changes to the Order.

### **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 Commodity Promotion, Research, and Information Act of 1996 (the 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 sec. 519 of the Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 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**

Under the Christmas Tree Promotion, Research, and Information Order (7 CFR part 1214) (Order), the Christmas Tree Promotion Board (Board), with USDA oversight, administers a nationally coordinated program of research, promotion and information designed to maintain and expand markets for fresh cut Christmas trees. The program is financed by assessments on domestic producers and importers of 500 or more Christmas trees annually. The Board, which is composed of one importer and eleven domestic producers from three regions across the United States, unanimously recommended these proposed changes during a meeting on September 21, 2023. These proposed changes include: changing the Board name; revising timelines associated with budget and financial requirements; clarifying assessment and exemption requirements; and modernizing language in the Order. The proposal would also make clarifying changes and changes to administrative requirements.

### **Board Recommendation to Change Board Name**

Currently the Order refers to the Board as the “Christmas Tree Promotion Board”. In 2022, the Board rebranded their name on their website and marketing materials to “Real Christmas Tree Board” to alleviate confusion amongst industry members and distinguish the program from other national organizations who represent both real and artificial Christmas trees. This proposed change would align the language of the Order with the Board’s name, as it has been used on their website and marketing materials since 2022, and would permit the Board to use the new name for all business purposes. The proposal would make these changes in sections 1214.2 and 1214.40 of the Order.

### **Changes to Budget and Financial Requirements**

Section 1214.46(p) currently states that the Board must submit a budget for approval within 60 days after assessments are due to the Board, which falls on April 15<sup>th</sup>. This requirement would be removed so Board staff could provide a more accurate budget

when final revenue and expenses of the current fiscal period are known. To accommodate this change, a budget submission deadline would be added in section 1214.50(a) which would require the Board to submit a budget for review no more than 90 days or less than 60 days prior to the fiscal period. This change would require the budget to be submitted between May 1<sup>st</sup> and June 1<sup>st</sup>, giving the Board additional time to calculate accurate budget numbers.

Section 1214.50(j) would be revised to increase the maximum allowable administrative expenses of the Board from 10 percent of annual revenue to 15 percent. Section 515(e)(5) of the Act (7 U.S.C. 7414(e)(5)) allows a spending limit of up to 15 percent of income for the fiscal period for administrative costs. In 2021, 2022, and 2023, the Board's administrative costs were 7.2 percent, 7.3 percent, and 9.3 percent of revenues, respectively. The Board's administrative costs have increased, largely due to inflation, while revenues have decreased because of weather events. The Board expects this trend to persist and therefore seeks to have greater budgetary flexibility that would allow them to continue paying for administrative costs with decreases in revenues. Notably, most of the other Orders established pursuant to the Act have a 15 percent administrative cost cap.

Section 1214.51 outlines the Board's financial statement requirements. This proposed rule would revise the financial statement requirement in section 1214.51(a) by requiring financial reporting on a periodic basis as opposed to quarterly. This proposed change would align the Order to the Board's current procedure of producing financial statements monthly. Section 1214.51(c) states the Board must submit an annual financial statement within 90 days after the fiscal period. This deadline has proven to be difficult to meet as it falls on October 31<sup>st</sup>, which is in the middle of the Christmas tree harvesting season for the industry. In order to meet this deadline, Board members must meet during their busy season which can negatively affect their businesses. By extending this deadline

to 180 days after the fiscal period, the Board members will be out of their busy season and able to meet more easily to review the annual financial statement.

### **Changes to Clarify Assessments and Exemptions**

Section 1214.52(b) would be revised to clarify who is responsible for paying assessments by referencing the definitions of “person” and “producer” in sections 1214.14 and 1214.17, respectively. Section 1214.52(c), regarding Christmas tree importers, would be revised to state that if assessments are not collected at the border by the United States Customs and Border Protection (Customs), they should be paid directly to the Board by February 15<sup>th</sup> of the crop year in which they are imported. The Board anticipates that assessments from importers will be collected by Customs, but in the unlikely event that an assessment is not collected by Customs, importers would be required to pay such assessment directly to the Board by February 15<sup>th</sup> of the crop year in which the trees are imported. Section 1214.52(c)(3) would be updated to clarify that if assessments are collected by Customs, they shall be paid when the trees enter the United States.

