

The NAC and PCC discussed the subcommittee's recommendation at their meeting on May 1, 2003. They debated the value of simply making 29 pounds the sole minimum net weight for volume-filled Euro containers, but opted to maintain the 31-pound container and add the 29-pound container for the 2003 season, contingent upon review at the end of the season by the Grade and Size Subcommittee. At that time, the subcommittee is expected to recommend only one net weight for five down, volume-filled Euro containers of nectarines and peaches for the 2004 season.

The NAC voted 7 in favor and one opposed to this recommendation, while the PCC voted unanimously in favor of the recommendation. The NAC member opposed to the recommendation noted that additional box styles are costly to the industry and should be avoided, if possible. However, the large majority of committee members disagreed, opting instead to take steps to be responsive to buyers.

#### Weight-counts for Peento Type Peaches

Section 917.442 also establishes minimum weight-count standards for containers of peaches. Under these requirements, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches are packed in a tray-packed container. Those same maximum numbers of peaches are also applicable to volume-filled containers, based upon the tray-packed standard. The weight-count standard was developed so handlers may convert tray-packed peaches to volume-filled containers and be assured that fruit of a specific size in the volume-filled container will be the same as that in the tray-packed container.

When Peento type peach varieties were first introduced and marketed, they were generally tray-packed because they were a novel and premium product. As production has increased, the value of the varieties has diminished in the marketplace, and some handlers have converted their tray-packed containers of Peento type peaches to volume-filled containers. Weight-count standards provide a basis for volume filling containers of other varieties of peaches. Currently, Peento type peaches are regulated under a new table of weight-count standards applicable to only these uniquely-shaped peaches.

However, due to an inadvertent omission, Peento type peaches were not exempted from the weight-count standards for round peaches in the non-listed (blanket) variety sizes in

paragraph (b)(3) and (c)(3) of § 917.459, as noted by the commenter. Thus, under the rules and regulations in the orders, varieties of Peento type peaches that are not regulated by name would be regulated by date of harvest in the blanket regulations. To correct that omission, the words "except Peento type peaches" will be added to the end of each of those paragraphs, in response to the concerns of the commenter.

The alternative to this conforming change would be to have Peento type peaches in non-listed variety sizes subject to the same weight-count standards assigned to round varieties, treating these Peento type peaches differently than other varieties of Peento type peaches. Clearly, that is not an acceptable alternative, given that these donut-shaped peaches cannot meet the requirements established for round peaches, and require their own weight-count standards.

The Grade and Size Subcommittee also discussed the issue of variety nomenclature at its meeting on April 8, 2003. Several members expressed concern that use of different marketing names by different handlers for the same variety was causing mismarking situations, which affect inspections, size and maturity assignments, and data collection. The current regulations require that containers bear the name of the variety. This is clarified by adding that trademarks, marketing names, and brand names may be associated with the variety name, but cannot be substituted for the variety name. This is expected to foster consistent variety identification within the industries, and uniform application of maturity and size requirements.

The committees voted unanimously to define "variety" as part of the orders' rules and regulations and to specify more detailed identification requirements. A commenter also recommended changes to the names of several peach varieties to bring them into conformity with the recommendations of the PCC. However, because these recommendations limit how handlers must identify the variety names, USDA plans to issue a proposed rule on these recommendations. USDA recognizes that there may be a need for consistency in naming the various peach and nectarine varieties to prevent misleading variety markings, but believes that notice and comment rulemaking, rather than an interim final rule, should be used for implementing such changes.

The committees make recommendations regarding all the revisions in handling requirements after considering all available information,

including recommendations by various subcommittees, comments of persons at subcommittee meetings, and comments received by committee staff. Such subcommittees include the Stone Fruit Grade and Size Subcommittee, the Inspection and Compliance Subcommittee, and the Executive Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers and handlers with many years of experience in the industry who are familiar with industry practices and trends. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited. In the case of the Stone Fruit Grade and Size Subcommittee, many growers and handlers who are affected by the issues discussed by the subcommittee attend and actively participate in the public deliberations. In addition, minutes of all subcommittee meetings are distributed to committee members and others who have requested them, thereby increasing the availability of information within the industry.

Each of the recommended handling requirement changes for the 2003 season is expected to generate financial benefits for producers and handlers through increased fruit sales, compared to the situation that would exist if the changes were not adopted. Both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be substantially different between large and small entities.

This rule does not impose any additional reporting and 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings are widely publicized throughout the nectarine and peach industry and all interested parties are encouraged to attend and participate in committee