

# 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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206-AK91

#### Prevailing Rate Systems; Redefinition of the Adams-Denver, CO; Nonappropriated Fund Wage Area

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Office of Personnel Management is issuing a proposed rule that would remove Adams County, CO, from the Adams-Denver, CO, Federal Wage System (FWS) nonappropriated fund (NAF) wage area and redefine Arapahoe County, CO, from the area of application to the survey area. In addition, we propose to change the name of the Adams-Denver FWS NAF wage area to Arapahoe-Denver. These changes are necessary because the closure of Fitzsimons Army Medical Center in Adams County left the Adams-Denver survey area without a host activity to conduct local NAF wage surveys.

**DATES:** We must receive comments on or before September 21, 2005.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200; e-mail [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov); or fax: (202) 606-4264.

**FOR FURTHER INFORMATION CONTACT:** Madeline Gonzalez, (202) 606-2838; e-mail [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov); or fax: (202) 606-4264.

**SUPPLEMENTARY INFORMATION:** The Adams-Denver, CO, Federal Wage System (FWS) nonappropriated fund (NAF) wage area is presently composed of two survey area counties, Adams and Denver Counties, CO, and two area of application counties, Arapahoe and

Mesa Counties, CO. The Department of Defense (DOD) requested that the Office of Personnel Management (OPM) remove Adams County from the wage area, redefine Arapahoe County as part of the survey area, and change the Adams-Denver wage area's name to Arapahoe-Denver. These changes are necessary because the closure of Fitzsimons Army Medical Center in Adams County left the Adams-Denver survey area without an activity having the capability to conduct a local wage survey.

The closure of Fitzsimons Army Medical Center left Adams County with no FWS NAF employment. Under 5 U.S.C. 5343(a)(1)(B)(i), NAF wage areas "shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed." Therefore, Adams County should not be defined as part of an NAF wage area.

Under 5 CFR 532.219, OPM may establish an NAF wage area when a minimum of 26 NAF wage employees are employed in a survey area, a local activity has the capability to host annual local wage surveys, and sufficient private employment exists within the survey area to provide adequate data for establishing an NAF wage schedule. While the remaining survey county, Denver County, has the overall population and private industry employment to support a survey, it does not have sufficient FWS NAF employment to qualify as a survey area or an activity with the capability to host annual local wage surveys. Therefore, Denver County cannot be defined as the sole survey county for the wage area.

After the closure of Fitzsimons Army Medical Center, the Army and Air Force Exchange Service (AAFES) Denver Exchange was relocated to Buckley Air Force Base (AFB) in Arapahoe County. There are 37 FWS NAF employees working in Arapahoe County, and Buckley AFB has the capability to conduct a local wage survey. DOD has requested that Arapahoe County be defined as part of the survey area. By adding Arapahoe County to the survey area, the wage area continues to meet OPM's regulatory criteria to be a separate NAF wage area. There are about 58 FWS NAF employees working in the survey area, and the area has a local activity, Buckley AFB, with the capability to conduct a local wage

survey. Arapahoe and Denver Counties also meet the regulatory requirement of having a minimum of 1,800 private enterprise employees in establishments within the survey specifications. The name of the wage area would be Arapahoe-Denver, CO. The Arapahoe-Denver wage area would consist of two survey counties, Arapahoe and Denver Counties, CO, and one area of application county, Mesa County, CO.

These changes would be effective for the next full-scale wage survey in the Arapahoe-Denver wage area, which is scheduled to begin in January 2006.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, reviewed and recommended these changes by consensus.

#### Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

#### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

**Linda M. Springer,**

*Director.*

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 532 as follows:

#### PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. In appendix D to subpart B, the wage area listing for the State of Colorado is amended by revising the listing for Adams-Denver to read as follows:

#### Appendix D to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

\* \* \* \* \*

**COLORADO****Arapahoe-Denver***Survey Area*

Colorado:  
Arapahoe  
Denver

*Area of Application. Survey area plus:*

Colorado:  
Mesa

\* \* \* \* \*

[FR Doc. 05-16593 Filed 8-19-05; 8:45 am]

BILLING CODE 6325-39-P

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Parts 916 and 917**

[Docket No. FV05-916-3 PR]

**Nectarines and Peaches Grown in California; Increased Assessment Rates**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rates established for the Nectarine Administrative Committee and the Peach Commodity Committee (committees) for the 2005-06 and subsequent fiscal periods from \$0.195 and \$0.19, respectively, to \$0.20 per 25-pound container or container equivalent of nectarines and peaches handled. The committees locally administer the marketing orders that regulate the handling of nectarines and peaches grown in California. Authorization to assess nectarine and peach handlers enables the committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal period runs from March 1 through the last day of February. The assessment rates would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by September 1, 2005.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the

Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Laurel May, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement Nos. 85 and 124 and Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, California nectarine and peach handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as proposed herein would be applicable to all assessable nectarines and peaches beginning on March 1, 2005, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with

the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Nectarine Administrative Committee (NAC) for the 2005-06 and subsequent fiscal periods from \$0.195 to \$0.20 per 25-pound container or container equivalent of nectarines. This rule would also increase the assessment rate established for the Peach Commodity Committee (PCC) for the 2005-06 and subsequent fiscal periods from \$0.19 to \$0.20 per 25-pound container or container equivalent of peaches.

The nectarine and peach marketing orders provide authority for the committees, with the approval of USDA, to formulate annual budgets of expenses and collect assessments from handlers to administer the programs. The members of the NAC and PCC are producers of California nectarines and peaches, respectively. They are familiar with the committees' needs, and with the costs for goods and services in their local area and are, therefore, in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

**NAC Assessment and Expenses**

The NAC recommended, for the 2004-05 fiscal period, and USDA approved, an assessment rate of \$0.195 that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The NAC met on April 28, 2005, and discussed and unanimously recommended 2005-06 expenditures and an assessment rate of \$0.20 per 25-pound container or container equivalent of nectarines. Subsequently, the NAC revised its budget recommendation because it anticipated higher administrative overhead expenses than it had forecast earlier. In a mail vote completed on June 28, 2005, the NAC