Section 1214.53(a)(7) would be revised to clarify that importers who import less than 500 trees annually shall receive a refund from the Board for assessments collected. The change would remove reference to producers because assessments are not collected from producers who are under the de minimis amount specified in section 1214.53(a) but are collected from importers through Customs.

Section 1214.53(b) would be revised to allow importers the ability to request a refund for assessments paid on trees imported into the United States but not sold. This change would ensure that importers are able to request refunds for assessments paid on any trees that are not sold after importation. Some importers have faced an issue in which their retailer will pay only for the trees sold. The Board would like to give these importers and other importers who may face this problem in the future opportunity for a

refund on trees that are imported into the United States but not sold. This option is already available to producers as they can report and pay assessments only on the trees which they were paid for as opposed to importers who pay assessments on each tree imported, regardless of its ultimate disposition.

### **Changes to Modernize Order Language**

Several proposed changes would modernize the Order so the Board can take advantage of different voting and meeting options, specifically electronic capabilities. Using electronic capabilities would increase accessibility, enhance efficiency, and decrease administrative costs. Additionally, the changes would modernize the language to be in line with current industry practices.

Section 1214.41(a) would be revised to allow producers to vote for producer nominees by any means of communication available, so long as the votes cast are verifiable and meet procedural requirements.

Section 1214.44(b) would be revised to lower the minimum days of advanced notice for Board meetings from 14 to 7 to allow for more flexibility in scheduling meetings, particularly virtual ones. Section 1214.44(c) would be revised to clarify that Board members abstaining from any Board vote would not be counted against the motion. The proposed language is consistent with other orders established pursuant to the Act.

Section 1214.44(e) currently provides that in lieu of voting at a properly convened meeting, the Board may take action by other means in certain circumstances. In light of advancement of electronic capabilities, section 1214.44(e) would be revised to allow meetings by electronic means or by any means of communication available. Section 1214.102(c) would also be updated to allow the Board to vote to take action by any means of communication available. The proposed language in these sections is consistent with other orders established pursuant to the Act.

The proposed changes would update the Harmonized Tariff Schedule numbers of Christmas trees that are assessed in sections 1214.52(c) and 1214.101(e).

### **Clarifying and Administrative Revisions**

Section 1214.9, which defines Importer, would be revised to remove the word “domestically” to clarify that the trees are produced outside of the United States. Section 1214.17, which defines Producer, would be revised to change the word “of” in “loss of the production” to the word “in”, and to add a semicolon after the clause “and who owns, or shares the ownership and risk of loss in the production of Christmas trees” for clarity and readability. Section 1214.101(d)(1), which defines “eligible domestic producer” in the context of referendum procedures, would also be revised to change the word “of” in “loss of the production” to the word “in” for consistency.

Section 1214.41(e) would be revised to explain that nominees who are both a producer and an importer, may only seek nomination to the Board and vote in the nomination process as either a producer or an importer, but not both.

Section 1214.53(a)(8) would be revised to further explain that the Board has the power to develop safeguard procedures to prevent improper use of exemptions from mandatory assessments. As prescribed by the regulations, any such procedures shall be implemented through rulemaking by the Secretary.

Section 1214.71, which details books and records requirements for producers and importers, would be modified to require that they retain all relevant records for at least five years to allow the Board to audit additional years’ records and collect any potential past due assessments.

Section 1214.82(a) would be revised to clarify that a majority of persons voting in the referendum must be in favor of the program’s continuance. This is consistent with the Act and other orders, as well as existing procedure under Sections 1214.81(a)(2)(i) and 1214.81(b)(2).

Section 1214.85, which details personal liability, would be revised to clarify that committee members and agents of the program shall not be held personally responsible, except for acts of dishonesty or willful misconduct. The proposed language in these sections is consistent with other orders established pursuant to the Act.

The term “fiscal period” is defined in section 1214.8 of the Order, however, in sections 1214.50(j) and 1214.53(a)(7), the term “fiscal year” is used. These two sections would be updated to ensure consistent use of “fiscal period” throughout the Order.

Throughout the Order, there are multiple references to the minimum number of Christmas trees produced or imported annually to meet certain requirements of the Board. Sections 1214.41(c), 1214.41(d), 1214.53(a), 1214.101 would all be revised to ensure consistency in stating that the number of trees to exceed the de minimis amount is “500 or more Christmas trees”.

