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## **Agricultural Marketing Service**

### **7 CFR Part 1222**

**[Doc. No. AMS-SC-22-0050]**

## **Harmonized Tariff Schedule Numbers for the Paper and Paper-Based Packaging Products**

**AGENCY:** Agricultural Marketing Service, Department of Agriculture (USDA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposal invites comments on updates to the Harmonized Tariff Schedule (HTS) numbers for paper and paper-based packaging products in the Paper and Paper-Based Packaging Promotion, Research, and Information Order (Order). In addition, this action proposes new language that allows assessment collection to continue even if HTS numbers change in the future. The Paper and Packaging Board (Board) administers the Order with oversight by the U.S. Department of Agriculture (USDA).

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

**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 <https://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 <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Marlene Betts, Marketing Specialist, or Alexandra Caryl, Branch Chief, Mid-Atlantic Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue, SW,

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**SUPPLEMENTARY INFORMATION:** This proposal is issued under the Order (7 CFR part 1222). 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. Agricultural Marketing Service (AMS) has assessed the impact of this proposed rule on Indian tribes and determined that this rulemaking 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 regards to this change 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 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, 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 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**

The Paper and Paper-Based Packaging Promotion, Research, and Information Order (Order) took effect in January 2014 (79 FR 3696), and assessment collection began in March 2014 for paper and paper-based packaging. The program is funded by assessments on manufacturers and importers of 100,000 short tons or more of paper and paper-based packaging per year. The assessments are used for projects to promote paper and paper-based packaging. This proposed rule invites comments on updates to the Harmonized Tariff Schedule (HTS) numbers for paper and paper-based packaging products. This action also proposes the addition of verbiage that allows the collection of

assessments to continue even if HTS numbers change in the future. Updates to the HTS numbers and the additional verbiage are necessary to ensure that importers are being assessed appropriately.

This change would ensure that importers are being assessed on the same products as domestic manufacturers. The proposed changes were recommended by the Board at its meeting on June 21, 2022. The Board was unanimously in favor of this recommendation. AMS agrees to propose the updates to the HTS numbers.

### **Update HTS Numbers**

Sections 1222.46(p) of the Order allows for the Board to recommend amendments to the Order as the Board considers appropriate. The Board reviewed the current HTS numbers after noting that several changes made by the U.S. International Trade Commission (USITC) are not reflected in the Order's current HTS numbers. Therefore, this action proposes to update the Order's HTS numbers, bringing them in-line with the most current HTS numbers as provided by the USITC<sup>1</sup>. In addition, this action proposes additional verbiage that allows the collection of assessments to continue even if HTS numbers change in the future.

Section 1222.52(e) would be updated to include language that would allow the Board to continue to collect assessments in the event the USITC makes future changes to any HTS number by merely replacing a previous number. In addition, the list of HTS numbers in the table for assessments on importers of paper and paper-based packaging have all been reviewed and updated in the Order to coincide with the most current HTS numbers as provided by USITC.

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

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 - 612), AMS has considered the economic impact of this action on small entities that would be

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<sup>1</sup> <https://hts.usitc.gov/current> Chapter 48

affected by this rule. The purpose of the RFA is to fit regulatory action to scale of businesses subject to such action so that small businesses will not be disproportionately burdened. The Small Business Administration defines small agricultural service firms as those having annual receipts of no more than \$30 million (13 CFR part 121).

Manufacturers and importers would be considered agricultural service firms.

According to the Board, there are approximately 50 manufacturers in the United States that produce the types of paper and paper-based packaging covered under the Order. Using an average price of \$1,165 per short ton<sup>2</sup>, a manufacturer who produces less than about 25,760 short tons of paper and paper-based packaging per year would be considered a small entity. The Board estimates that no manufacturers produced less than 25,760 short tons in 2021; thus, no domestic manufacturers would be considered small businesses.

Based on U.S. Customs and Border Protection (Customs) data, there were 3,020 importers of paper and paper-based packaging in 2021. Of these, 34 importers, or 1 percent, had annual receipts of more than \$30 million of paper and paper-based packaging. Thus, most importers would be considered small entities.

The proposed rule would update the Order's HTS numbers, bringing them in-line with the most current HTS numbers as provided by the USITC. In addition, this action proposes additional verbiage that allows the Board to continue to collect assessments even if HTS numbers change in the future.

This rulemaking does not impose additional recordkeeping requirements on manufacturers and importers of paper and paper-based packaging. There are no Federal rules that duplicate, overlap, or conflict with this proposed rule. In accordance with OMB regulations (5 CFR part 1320) that implements the Paperwork Reduction Act of 1995 (44

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<sup>2</sup> No domestic market pricing information for paper and paper-based packaging was publicly available; instead, average prices were estimated using export data from the U.S. Census Bureau.

U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been previously approved under OMB control number 0581-0093. This rulemaking does not result in a change to the information collection and recordkeeping requirements previously approved.

Regarding outreach efforts, the Board discussed this action during Board meetings in 2022. The Board members unanimously approved the changes to the HTS numbers to bring them in accordance with the USITC numbers and ensure that assessments on domestic manufacturers are the same as assessments on imports. In addition, all of the Board's meetings are open to the public and interested persons are invited to participate and express their views.

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 or citizen access to Government information and services, and for other purposes.

We have performed this initial RFA analysis regarding the impact of the proposed action on small entities and we invite comments concerning the potential effects of this action.

