

| Geographic coverage  | Allowance rate (percent) |
|--|--------------------------|
| City of Juneau and 80-kilometer (50-mile) radius by road .....           | 23                       |
| Rest of the State .....  | 25                       |
| State of Hawaii:   |                          |
| City and County of Honolulu .....  | 25                       |
| Hawaii County, Hawaii .....  | 18                       |
| County of Kauai .....  | 25                       |
| County of Maui and County of Kalawao .....                               | 25                       |
| Territory of Guam and Commonwealth of the Northern Mariana Islands ..... | 25                       |
| Commonwealth of Puerto Rico .....  | 14                       |
| U.S. Virgin Islands .....  | 25                       |

[FR Doc. E9-3676 Filed 2-19-09; 8:45 am]

BILLING CODE 6325-39-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Doc. No. AMS-FV-08-0108; FV09-916/917-1 IFR]

#### Nectarines and Peaches Grown in California; Changes in Handling Requirements for Fresh Nectarines and Peaches

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule changes the handling requirements applicable to well matured fruit covered under the nectarine and peach marketing orders (orders). The orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule updates the variety-specific size requirements to reflect changes in commercially significant varieties. This will enable handlers to continue to ship fresh nectarines and peaches in a manner that meets consumer needs, increases returns to producers and handlers, and reflects current industry practices.

**DATES:** Effective February 21, 2009; comments received by April 21, 2009 will be considered prior to issuance of any final rule.

**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: 202-2491, Telephone: (202) 720-2491, or E-mail: [Jay.Guerber@ams.usda.gov](mailto:Jay.Guerber@ams.usda.gov).

(202) 720-8938, or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at 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 the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Garcia, Marketing Specialist, or Kurt J. 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: [Jennifer.Garcia@ams.usda.gov](mailto:Jennifer.Garcia@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 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@ams.usda.gov](mailto:Jay.Guerber@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. This rule is not intended to have retroactive effect. 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. A 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 changes the handling requirements applicable to well matured fruit covered under the nectarine and peach orders. This rule updates the variety-specific size requirements to reflect changes in commercially significant varieties. These changes will enable handlers to continue to ship fresh nectarines and peaches in a manner that meets consumer needs, increases returns to producers and handlers, and reflects current industry practices.

Sections 916.52 and 917.41 of the orders provide authority for handling regulations for fresh California nectarines and peaches. The regulations may include grade, size, maturity, quality, pack, and container requirements. The orders also provide that whenever such requirements are in effect, the fruit subject to such regulation must be inspected by the Federal or Federal-State Inspection Service (Inspection Service) and

certified as meeting the applicable requirements.

The nectarine order has been in effect since 1939, and the peach program has been in effect since 1958. The orders have been used over the years to establish a quality control program that includes minimum grades, sizes, and maturity standards. That program has helped improve the quality of product moving from the farm to market, and has helped growers and handlers more effectively market their crops. Additionally, the orders have been used to ensure that only satisfactory quality nectarines and peaches reach the consumer. This has helped increase and maintain market demand over the years.

Sections 916.53 and 917.42 authorize the modification, suspension, or termination of regulations issued under §§ 916.52 and 917.41, respectively. Changes in regulations have been implemented to reflect changes in industry operating practices and to solve marketing problems as they arise. The committees meet whenever needed, but at least annually, to discuss the orders and the various regulations in effect and to determine if, or what, changes may be necessary to reflect industry needs. As a result, regulatory changes have been made numerous times over the years to address industry changes and to improve program operations.

Currently, handling requirements are in effect for nectarines and peaches packed in containers marked "CA WELL MAT" or "California Well Matured." The term "well matured" is defined in the orders' rules and regulations, and has been used for many years by the industry to describe a level of maturity higher than the definition of "mature" in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160) and United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223). Other handling requirements were suspended in 2007 to reduce handler inspection costs.

The committees met on November 25, 2008, and unanimously recommended that the handling requirements be revised for the 2009 season, which is expected to begin in April. No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees will recommend a crop estimate at their meetings in early spring.

