

# 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.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Doc. No. AMS-FV-09-0091; FV10-916/917-2 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 2009–10 and subsequent fiscal periods from \$0.0175 to \$0.0280 per 25-pound container or container equivalent of nectarines handled, and from \$0.0025 to \$0.026 per 25-pound container or container equivalent of peaches handled. The Committees locally administer the marketing orders which regulate the handling of nectarines and peaches grown in California. Assessments upon nectarine and peach handlers are used by the Committees to fund reasonable and necessary expenses of the programs. The fiscal periods run 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 May 5, 2010.

**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 Internet: <http://www.regulations.gov>. Comments should reference the document 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.regulations.gov>. All comments submitted in response to this rule will be included in the 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 on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Jerry L. Simmons, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or E-mail: [Jerry.Simmons@ams.usda.gov](mailto:Jerry.Simmons@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing 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 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, 2010, and continue until amended, suspended, or terminated.

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 rates established for the Nectarine Administrative Committee (NAC) for the 2010–11 and subsequent fiscal periods from \$0.0175 to \$0.0280 per 25-pound container or container equivalent of nectarines and for the Peach Commodity Committee (PCC) for the 2010–11 and subsequent fiscal periods from \$0.0025 to \$0.026 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 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

For the 2009–10 and subsequent fiscal periods, the NAC recommended, and USDA approved, an assessment rate 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 December 10, 2009, and unanimously recommended 2010–11 expenditures of \$1,448,101 and an assessment rate of \$0.0280 per 25-pound container or container equivalent of nectarines. In comparison, the budgeted expenditures for the 2009–10 fiscal period were \$1,797,290. The assessment rate of \$0.0280 per 25-pound container or container equivalent of nectarines is \$0.0105 higher than the rate currently in effect. The NAC recommended a higher assessment rate because the 2009 crop was lower than expected due to a large number of tree pullouts and other economic factors.

The major expenditures recommended by the NAC for the 2010–11 fiscal period include \$291,377 for administration, \$157,016 for production research, and \$999,708 for domestic and international programs. In comparison, budgeted expenses for these items in 2008–09 were \$319,965.32 for administration, \$349,447.55 for production research, and \$1,127,877.33 for domestic and international programs.

The assessment rate recommended by the NAC was derived after considering anticipated fiscal year expenses; estimated assessable nectarines of 16,200,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate financial reserve to carry the NAC into the 2011–12 fiscal period. Therefore, the NAC recommended an assessment rate of \$0.0280 per 25-pound container or container equivalent.

Combining expected assessment revenue of \$453,600 with the \$641,840 carryover available from the 2009–10 fiscal period and other income such as interest should be adequate to meet Committee needs. The assessment rate is also likely to provide a \$116,486 reserve, which may be used to cover administrative expenses prior to the beginning of the 2011–12 shipping season as provided in the order (§ 916.42).

#### **PCC Assessment and Expenses**

For the 2009–10 and subsequent fiscal periods, the PCC recommended, and USDA approved, an assessment rate 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 PCC met on December 10, 2009, and recommended 2010–11 expenditures of \$1,839,651 and an assessment rate of \$0.026 per 25-pound container or container equivalent of

peaches. In comparison, budgeted expenditures for the 2009–10 fiscal period were \$1,885,250. The assessment rate of \$0.026 per 25-pound container or container equivalent of peaches is \$0.0235 higher than the rate currently in effect. The PCC recommended a higher assessment rate because the 2009 crop was lower than expected due to a large number of tree pullouts and other economic factors.

The major expenditures recommended by the PCC for the 2010–11 fiscal period include \$368,756 for administration, \$199,662 for production research, and \$1,271,233 for domestic and international programs. In comparison, budgeted expenses for these items in 2009–10 were \$334,058 for administration, \$366,920 for production research, and \$1,184,272 for domestic and international programs.

The assessment rate recommended by the PCC was derived after considering anticipated fiscal year expenses; estimated assessable peaches of 20,600,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate financial reserve to carry the PCC into the 2011–12 fiscal period. Therefore, the PCC recommended an assessment rate of \$0.026 per 25-pound container or container equivalent.

Combining expected assessment revenues of \$535,600 with the \$854,699 carryover available from the 2009–10 fiscal period and other income such as interest should be adequate to meet Committee needs. The assessment rate is also likely to provide a \$147,502 reserve, which may be used to cover administrative expenses prior to the beginning of the 2011–12 shipping season as provided in the order (§ 917.38).

#### **Continuance of Assessment Rates**

The proposed assessment rates would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates would be in effect for an indefinite period, the Committees will continue to meet prior to or during each fiscal period to recommend budgets of expenses and consider recommendations for modification of the assessment rates. The dates and times of Committee meetings are available from the Committees' Web site at <http://www.eatcaliforniafruit.com> or USDA. Committee meetings are open to the public and interested persons may

express their views at these meetings. USDA would evaluate the Committees' recommendations and other available information to determine whether modification of the assessment rate for each Committee is needed. Further rulemaking would be undertaken as necessary. The Committees' 2010–11 fiscal period budgets and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 101 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 475 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. A majority of these handlers and producers may be classified as small entities.

The Committees' staff has estimated that there are fewer than 50 handlers in the industry who would not be considered small entities. For the 2009 season, the committees' staff estimated that the average handler price received was \$11.50 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 608,696 containers to have annual receipts of \$7,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2009 season, the Committees' staff estimates that small handlers represent approximately 50 percent of all the handlers within the industry.

The Committees' staff has also estimated that fewer than 50 producers

in the industry would not be considered small entities. For the 2009 season, the Committees estimated the average producer price received was \$6.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 115,385 containers of nectarines and peaches to have annual receipts of \$750,000. Given data maintained by the Committees' staff and the average producer price received during the 2009 season, the Committees' staff estimates that small producers represent more than 80 percent of the producers within the industry.

With an average producer price of \$6.50 per container or container equivalent, and a combined packout of nectarines and peaches of 37,263,343 containers, the value of the 2009 packout is estimated to be \$242,211,730. Dividing this total estimated grower revenue figure by the estimated number of producers (475) yields an estimate of average revenue per producer of about \$509,919 from the sales of peaches and nectarines.

The nectarine and peach marketing orders provide authority for the Committees, with the approval of USDA, to formulate an annual budget 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.

This rule would increase the assessment rates established for the NAC for the 2010–11 and subsequent fiscal periods from \$0.0175 to \$0.0280 per 25-pound container or container equivalent of nectarines and for the PCC for the 2010–11 and subsequent fiscal periods from \$0.0025 to \$0.026 per 25-pound container or container equivalent of peaches.

The NAC recommended 2010–11 fiscal period expenditures of \$1,448,101 for nectarines and an assessment rate of \$0.0280 per 25-pound container or container equivalent of nectarines. The assessment rate of \$0.0280 is \$0.0105 higher than the rate currently in effect. The PCC recommended 2010–11 fiscal period expenditures of \$1,839,651 for peaches and an assessment rate of \$0.026 per 25-pound container or container equivalent of peaches. The assessment rate of \$0.026 is \$0.0235 higher than the rate currently in effect.

#### Analysis of NAC Budget

The quantity of assessable nectarines for the 2010–11 fiscal period is estimated at 16,200,000 25-pound containers or container equivalents. Thus, the \$0.0280 rate should provide \$453,600 in assessment income. Income

derived from handler assessments, along with income from other sources and funds from the NAC's reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the NAC for the 2010–11 year include \$291,377 for administration, \$157,016 for production research, and \$999,708 for domestic and international programs. Budgeted expenses in 2009–10 were \$319,965.32 for administration, \$349,447.55 for production research, and \$1,127,877.33 for domestic and international programs.

The NAC recommended an increased 2010–11 fiscal period assessment rate because the 2009 crop was lower than expected due to a large number of tree pullouts and other economic factors. Income generated from the higher assessment rate combined with reserve funds should be adequate to cover anticipated 2010–11 expenses.

#### Analysis of PCC Budget

The quantity of assessable peaches for the 2010–11 fiscal year is estimated at 20,600,000 25-pound containers or container equivalents. Thus, the \$0.026 rate should provide \$535,600 in assessment income.

The major expenditures recommended by PCC for the 2010–11 year include \$368,756 for administration, \$199,662 for production research, and \$1,271,233 for domestic and international programs. Budgeted expenses in 2009–10 were \$334,058 for administration, \$366,920 for production research, and \$1,184,272 for domestic and international programs.

The PCC recommended an increased 2010–11 fiscal period assessment rate because the 2009 crop was lower than expected due to a large number of tree pullouts and other economic factors. Income generated from the higher assessment rate combined with reserve funds should be adequate to cover anticipated 2010–11 expenses.

#### Considerations in Determining Expenses and Assessment Rates

Prior to arriving at these budgets, the Committees considered alternative expenditure and assessment rate levels, but ultimately decided that the recommended levels were reasonable to properly administer the orders.

