

Agricultural Marketing Service, USDA

§ 993.50

than substandard prunes and undersized prunes, unless such prunes meet the minimum standards for natural condition prunes set forth in §993.97 (Exhibit A), or as such standards may be modified, or the more restrictive grade regulation established pursuant to this section, and then in effect: *Provided*, That no handler shall receive any prunes (including substandard prunes and undersized prunes) from producers or dehydrators unless such prunes have been properly dried and cured in original natural condition, without the addition of water, and are free from active insect infestation, so that they are capable of being received, stored, and packed without material deterioration or spoilage. Any "high moisture content prunes," as described in the exception in §993.5(b), in the possession of a handler, shall be held separate and apart from any prunes held by him. If such "high moisture content prunes" are dried or dehydrated to a point where they are capable of being stored, without material deterioration or spoilage, unrefrigerated or not otherwise artificially preserved, they shall be deemed, at that time, to have been received by such handler as prunes, and shall be subject to all of the conditions and restrictions of this subpart.

(b) The Secretary, on the basis of a recommendation of the committee or other information, may establish size regulations with respect to prunes that may be received by a handler from producers and dehydrators whenever he finds that such action would tend to effectuate the declared policy of the act.

(c) In no crop year shall a handler receive from producers or dehydrators prunes, other than as undersized prunes, which pass freely through a round opening with a diameter as follows: For French prunes 23/32 of an inch, and for non-French prunes 28/32 of an inch: *Provided*, That the Secretary upon a recommendation of the Committee, may establish larger openings whenever it is determined that supply conditions for a crop year warrant such regulation. The quantity of undersized prunes in any lot received by a handler from a producer or dehydrator shall be determined by the inspection service

and entered on the applicable inspection certificate.

[26 FR 476, Jan. 19, 1961, as amended at 37 FR 862, Jan. 20, 1972; 46 FR 61637, Dec. 18, 1981]

EFFECTIVE DATE NOTE: At 70 FR 30613, May 27, 2005, §993.49 was suspended indefinitely.

§ 993.50 Outgoing regulation.

(a) Except as otherwise specifically provided, no handler shall ship or otherwise make final disposition of prunes which fail to meet the applicable minimum standards set forth in §993.97 (Exhibit A), or as such standards may be modified, for standard prunes or standard processed prunes.

(b) The Secretary, on the basis of a recommendation of the committee or other information, may establish size regulations, pack specifications, or more restrictive grade regulations with respect to prunes that may be shipped or otherwise disposed of by a handler if such action would tend to effectuate the declared policy of the act. If a more restrictive grade regulation is established in connection with §993.97 (Exhibit A) it shall insofar as practicable apply comparably to both natural condition prunes and processed prunes. When pack specifications are in effect, no handler shall ship prunes in consumer packages, unless such prunes are identified by an appropriate label, seal, stamp, or tag affixed to such container by the handler showing the size of prunes in the lot from which the container was packed. In order to effectuate such orderly marketing of prunes as will be in the public interest, whether prices are above or below parity, no handler shall use descriptive terms in a manner inconsistent with that set forth in this subpart or in any pack specifications or other regulation issued by the Secretary pursuant to this subpart.

(c) Non-French prunes: No handler shall ship or otherwise make final disposition of any lot of standard prunes or standard processed prunes of the non-French varieties or any lot which includes non-French prunes in excess of a tolerance to be prescribed by the Secretary on recommendation of the Committee, unless the average count of such non-French prunes contained in any such lot is 40 or less per pound.

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However, under safeguards to be established by the Committee, any lot containing non-French prunes with an average size count of more than 40 prunes per pound may be shipped to or disposed of in prune product outlets in which they lose their form and character as prunes by conversion prior to consumption. A tolerance as to the permitted deviation of sizes about the average count shall be prescribed by the Secretary, upon recommendation of the Committee.

(d) French prunes: No handler shall ship or otherwise make final disposition of any lot of French prunes for human consumption as prunes, or any lot of mixed dried fruit containing French prunes for human consumption as mixed dried fruit, unless the average count of French prunes contained in any such lot is 100 or less per pound. However, under safeguards to be established by the Committee, any lot containing French prunes with an average size count of more than 100 prunes per pound may be shipped to or disposed of in prune product outlets in which they lose their form and character as prunes by conversion prior to consumption. In determining whether any such lot conforms to this minimum size requirement, the following tolerance shall apply: In a sample of 100 ounces, the count per pound of 10 ounces of the smallest prunes shall not vary from the count per pound of 10 ounces of the largest prunes by more than 45 points. The Secretary may, upon the basis of the recommendation and information submitted by the Committee and other available information, modify this tolerance for uniformity of size.

(e) No handler shall ship or otherwise make final disposition of any lot of substandard prunes except for use as prune products in which the prunes lose their form and character as prunes by conversion prior to consumption, or for use in non-human consumption outlets: *Provided*, That any such prunes which are shipped or otherwise disposed of for human consumption shall meet the minimum standards prescribed in II C (1), (2), and (3) of § 993.97 or as such standards as may pursuant to § 993.52 be modified. The committee shall issue any such rules and regula-

tions as may be necessary to insure such uses.

(f) Notwithstanding the restrictions contained in this section, any handler may transfer prunes from one plant owned by him to another plant owned by him within the area without having an inspection made as provided for in § 993.51. Any handler may ship prunes from his plant to another handler's plant within the area without having an inspection made as provided for in § 993.51, but a report of such inter-handler transfer shall be made promptly by the transferring handler to the committee. The receiving handler shall, before shipping or otherwise making final disposition of such prunes, comply with the requirements of this section and of § 993.51.

(g) No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes. However, such handler may, at the direction and under the supervision of the Committee, dispose of such quantity of prunes in nonhuman consumption outlets. Prunes so disposed of shall be of the same variety as, and reasonably comparable in size, to such undersized prunes. The handler shall cause the inspection service to make a determination whether the prunes disposed of by the handler in nonhuman consumption outlets meet such requirements. In making the determination with respect to comparability in size, the inspection service shall apply a tolerance permitting a deviation from the size of the applicable opening established pursuant to § 993.49(c). Any such tolerance, together with any rules and regulations to insure proper disposition of the prunes and that such prunes are reasonably comparable to the undersized prunes so received, shall be established by the Committee with the approval of the Secretary. The quantity of prunes determined pursuant to § 993.49(c) shall not be deemed to be within the handler's quota for salable prunes fixed by the Secretary within the meaning of section 8a(5) of the Act.

[26 FR 476, Jan. 19, 1961, as amended at 37 FR 862, Jan. 20, 1972]

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