Both orders provide authority (in §§ 916.52 and 917.41) to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer, which improves both the

size and maturity of the fruit. Acceptable fruit size provides greater consumer satisfaction and promotes repeat purchases, thereby increasing returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, which is also a benefit to producers and handlers.

Varieties recommended for specific size regulations have been reviewed and such recommendations are based on the specific characteristics of each variety. The committees conduct studies each season on the range of sizes attained by the regulated varieties and those varieties with the potential to become regulated, and determine whether revisions to the size requirements are appropriate.

**Nectarines:** Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises paragraphs (a)(3), (a)(4), and (a)(6) of § 916.356 to establish variety-specific minimum size requirements for 10 varieties of nectarines that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2008 season. This rule also removes the variety-specific minimum size requirements for four varieties of nectarines whose shipments fell below 5,000 containers during the 2008 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Honey Rose variety of nectarines, recommended for regulation at a minimum size 84. A minimum size of 84 means that a packed standard lug box will contain not more than 84 nectarines. Studies of the size ranges attained by the Honey Rose variety revealed that 99.9 percent of the containers met the minimum size of 84 during the 2007 and 2008 seasons. Sizes ranged from size 30 to size 84, with 13.3 percent of the containers meeting the size 30, 17.9 percent meeting the size 40, 38.6 percent meeting the size 50, 25.1 percent meeting the size 60, 4.2 percent meeting the size 70, and 0.8 percent meeting the size 80 in the 2008 season.

A review of other varieties with the same harvesting period indicated that the Honey Rose variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Honey

Rose variety in the variety-specific minimum size regulation at a minimum size 84 is appropriate. This recommendation results from size studies conducted over a two-year period.

Historical data such as this provides the committee with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both committee and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, paragraph(a)(3) of § 916.356 is revised to include the Honey May and May Pearl(tm) nectarine varieties and paragraph (a)(6) of § 916.356 is revised to include the 15G225, Autumn Fire, Honey Rose, Neptune, Orange Honey, Red Bright, Ruby Bright, and Signature nectarine varieties.

This rule also revises paragraph (a)(4) of § 916.356 to remove the White Sun nectarine variety and paragraph (a)(6) of § 916.356 to remove the Arctic Gold, Flaming Red, and Prima Diamond VII nectarine varieties from the variety-specific minimum size requirements because fewer than 5,000 containers of each of these varieties were produced during the 2008 season. Nectarine varieties removed from the nectarine variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

**Peaches:** Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule revises paragraphs (a)(2), (a)(3), (a)(5), and (a)(6) of § 917.459 to establish variety-specific minimum size requirements for seven peach varieties that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2008 season. This rule also removes the variety-specific minimum size requirements for five varieties of peaches whose shipments fell below 5,000 containers during the 2008 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Spring Princess variety of peaches, which was

recommended for regulation at a minimum size 88. A minimum size of 88 means that a packed standard lug box contains not more than 88 peaches. Studies of the size ranges attained by the Spring Princess variety revealed that 100 percent of the containers met the minimum size of 96 during the 2007 and 2008 seasons. Sizes ranged from size 30 to size 80, with 4.7 percent of the containers meeting the size 30, 60.9 percent meeting the size 40, 16 percent meeting the size 50, 16.1 percent meeting the size 60, 2.1 percent meeting the size 70, and 0.2 percent meeting the size 80 in the 2008 season.

A review of other varieties with the same harvesting period indicated that the Spring Princess variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to pack the variety confirm this information regarding minimum size and the harvesting period, as well. Thus, the recommendation to place the Spring Princess variety in the variety-specific minimum size regulation at a minimum size 88 is appropriate.

Historical data such as this provides the committee with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at committee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, paragraph (a)(3) of § 917.459 is revised to include the Spring Princess peach variety and paragraph (a)(6) of § 917.459 is revised to include the August Saturn, Autumn Jewel, Autumn Sun, Diamond Candy, Jasper Gem, and September Lady peach varieties.