### **Formatting Changes**

The proposed rule would make several formatting changes. Section 1214.40(a) would correct the alphabetical list of U.S. states. Additionally, § 1214.101, which consists of definitions, would be amended to remove the paragraph (a) through (j) designations and would be reordered in alphabetical order.

### **Initial Regulatory Flexibility Act Analysis**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), agencies are required to examine the impact of the proposed 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 firms which engage in “agricultural nursery and tree production” (domestic manufacturers and

importers) as those having annual receipts of no more than \$3.25 million (NAICS code 111421).

According to the 2022 Census of Agriculture published by the National Agricultural Statistics Service (NASS), it is estimated that there are 10,113 farms that sold cut Christmas trees in the United States. According to NASS, the value of cut Christmas trees sold in 2022 was \$552,900,000. Dividing that value by the number of farms yields an average annual producer revenue of \$54,672. Therefore, it is estimated that all farms that sold Christmas trees had revenue under \$3.25 million for the purposes of this RFA analysis<sup>1</sup> and would be considered small entities.

Likewise, based on Customs data, there were 150 importers of nursery and tree production (Harmonized Tariff Schedule codes; 0604.20.00.20, 0604.20.00.40, 0604.20.00.60) in 2023. Of these, 5 importers, or 3 percent, had annual receipts of more than \$3.25 million of nursery and tree production. Thus, most importers would be considered small entities. The proposed rule would not disproportionately burden small domestic producers and importers of agricultural nursery and tree production (NAICS code 111421).

### **Paperwork Reduction Act**

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 0581-0268. One proposed change in this proposal would increase the number of respondents for a current OMB approved form.

Section 1214.53(b) would be updated to allow importers to request a refund of assessments paid on Christmas trees that were imported but not ultimately sold by

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<sup>1</sup> NASS and Census are the only available data. Given the limited data, equal revenue is assumed in the calculation to be distributed across all producers. This is done to give an idea of how many domestic producers might be considered “small” businesses under the SBA definition.

submitting documentation that they did not receive payment for the trees. This change would create equality between producers and importers as currently, producers are only required to pay assessments on trees that were sold. Should the industry be in favor of this proposal, the changes to the number of respondents would be submitted to OMB in concurrence with a finalized rule to go into effect at the same time.

As with all Federal research and promotion programs, reports and forms are periodically reviewed to reduce the burden of information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

Regarding alternatives, the Board considered not making the proposed changes to the Order and leaving it as-is. If the Order was left unchanged, the administrative cap of 10 percent would continue to be an issue and could result in the Board becoming out of compliance. Further, without changing the annual financial statement and budget requirements, the Board would continue having problems meeting their submission deadlines which would require increased staff time to reconcile. Board members would also continue needing to meet during harvest season which could adversely affect their businesses if these deadlines are not adjusted. Additionally, confusion amongst industry members and the media regarding the Board's official name would persist, and importers of Christmas trees would remain responsible for assessments paid on trees imported but not sold if the Order is not updated. After considering these potential issues, the Board decided against leaving the Order unchanged.

Regarding outreach efforts, the Board discussed this proposal throughout 2022 and 2023 and the full Board unanimously recommended the proposed changes during

their in-person meeting on September 21, 2023. The Board is made up of domestic producers and importers. Additionally, the Board widely circulated a summary of the proposed Order changes amongst industry members via the Board’s e-newsletter, at state and regional Christmas tree meetings, and through direct communication with other Christmas tree associations. AMS has performed this initial RFA analysis regarding the impact of this action on small entities and invites comments concerning potential effects of this action.

While this proposed rule as set forth below has not yet received the approval of USDA, it has been determined that it is consistent with and would effectuate the purposes of the Act. A 30-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 1214**

Administrative practice and procedure, Advertising, Christmas trees, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 1214 as follows:

#### **PART 1214—CHRISTMAS TREE PROMOTION, RESEARCH, AND INFORMATION ORDER**

1. The authority citation for 7 CFR part 1214 continues to read as follows:

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

#### **§ 1214.2 [Amended]**

2. Amend § 1214.2 by removing the words “Christmas Tree Promotion Board” and adding in their place the words “Real Christmas Tree Board”.

