

PCC, although their recommendations that the term "variety" be defined is not adopted because this change should be implemented following notice and comment rule making procedures.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public and interested persons are encouraged to express their views at these meetings, such as the May 1, 2003 meetings. USDA reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

Container and Pack Requirements

Sections 916.52 and 917.41 of the orders authorize establishment of container, pack, and marking requirements for shipments of nectarines and peaches, respectively. Under §§ 916.350 and 917.442 of the orders, the specifications of container markings, net weights, well-filled requirements, weight-count standards for various sizes of nectarines and peaches, and lists of standard containers are provided.

The committees recommended that a revised minimum net weight be established for all "five down" boxes (commonly referred to as "Euro" boxes) that are volume-filled. Currently, the minimum net weight requirement for "five down" boxes is 31 pounds, as established by the prior interim final rule. The committees have now recommended that the minimum net weight for five down containers be revised to include a 29-pound net weight for five down containers for the 2003 season only.

"Five down" boxes are containers that lay in a pattern of five containers per layer on each pallet. In other words, each layer of boxes on a pallet contains only five Euro boxes. Other container sizes and "footprints" may result in nine boxes per layer, etc.

The committees met on May 1, 2003 and recommended that the current net weights for five down Euro containers be revised to include both a 29-pound box and a 31-pound box. The 29-pound box will be permitted for the 2003 season only, after which time the Grade and Size Subcommittee will review the results from the season and make a recommendation to establish either a 29-pound box or a 31-pound box or other appropriate weight.

Containers used in the nectarine and peach industry have largely resulted from retailer demands. Many retailers want all of their suppliers to provide them with commodities in containers of the same footprint (length and width dimensions), thereby creating consistency and ease of transportation, storage, etc., for the retailer. Euro containers meet those demands, but require the industry to make changes in pack styles and package weights to conform to the evolving demands of the retail sector.

This recommendation resulted from a request by a handler who wanted to respond to a demand from one of his larger retail customers. The customer wanted volume-filled containers of nectarines and peaches of the same weight as tray-packed containers, which currently weigh 29 pounds.

At the meeting, the handler advised the committees that the current minimum net weight of 31 pounds for volume-filled Euro containers is not flexible enough to afford him the opportunity to meet the demands of his buyer.

Nectarines: For the reasons stated above, paragraph (a)(8) of § 916.350 is revised to include a 29-pound net weight for all volume-filled, five down Euro containers of nectarines, in addition to the current 31 pounds. The 29-pound container will be permitted during the 2003 season only. At the end of the 2003 season, the committees will recommend either a 29-pound, 31-pound container, or other appropriate weight. The container markings shall be placed on one outside end of the container in plain sight and in plain letters.

Peaches: For the reasons stated above, paragraph (a)(9) of § 917.442 is revised to include a 29-pound net weight for all volume-filled, five down Euro containers of peaches, in addition to the current 31 pounds. The 29-pound container will be permitted during the 2003 season only. At the end of the 2003 season, the committees will recommend either a 29-pound, 31-pound container, or other appropriate weight. The markings shall be placed on one outside end of the container in plain sight and in plain letters.

Weight-Count Standards for Peaches

Under the requirements of § 917.41 of the order, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches, which may be packed in tray-packed containers, are converted to volume-filled containers. Under § 917.442 of the order's rules and regulations, weight-

count standards are established for all varieties of peaches as TABLES 1, 2, and 3 of paragraph (a)(5)(iv).

According to the PCC, the Peento type peaches were initially packed in trays because they were marketed as a premium variety, whose value justified the added packing costs. However, as the volume has increased, the value of this peach has diminished in the marketplace, and some handlers converted their tray-packed containers of Peento type peaches to volume-filled containers.

Prior to the 2002 season, weight-count standards established for peaches and nectarines were developed solely for round fruit. Peento type peaches are shaped like donuts, and weight-count standards for round fruit were inappropriate. In an effort to standardize the conversion from tray-packed containers to volume-filled containers for Peento type peaches, the committee staff conducted weigh-count surveys to determine the most optimum weight-counts for the varieties at varying fruit sizes.

As a result of those surveys, a new weight-count table applicable to only the Peento type peaches was added for the 2002 season and amended for the 2003 season. The new weight-count tables accommodate very large Peento type peaches that were not previously converted from tray-packs to volume-filled containers, but were being packed in volume-filled containers and required weight-count standards specifically for those sizes.

However, Peento peaches, which are subject to weight-count standards in TABLE 3 of paragraph (a)(5)(iv) in § 917.442, were not exempted from weight-count standards in the non-listed variety size requirements specified in paragraphs (b)(3) and (c)(3) of § 917.459, according to the commenter. This was an inadvertent omission in the previous interim final rule and requires this conforming change in this amended interim final rule. Therefore, the words "except for Peento type peaches" will be added at the end of paragraphs (b)(3) and (c)(3) of § 917.459.

Variety Nomenclature

In §§ 916.350 and 917.442 of the orders' rules and regulations, specifications of container markings, net weights, well-filled requirements, weight-count standards for various sizes of fruit, and lists of standard containers are provided.

In §§ 916.356 and 917.459 of the orders' rules and regulations, specifications of grade, maturity, and size regulations for nectarines and peaches, respectively, are provided for