This rule also revises paragraph (a)(2) of § 917.459 to remove the Supechsix peach variety; paragraph (a)(5) of § 917.459 to remove the Crimson Queen peach variety; and paragraph (a)(6) of § 917.459 to remove the Burpeachsixteen, Jasper Flame, and Princess Gayle peach varieties from the variety-specific minimum size requirements because less than 5,000 containers of each of these varieties was produced during the 2008 season. Peach variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

This rule also removes obsolete language from paragraph 6(iii) in § 917.459. That paragraph states that containers of peaches not mentioned in paragraphs (a)(6)(i) or (a)(6)(ii) of § 917.459 must contain not more than 66 peaches in a 16-pound sample or not more than 73 peaches if they are "well matured." Currently only "well matured" fruit is regulated. The reference to "not more than 66 peaches, or if the peaches are well matured" was removed in 2007 (72 FR 18847). The language should be omitted from § 917.459.

The committees recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine and peach varieties, and the consumer acceptance levels for various fruit sizes. This rule is designed to establish minimum size requirements for fresh nectarines and peaches consistent with expected crop and market conditions. This should help establish and maintain orderly marketing conditions for these fruits in the interests of producers, handlers, and consumers.

#### 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 action 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

#### Industry Information

There are approximately 120 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 550 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 whose annual receipts are less than \$7,000,000. Small agricultural producers are defined by the SBA 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 30 handlers in the industry who would not be considered small entities. For the 2008 season, the committees' staff estimated that the average handler price received was \$9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 777,778 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 2008 season, the committees' staff estimates that small handlers represent approximately 78 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 60 producers in the industry would not be considered small entities. For the 2008 season, the committees estimated the average producer price received was \$4.25 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 176,471 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 2008 season, the committees' staff estimates that small producers represent more than 88 percent of the producers within the industry.

With an average producer price of \$4.25 per container or container equivalent, and a combined packout of nectarines and peaches of 45,543,561 containers, the value of the 2008 packout is estimated to be \$193,560,134. Dividing this total estimated grower revenue figure by the estimated number of producers (550) yields an estimate of average revenue per producer of about \$351,928 from the sales of peaches and nectarines.

Under authority provided in §§ 916.52 and 917.41 of the orders, grade, size, maturity, pack, and container marking requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis.

Sections 916.356 and 917.459 of the orders' rules and regulations establish minimum sizes for various varieties of nectarines and peaches. This rule makes adjustments to the minimum sizes authorized for certain varieties of each commodity for the 2009 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time, increasing both maturity and fruit size. Increased fruit size increases the number of packed containers per acre, and coupled with heightened maturity

levels, also provides greater consumer satisfaction, which in turn fosters repeat purchases that benefit producers and handlers alike.

Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by the committees based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' past practices and represent a significant change in the regulations as they currently exist. For these reasons, this alternative was not recommended.

The committees make recommendations regarding the revisions in handling requirements after considering all available information, including comments received by committee staff. At the meetings, the impact of and alternatives to these recommendations are deliberated. The committees consist of individual producers and handlers with many years of experience in the industry who are familiar with industry practices and trends. All committee meetings are open to the public and comments are widely solicited. In addition, minutes of all meetings are distributed to committee members and others who have requested them, and are also available on the committees' website, thereby increasing the availability of this critical information within the industry.

Regarding the impact of this action on the affected entities, both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be significantly different between large and small entities.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large nectarine and peach 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.

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

Further, the committees' meetings were widely publicized throughout the nectarine and peach industry and all interested parties were invited to attend the meetings and participate in committee deliberations. Like all committee meetings, the November 25, 2008, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Also, the committees have a number of appointed subcommittees to review certain issues and make recommendations to the committees. The committees' Tree Fruit Quality Subcommittee met on October 29, 2008, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the handling requirements currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments timely received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the committees' recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule should be implemented as soon as possible, since shipments of California nectarines and peaches are expected to begin in early April; (2) the committees met and unanimously recommended these changes at public meetings, and interested persons had opportunities to

provide input at all those meetings; and (3) the rule provides a 60-day comment period, and any written comments timely received will be considered prior to any finalization of this rule.