#### **§ 1214.9 [Amended]**

3. Amend § 1214.9 by removing the word “domestically”.

4. Revise § 1214.17 to read as follows:

**§ 1214.17 Producer.**

*Producer* means any person who is engaged in the production of Christmas trees in the United States, and who owns, or shares the ownership and risk of loss in the production of Christmas trees; or a person who is engaged in the business of producing, or causing to be domestically produced, Christmas trees beyond personal use and having value at first point of sale.

5. Remove the words “Christmas Tree Promotion Board” from the undesignated center heading above § 1214.40 and add in their place the words “Real Christmas Tree Board.”

6. Amend § 1214.40 by:

a. Removing the words “Christmas Tree Promotion Board” from paragraph (a) wherever they appear and adding in their place the words “Real Christmas Tree Board”; and

b. Revising paragraph (a)(1)(iii).

The revision reads as follows:

**§ 1214.40 Establishment and membership.**

(a) \* \* \*

(1) \* \* \*

(iii) Four producer members from Region #3—Eastern Region (states east of the Great Lakes): Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington, DC, West Virginia, and all U.S. Territories located in the Atlantic Ocean and Caribbean Sea, including but not limited to Puerto Rico.

\* \* \* \* \*

7. Amend § 1214.41 by:

a. Revising paragraph (a);

b. In paragraph (c), removing the words “more than 500” and adding in their place the words “500 or more”; and

c. Revising and republishing paragraphs (d) and (e).

The revisions and republications read as follows:

**§ 1214.41 Nominations and appointments.**

(a) Voting for producer members will be made by any means of communication available, electronic or otherwise, provided that votes cast are verifiable and that procedural requirements are met.

\* \* \* \* \*

(d) Nomination of producer members will be conducted by the Board. The Board staff will seek nominations for each vacant producer seat from each region from producers who have paid their assessments to the Board in the most recent fiscal period. Producers who produce Christmas trees in more than one region may seek nomination only in the region in which they produce the majority of their Christmas trees. For selection to the initial Board, the Secretary will notify producers to request nominations to the Board. Subsequent nominations will be submitted to the Board office and placed on a ballot that will be sent to known producers of 500 or more Christmas trees in each region for a vote. Producers who produce Christmas trees in more than one region may only vote in the region in which they produce the majority of their Christmas trees. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the producers' first and second choice nominees. The Board shall submit nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

(e) Nominations for the importer member(s) will be conducted by the Board. The Board will solicit importer nominations from those importers who have paid their assessments to the Board in the most recent fiscal period. Nominees that are both a producer and an importer may seek nomination to the Board and vote in the nomination process as either a producer or an importer, but not both. For selection to the initial Board, the Secretary will notify importers to request nominations to the Board. Subsequent nominations will be submitted to the Board office and placed on a ballot that will be sent to importers for a vote. The Board shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office. Two nominees for each importer position will be submitted to the Secretary for consideration.

\* \* \* \* \*

8. Amend § 1214.44 by:

- a. In paragraph (b), removing the number “14” and adding in its place the number “7”;
- b. In paragraph (c), adding the words “and voting” after the word “present”; and
- c. Revising paragraph (e).

The revision reads as follows:

**§ 1214.44 Procedure.**

\* \* \* \* \*

(e) The Board may conduct meetings by any means of communication available, electronic or otherwise, that effectively assembles members and the public and facilitates open communication.

\* \* \* \* \*9. Amend § 1214.46 by revising paragraph (p) to read as follows:

**§ 1214.46 Powers and duties.**

\* \* \* \* \*

(p) To prepare and submit for approval of the Secretary rates of assessment and a fiscal period budget of the anticipated expenses to be incurred in the administration of the Order, in accordance with § 1214.50;

\* \* \* \* \*

10. Amend § 1214.50 by revising the first sentence of paragraph (a) introductory text and paragraph (j) to read as follows:

**§ 1214.50 Budget and expenses.**

(a) No more than 90 days or less than 60 days prior to the fiscal period, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal period covering its anticipated expenses and disbursements in administering this part. \* \* \*

\* \* \* \* \*

(j) For fiscal periods beginning 3 or more years after the date of the establishment of the Board, the Board may not expend for administration, maintenance, and functioning of the Board in a fiscal period an amount that exceeds 15 percent of the assessment and other income received by the Board. Reimbursements to the Secretary required under paragraph (i) of this section are excluded from this limitation on spending.