USDA has determined that this proposed rule is consistent with and would effectuate the purpose of the 1996 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 1222**

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

For the reasons set forth in the preamble, the Agricultural Marketing Service proposed to amend 7 CFR part 1222 as follows:

**PART 1222—PAPER AND PAPER-BASED PACKAGING PROMOTION,  
RESEARCH, AND INFORMATION ORDER**

1. The authority citation for 7 CFR part 1222 continues to read as follows:

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

2. In § 1222.52, revise paragraph (e) to read as follows:

**§ 1222.52 Assessment.**

\* \* \* \* \*

(e) Each importer of paper and paper-based packaging shall pay through Customs to the Board an assessment on the paper and paper-based packaging imported into the United States identified in the Harmonized Tariff Schedule of the United States (HTSUS) number listed in the following table. In the event that any HTSUS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of the paper and paper-based packaging involved, assessments will continue to be collected based on the new number.

<b>Paper and paper-based packaging</b>	<b>Assessment \$/kg</b>
4802.54.1000	\$0.000386
4802.54.3100	0.000386
4802.54.5000	0.000386
4802.54.6100	0.000386
4802.55.1000	0.000386
4802.55.2000	0.000386

4802.55.4000	0.000386
4802.55.6000	0.000386
4802.55.7020	0.000386
4802.55.7040	0.000386
4802.56.1000	0.000386
4802.56.2000	0.000386
4802.56.4000	0.000386
4802.56.6000	0.000386
4802.56.7020	0.000386
4802.56.7050	0.000386
4802.56.7090	0.000386
4802.57.1000	0.000386
4802.57.2000	0.000386
4802.57.4000	0.000386
4802.57.4020	0.000386
4802.57.4040	0.000386



4802.57.4090	0.000386
4802.58.1000	0.000386
4802.58.2020	0.000386
4802.58.2040	0.000386
4802.58.2080	0.000386
4802.58.5000	0.000386
4802.58.6020	0.000386
4802.58.6040	0.000386
4802.61.1000	0.000386
4802.61.2000	0.000386
4802.61.3110	0.000386
4802.61.3135	0.000386
4802.61.3191	0.000386
4802.61.5000	0.000386
4802.61.6020	0.000386
4802.61.6040	0.000386

4802.62.1000	0.000386
4802.62.2000	0.000386
4802.62.3000	0.000386
4802.62.5000	0.000386
4802.62.6120	0.000386
4802.62.6140	0.000386
4802.69.1000	0.000386
4802.69.2000	0.000386
4802.69.3000	0.000386
4804.11.0000	0.000386
4804.19.0000	0.000386
4804.21.0000	0.000386
4804.29.0000	0.000386
4804.31.4020	0.000386
4804.31.4040	0.000386
4804.31.6000	0.000386

4804.39.4020	0.000386
4804.39.4049	0.000386
4804.39.6020	0.000386
4804.39.6040	0.000386
4804.41.2000	0.000386
4804.41.4000	0.000386
4804.42.0010	0.000386
4804.42.0020	0.000386
4804.42.0030	0.000386
4804.42.0040	0.000386
4804.42.0050	0.000386
4804.49.0000	0.000386
4804.51.0000	0.000386
4804.52.0010	0.000386
4804.52.0020	0.000386
4804.52.0030	0.000386

4804.52.0040	0.000386
4804.52.0050	0.000386
4804.59.0000	0.000386
4805.11.0000	0.000386
4805.12.1000	0.000386
4805.12.2000	0.000386
4805.19.1000	0.000386
4805.19.2000	0.000386
4805.24.5000	0.000386
4805.24.7000	0.000386
4805.24.9000	0.000386
4805.25.0000	0.000386
4805.91.1010	0.000386
4805.91.9000	0.000386
4805.92.4010	0.000386
4805.92.4030	0.000386

4805.93.4010	0.000386
4805.93.4030	0.000386
4805.93.4050	0.000386
4805.93.4060	0.000386
4807.00.9100	0.000386
4807.00.9400	0.000386
4810.13.1120	0.000386
4810.13.1140	0.000386
4810.13.1900	0.000386
4810.13.2010	0.000386
4810.13.2090	0.000386
4810.13.5000	0.000386
4810.13.6000	0.000386
4810.13.7020	0.000386
4810.13.7040	0.000386
4810.14.1120	0.000386

4810.14.1140	0.000386
4810.14.1900	0.000386
4810.14.2010	0.000386
4810.14.2090	0.000386
4810.14.5000	0.000386
4810.14.6000	0.000386
4810.14.7020	0.000386
4810.14.7040	0.000386
4810.19.1100	0.000386
4810.19.1900	0.000386
4810.19.2010	0.000386
4810.19.2090	0.000386
4810.22.1000	0.000386
4810.22.5044	0.000386
4810.22.5080	0.000386
4810.22.6000	0.000386

4810.22.7020	0.000386
4810.22.7040	0.000386
4810.29.1025	0.000386
4810.29.1035	0.000386
4810.29.5000	0.000386
4810.29.6000	0.000386
4810.29.7020	0.000386
4810.29.7025	0.000386
4810.29.7035	0.000386
4810.31.1020	0.000386
4810.31.1040	0.000386
4810.31.3000	0.000386
4810.31.6500	0.000386
4810.32.1020	0.000386
4810.32.1040	0.000386
4810.32.1060	0.000386

4810.32.3000	0.000386
4810.32.6500	0.000386
4810.39.1200	0.000386
4810.39.1400	0.000386
4810.39.3000	0.000386
4810.39.6500	0.000386
4810.92.1225	0.000386
4810.92.1235	0.000386
4810.92.6525	0.000386
4810.92.6535	0.000386
4810.99.1050	0.000386
4810.99.6500	0.000386
4811.51.2010	0.000386
4811.51.2020	0.000386
4811.51.2030	0.000386
4811.59.4020	0.000386



4811.90.8030	0.000386
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**Erin Morris,**

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