## 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 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 916.356 is amended by revising the introductory text of paragraphs (a)(3), (a)(4), and (a)(6) to read as follows:

### § 916.356 California nectarine grade and size regulation.

(a) \* \* \*

(3) Any package or container of May glo variety of nectarines on or after May 6 of each year, or Burnectfive (Spring Flare® 21), Burnecttive (Spring Flare® 19), Crimson Baby, Earliglo, Honey May, May Pearl™, Polar Ice, Polar Light, Red Jewel or Zee Fire variety nectarines unless:

\* \* \* \* \*

(4) Any package or container of Arctic Star, Burnectone (Spring Ray®), Burnecttwelve (Sweet Flair® 21), Burnectthirteen (Snow Flare® 22), Burnectfourteen (Snow Flare® 21), Diamond Bright, Diamond Pearl, Early Pearl, Gee Sweet, June Pearl, Kay Fire, Kay Glo, Kay Sweet, Prima Diamond IV, Prima Diamond VI, Prima Diamond XIII, Prince Jim, Prince Jim 1, Red Roy, Rose Bright, Rose Diamond, Royal Glo, or Zee Grand variety nectarines unless:

\* \* \* \* \*

(6) Any package or container of 15G225, Alta Red, Arctic Belle, Arctic Blaze, Arctic Ice, Arctic Jay, Arctic Mist, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Bright, August Fire, August Glo, August Lion, August Pearl, August Red, August Sweet, Autumn Blaze, Autumn Fire, Big Jim, Bright Pearl, Burnectfour (Summer Flare® 35), Burnectseven (Summer Flare® 28), Burnecteleven (Summer

Flare® 30), Burnectfifteen (Summer Flare® 27), Burnectseventeen (Summer Flare® 32), Candy Gold, Candy Pearl, Diamond Ray, Early Red Jim, Fire Pearl, Fire Sweet, Giant Pearl, Grand Bright, Grand Candy, Grand Pearl, Grand Sweet, Honey Blaze, Honey Dew, Honey Diva, Honey Fire, Honey Kist, Honey Rose, Honey Royale, July Pearl, July Red, Kay Pearl, La Pinta, La Reina, Larry's Red, Late Red Jim, Mike's Red, Neptune, Orange Honey, P-R Red, Prima Diamond IX, Prima Diamond X, Prima Diamond XIX, Prima Diamond XXIV, Prima Diamond XXVIII, Prince Jim 3, Red Bright, Red Diamond, Red Glen, Red Jim, Red Pearl, Regal Pearl, Regal Red, Royal Giant, Ruby Bright, Ruby Diamond, Ruby Pearl, Ruby Sweet, Saucer, September Bright (26P-490), September Free, September Red, Signature, Sparkling June, Spring Bright, Spring Pearl™, Spring Sweet, Sugar Pearl™, Sugarine, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Jewel, Summer Lion, Summer Red, Sunburst, Sun Valley Sweet, Terra White, Zee Glo or Zephyr variety nectarines unless:

\* \* \* \* \*

#### **PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA**

■ 3. Section 917.459 is amended by revising the introductory text of paragraphs (a)(2), (a)(3), (a)(5), (a)(6), and by adding paragraph (a)(6)(iii) to read as follows:

##### **§ 917.459 California peach grade and size regulation.**

(a) \* \* \*

(2) Any package or container of April Snow, Earlitreat, Snow Angel, Supechfifteen, or Super Lady variety peaches unless:

\* \* \* \* \*

(3) Any package or container of Island Prince, Snow Kist, Snow Peak, Spring Princess, or Super Rich variety peaches unless:

\* \* \* \* \*

(5) Any package or container of Babcock, Bev's Red, Bright Princess, Brittney Lane, Burpeachone (Spring Flame® 21), Burpeachfourteen (Spring Flame® 20), Burpeachnineteen (Spring Flame® 22), Candy Red, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Honey Sweet, Ivory Queen, June Lady, Magenta Queen, May Crest, May Sweet, Prima Peach IV, Queencrest, Rich May, Sauzee Queen, Scarlet Queen, Sierra Snow, Snow Brite, Springcrest, Spring Lady, Spring Snow, Springtreat (60EF32), Sugar Time (214LC68), Supecheight (012-094),

Supechnine, Sweet Scarlet, Sweet Crest or Zee Diamond variety peaches unless:

\* \* \* \* \*

(6) Any package or container of August Lady, August Saturn, Autumn Flame, Autumn Jewel, Autumn Red, Autumn Rich, Autumn Rose, Autumn Snow, Autumn Sun, Burpeachtwo (Henry II®), Burpeachthree (September Flame®), Burpeachfour (August Flame®), Burpeachfive (July Flame®), Burpeachsix (June Flame®), Burpeachseven (Summer Flame® 29), Burpeachfifteen (Summer Flame® 34), Burpeachtwenty (Summer Flame®), Burpeachtwentyone (Summer Flame® 26), Candy Princess, Coral Princess, Country Sweet, Diamond Candy, Diamond Princess, Earlrich, Early Elegant Lady, Elegant Lady, Fancy Lady, Fay Elberta, Full Moon, Galaxy, Glacier White, Henry III, Henry IV, Ice Princess, Ivory Princess, Jasper Gem, Jasper Treasure, Jillie White, Joanna Sweet, John Henry, Kaweah, Klondike, Last Tango, Natures #10, O'Henry, Peach-N-Cream, Pink Giant, Pink Moon, Prima Gattie 8, Prima Peach 13, Prima Peach XV, Prima Peach 20, Prima Peach 23, Prima Peach XXVII, Queen Jewel, Rich Lady, Royal Lady, Ruby Queen, Ryan Sun, Saturn (Donut), September Blaze, September Lady, September Snow, September Sun, Sierra Gem, Sierra Rich, Snow Beauty, Snow Blaze, Snow Fall, Snow Gem, Snow Giant, Snow Jewel, Snow King, Snow Magic, Snow Princess, Sprague Last Chance, Spring Candy, Strawberry, Sugar Crisp, Sugar Giant, Sugar Lady, Summer Dragon, Summer Fling, Summer Lady, Summer Sweet, Summer Zee, Sweet Blaze, Sweet Dream, Sweet Henry, Sweet Kay, Sweet September, Tra Zee, Valley Sweet, Vista, White Lady, or Zee Lady variety peaches unless:

\* \* \* \* \*

(iii) Such peaches in any container when packed other than as specified in paragraphs (a)(6)(i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 73 peaches, except for Peento type peaches.

\* \* \* \* \*

Dated: February 13, 2009.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. E9-3585 Filed 2-19-09; 8:45 am]

**BILLING CODE 3410-02-P**

#### **DEPARTMENT OF AGRICULTURE**

##### **Agricultural Marketing Service**

##### **7 CFR Part 932**

**[Doc. No. AMS-FV-08-0105; FV09-932-1 IFR]**

##### **Olives Grown in California; Increased Assessment Rate**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule increases the assessment rate established for the California Olive Committee (committee) for the 2009 and subsequent fiscal years from \$15.60 to \$28.63 per assessable ton of olives handled. The committee locally administers the marketing order which regulates the handling of olives grown in California. Assessments upon olive handlers are used by the committee to fund reasonable and necessary expenses of the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective February 21, 2009. Comments received by April 21, 2009, will be considered prior to issuance of a final rule.

**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 docket number and the date and page number of this issue of the **Federal Register** and will be made 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:**

Jennifer R. Garcia, Marketing Specialist, or Kurt J. 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: