

and also by either net weight or count. It was a customary industry practice to pack the equivalent of three single layer trays into a volume filled container and to specify the quantity of the kiwifruit placed into the volume filled container as the count.

In 1993, the Committee recommended and the USDA established a pack requirement under the order's administrative rules and regulations which specified that for shipments in volume filled containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in 7 CFR 51.2328(c)(2) of the Grade Standards, (58 FR 43243, April 16, 1993). This requirement was established to ensure that volume filled containers designated by size and count held a consistent number of pieces of kiwifruit.

During the 1993–94 season handlers realized it was more labor intensive and more expensive to pack volume filled containers by count than by net weight. They also realized that the difference in the average FOB values for each type of volume filled container was negligible. Retailers were unwilling to pay a higher price for volume filled containers designated by count and handlers were unwilling to pack these more labor-intensive and more expensive containers, if they could not recoup the extra handling costs. As a result, the amount of kiwifruit packed into volume filled containers designated by count and size declined to 2 percent during the 1995–96 season. While kiwifruit handlers have not used volume filled containers designated by count and size since the 1995–96 season, they continue to use volume filled containers packed by net weight and size designation.

Recently, retailers have requested new, smaller containers of kiwifruit designated by count and size. Some kiwifruit handlers in the industry, including those that are packing a new variety, "Hort16A", would like the flexibility to pack these smaller containers of kiwifruit. These handlers are currently unable to meet retailer's requests for smaller volume filled containers of kiwifruit, as the order's administrative rules and regulations require the count to equal three times the size designation in volume filled containers in which the quantity is specified by count. For example, if a retailer requests containers of Size 20 fruit with 50 pieces of fruit in each container, the handler would not be able to meet the retailer's requirements because the order's administrative rules and regulations require that 60 pieces of fruit (a count equal to three times the

size designation) be packed into the container.

Thus, the Committee, at its March 12, 2003, meeting, unanimously recommended removing the requirement as it is obsolete and no longer meets the industry's needs. The Committee discussed alternatives to this change, including not removing this requirement from the order's administrative rules and regulations, but concluded that small and large growers and handlers would benefit from this change. This change would not affect volume filled containers packed by net weight and is expected to help handlers compete more effectively in the marketplace and to improve grower returns.

Continued Suspension of Standard Packaging for Volume Filled Containers Designated by Weight

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Prior to the issuance of an interim final rule on August 22, 2002 (67 FR 54327), § 920.302(a)(4)(v) specified that all volume filled containers of kiwifruit designated by weight shall hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit. This standard packaging requirement was unanimously recommended by the Committee and established under the order's administrative rules and regulations by a final rule issued on October 25, 1994, (59 FR 53563).

During the 1994–95 season, 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 9.8-pound (9-kilogram) net weight volume filled containers, whereas the order limited California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between imported 19.8-pound (9-kilogram) and 22-pound (10-kilogram) net weight volume filled containers from California. Because buyers pay the same price for each container, the effect is not favorable for California handlers.

At its April 9, 2002, meeting, the Committee, unanimously recommended and the USDA approved suspending the standardized packaging requirement of 22-pounds (10-kilograms) net weight for

volume filled containers for the 2002–03 season. This suspension was implemented by an interim final rule published on August 22, 2002 (67 FR 54327) and will be in effect until July 31, 2003. This was made final on November 21, 2002 (67 FR 76140). To date, relaxation of these packaging requirements during the 2002–03 season enabled handlers to ship 73 percent of the crop in 22-pound (10-kilogram) net weight volume filled containers, 13 percent of the crop in 19.8-pound (9-kilogram) net weight containers and less than 1 percent in volume filled containers of other weights.

The Committee concluded that while suspending the standard packaging requirements for the 2002–03 season had enabled handlers to compete more effectively in the marketplace, it would like to gather more data to further evaluate the benefits of nonstandard pack requirements for another season, the 2003–04.

Therefore, the majority of the Committee members agreed that the suspension of the standard packaging requirement for volume filled containers by net weight should be continued for the 2003–04 season. Of the twelve members present, eight voted for this change, and four voted against it. Opponents of this recommendation preferred standard packaging, but could not agree whether the 22-pound (10-kilogram) or the 19.8-pound (9-kilogram) net weight container should be the standard. Small and large growers and handlers are expected to benefit from the continued suspension of the standard packaging requirements. The majority of the Committee believes that handlers and growers would benefit by being able to meet buyer's preferences for alternate containers. This suspension would be in effect until July 31, 2004.

The Committee discussed alternatives to this change including reinstating the 22-pound (10-kilogram) net weight standard packaging requirement for the 2003–04 season. Committee members also suggested two other alternatives. One alternative was to establish a standard packing requirement that would require volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9 kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit. The other alternative suggested would establish a standard packing requirement that would require volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9-kilograms) net weight of kiwifruit, unless such containers hold less than 15-pounds or more than 35-