

compartments, cardboard fillers, or molded trays). Volume filled containers were designated by size and also 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 by 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 was 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 kiwifruit.

During the 1993–94 season handlers realized that it was more labor intensive and more expensive to pack volume filled containers designated 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 designated by net weight and size.

Recently, retailers have requested new, smaller containers of kiwifruit designated by count and size. Some handlers in the industry, including those that are packing a new variety, "Hort16A", want the flexibility to pack these smaller containers of kiwifruit. These handlers are currently unable to meet retailer 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 kiwifruit in each container, the handler will not be able to meet the retailer's requirements because the order's administrative rules

and regulations require that 60 kiwifruit (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 this requirement as it is obsolete and no longer meets the industry's needs. This relaxation in pack requirements is expected to enable handlers to compete more effectively in the marketplace and to improve grower returns.

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

Section 920.52(a)(3) of the order authorizes the establishment of weight requirements for containers of California kiwifruit.

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 had to 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 19.8-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 during the 2002–03 season, handlers shipped 85 percent of the crop in volume filled containers (73 percent in 22-pounds (10-kilograms) net weight volume filled containers, 12 percent in 19.8-pounds (9-kilograms) net weight containers, and less than 1 percent in volume filled containers of other weights).

At its March 12, 2003, meeting, the Committee discussed three options for volume filled containers: (1) Establishing a standard packaging requirement of 19.8-pounds (9-kilograms) net weight, (2) reestablishing a standard packaging requirement of 22-pounds (10-kilograms) net weight and (3) continuing the suspension of the standardized packaging requirement for the 2003–04 season, thus allowing flexibility to pack any net weight volume filled container. In its deliberations, the Committee discussed grower returns and the ability to meet buyer's preferences for alternate containers. Committee members mentioned that 10 percent more containers could be packed if the standard were set at 19.8-pounds (9-kilograms) net weight. Others mentioned that the increased number of containers will not offset the increased handler costs of packing more, smaller containers and could result in decreased grower returns. Many retailers do not differentiate between 19.8-pounds (9-kilograms) net weight volume filled containers and 22-pounds (10-kilograms) net weight volume filled containers and pay the same price for each. Thus, packaging 19.8-pounds (9-kilograms) net weight containers may not be beneficial for growers and handlers.

The Committee also discussed reestablishing the 22-pounds (10-kilograms) net weight container standard packaging requirement. Some Committee members believe that increased flexibility benefits growers and handlers, as handlers are able to meet buyer's preferences for alternate containers. Before making the change permanent, the Committee needs to gather more data to further evaluate the benefits of suspending standard pack requirements for another season, the 2003–04 season.

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,