Each of the Committees then reviewed the proposed expenses; the total estimated assessable 25-pound containers or container equivalents; and the estimated income from other sources, such as interest income, prior to recommending a final assessment rate. The NAC decided that an assessment rate of \$0.0280 per 25-pound

container or container equivalent will allow it to meet its 2010–11 fiscal period expenses and carryover an operating reserve of about \$116,486 which is in line with the Committee's financial needs. The PCC decided that an assessment rate of \$0.026 per 25-pound container or container equivalent will allow it to meet its 2010–11 fiscal period expenses and carryover an operating reserve of \$147,502. These assessment rates would allow them to meet their 2010–11 fiscal period expenses and carryover necessary reserves to finance operations before 2011–12 fiscal period assessments are collected.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for nectarines and peaches for the 2010–11 season could range between \$6.00 and \$8.00 per 25-pound container or container equivalent. Therefore, the estimated assessment revenue for the 2010–11 fiscal period as a percentage of total grower revenue could range between 0.33 and 0.47 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committees' meetings were widely publicized throughout the California nectarine and peach industries and all interested persons were invited to attend the meetings and were encouraged to participate in the Committees' deliberations on all issues. Like all Committee meetings, the December 10, 2009, meetings were public meetings and entities of all sizes were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetch>

[TemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide](http://www.ams.usda.gov/AMSV1.0/ams.fetch?template=TemplateN&page=MarketingOrdersSmallBusinessGuide). Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2010–11 fiscal period begins March 1, 2010, and the marketing orders require that the rates of assessment for each fiscal period apply to all assessable nectarines and peaches handled during such fiscal period; (2) the Committees need to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this action which was unanimously recommended by the Committees at public meetings and is similar to other assessment rate actions issued in past years.

#### List of Subjects

##### 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

##### 7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

#### **PART 916—NECTARINES GROWN IN CALIFORNIA**

2. Section 916.234 is revised to read as follows:

##### **§ 916.234 Assessment rate.**

On and after March 1, 2010, an assessment rate of \$0.0280 per 25-pound container or container equivalent of nectarines is established for California nectarines.

#### **PART 917—PEACHES GROWN IN CALIFORNIA**

3. Section 917.258 is revised to read as follows:

##### **§ 917.258 Assessment rate.**

On and after March 1, 2010, an assessment rate of \$0.026 per 25-pound container or container equivalent of peaches is established for California peaches.

Dated: March 30, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–7568 Filed 4–2–10; 8:45 am]

**BILLING CODE P**

## **DEPARTMENT OF ENERGY**

### **10 CFR Part 430**

[Docket No. EERE–2008–BT–TP–0020]

RIN 1904–AB89

#### **Energy Conservation Program for Consumer Products: Test Procedures for Residential Furnaces and Boilers**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Supplemental notice of proposed rulemaking and solicitation of comments.

**SUMMARY:** In order to implement recent amendments to the Energy Policy and Conservation Act (EPCA) by the Energy Independence and Security Act of 2007 (EISA 2007), the U.S. Department of Energy (DOE) proposed amendments to its test procedures for residential furnaces and boilers to provide for measurement and incorporation of standby mode and off mode energy consumption. A public meeting on the proposed rule was held on August 18, 2009. This supplemental notice of proposed rulemaking (SNOPR) proposes an integrated efficiency descriptor that incorporates standby mode and off mode energy consumption into the statutorily identified efficiency descriptor, Annual Fuel Utilization Efficiency (AFUE).

**DATES:** DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NOPR) no later than April 20, 2010. For details, see section V, “Public Participation,” of this NOPR.

**ADDRESSES:** Any comments submitted must identify the SNOPR on Test Procedures for Residential Furnaces and Boilers, and provide the docket number EERE–2008–BT–TP–0020 and/or regulatory information number (RIN) 1904–AB89. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. *E-mail:* RFB–2008–TP–0020@ee.doe.gov. Include docket number EERE–2008–BT–TP–0020 and/or RIN 1904–AB89 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L’Enfant Plaza, SW., Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V, “Public Participation,” of this document.

*Docket:* For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 6th Floor, 950 L’Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information about visiting the Resource Room.

#### **FOR FURTHER INFORMATION CONTACT:**

Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. E-mail: [Mohammed.Khan@ee.doe.gov](mailto:Mohammed.Khan@ee.doe.gov).

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: [Eric.Stas@hq.doe.gov](mailto:Eric.Stas@hq.doe.gov).

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

#### **SUPPLEMENTARY INFORMATION:**

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