\* \* \* \* \*

11. Amend § 1214.51 by:

a. Revising the first sentence of paragraph (a); and

b. In paragraph (c), removing the number “90” and adding in its place the number “180”.

The revision reads as follows:

**§ 1214.51 Financial statements.**

(a) The Board shall prepare and submit financial statements to the Secretary on a periodic basis, or at any other time requested by the Secretary. \* \* \*

\* \* \* \* \*

12. Amend § 1214.52 by revising paragraph (b), the second sentence of paragraph (c) introductory text, and paragraphs (c)(2) and (3) to read as follows:

**§ 1214.52 Assessments.**

\* \* \* \* \*

(b) The payment of assessments on domestic Christmas trees that are cut and sold will be the responsibility of the producer, as defined in §§ 1214.14 and 1214.17.

(c) \* \* \* If Customs does not collect an assessment from an importer, the importer will be responsible for paying the assessment directly to the Board in accordance with paragraph (e) of this section.

(1) \* \* \*

(2) The import assessment shall be uniformly applied to imported Christmas trees that are identified by the numbers 0604.20.00.20, 0604.20.00.40, and 0604.20.00.60 in the Harmonized Tariff Schedule of the United States or any other numbers used to identify Christmas trees in that schedule.

(3) If collected by Customs, the assessments due on imported Christmas trees shall be paid when the Christmas trees enter into the United States.

\* \* \* \* \*

13. Amend § 1214.53 by revising paragraphs (a)(6) and (7), the first sentence of paragraph (a)(8), and the first sentence of paragraph (b)(1) to read as follows:

**§ 1214.53 Exemption from and refunds of assessments.**

(a) \* \* \*

(6) Producers and importers who received an exemption certificate from the Board but domestically produced or imported 500 or more Christmas trees during the fiscal period shall pay the Board the applicable assessments owed and submit any necessary reports to the Board pursuant to § 1214.70.

(7) Importers who did not apply to the Board for an exemption and imported less than 500 Christmas trees during the fiscal period shall receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal period. Board staff shall determine the assessments paid and refund the amount due to the importers accordingly.

(8) The Board may develop additional safeguard procedures as it deems necessary for accurately accounting for this exemption and to prevent improper use of this exemption. \* \* \*

(b) \* \* \*

(1) Importers who are exempt from assessment or certify and provide verification that Christmas trees were not sold shall be eligible for a refund of assessments collected by Customs during the applicable fiscal period. \* \* \*

\* \* \* \* \*

#### **§ 1214.71 [Amended]**

14. Amend § 1214.71 by removing the word “two” and adding in its place the word “five”.

#### **§ 1214.82 [Amended]**

15. Amend § 1214.82 in paragraph (a) by adding the words “a majority of” after the words “not favored by”.

16. Revise § 1214.85 to read as follows:

#### **§ 1214.85 Personal liability.**

No member, committee member, agent, or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, committee member, agent, or employee, except for acts of dishonesty or willful misconduct.

17. Amend § 1214.101 by:

- a. Removing the first-level paragraph designations from paragraphs (a) through (j);
- b. Reordering the definitions in alphabetical order; and
- c. Revising the introductory text and paragraph (1) of the definition of “Eligible domestic producer” and the first sentence of the definition of “Eligible importer”.

The revisions read as follows:

**§ 1214.101 Definitions.**

\* \* \* \* \*

*Eligible domestic producer* means any person who domestically produces 500 or more Christmas trees annually in the United States, and who:

- (1) Owns, or shares the ownership and risk of loss in the production of Christmas trees;

\* \* \* \* \*

*Eligible importer* means any person importing 500 or more Christmas trees annually into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles Christmas trees outside of the United States for sale in the United States, and who is listed as the importer of record for such Christmas trees that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0604.20.00.20, 0604.20.00.40, and 0604.20.00.60 during the representative period. \* \* \*

\* \* \* \* \*

18. Amend § 1214.102 by revising paragraph (c) to read as follows:

**§ 1214.102 Voting.**

\* \* \* \* \*

(c) All ballots are to be cast by any means of communication available, electronic or otherwise, as instructed by the Department.

\* \* \* \* \*

**Erin Morris,**  
*Administrator,*  
*Agricultural Marketing Service.*

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