

members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider handler payment rates or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each payment rate modification submitted to USDA for review and approval. The Committee shall notify producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and cooperative bargaining association(s) of USDA's action on payment rates and conditions for payment by first class mail and/or by electronic communications.

[68 FR 17543, Apr. 10, 2003]

EFFECTIVE DATE NOTE: At 70 FR 30613, May 27, 2005, § 993.159 was suspended indefinitely.

VOLUNTARY DIVERSION

**§ 993.162 Voluntary prune plum diversion.**

(a) *Quantity to be diverted.* The Committee shall indicate the quantity of prune plums that producers may divert pursuant to § 993.62 whenever it recommends to the Secretary that diversion operations for a crop year be permitted. Whenever diversion operation for a crop year have been authorized by the Secretary, the Committee shall notify producers, commercial dehydrators, and handlers, known to it of such authorization and diversion program procedures. The Committee shall compute the dried weight equivalent of prune plums so diverted on a dryaway basis as follows:

(1) For prune plums of the French variety, the Committee shall survey at least eight commercial prune dehydrators that are geographically dispersed within the production area to obtain their annual dryaway ratios for each of the preceding five crop years, and compute a five-year average dryaway ratio for each dehydrator. The Committee shall then add together the participating commercial dehydrators' five-year average dryaway ratios for

each producing region within the production area, and divide the total by the number of participating commercial dehydrators in that region to compute the dryaway ratio by producing region. In the event any of the annual dryaway ratios for any of the crop years is abnormally high or low in any year, the Committee may replace the abnormal year's data with that of an earlier year. The prune producing regions for which dryaway ratios shall be computed for prune plums of the French variety are as follows:

(i) North Sacramento Valley, which includes the counties of Butte, Glenn, Shasta, and Tehama;

(ii) South Sacramento, Napa, Sonoma, and Santa Clara Valleys, which includes the counties of Amador, Colusa, Lake, Placer, Solano, Sutter, Yolo, Yuba, Napa, Sonoma, San Benito, and Santa Clara; and

(iii) San Joaquin Valley, which includes the counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

(A) *New producing counties within the area.* If there were new producing counties within the State of California, the Committee will, with the approval of the Secretary, assign the new prune producing county or counties, as the case may be, to one of the prune producing regions based on geographic proximity and/or production/dehydration characteristics. The addition of a county or counties, as the case may be, to one of the producing regions will be announced to the industry.

(B) *Removal of a county from a production area.* When prune acreage ceases to exist in a county, the Committee will, with the approval of the Secretary, remove that county from the existing region. Removal of a county from a production region also will be announced to the industry.

(2) For prune plums of the non-French variety, the dryaway ratio shall be 1 pound for each 3.50 pounds of prune plums diverted. The prune-producing region for prune plums of non-French varieties is the State of California.

(b) *Eligible diversions.* Eligible diversions shall preclude prune plums from becoming prunes and may include the following methods:

(1) Disposing of harvested prune plums under Committee supervision for nonhuman use at a location and in a manner satisfactory to the Committee;

(2) Leaving unharvested the entire production of prune plums from a solid block of bearing trees designated by the producer applying for the diversion of removing prune plum trees prior to harvest; and/or

(3) Such other diversions as may be authorized by the Committee and approved by the Secretary.

(4) In accordance with § 993.62(c), eligible diversion shall not apply to prune plums, which would not, under normal producer practices, be dried and delivered to a handler. On or before July 20 of each crop year when the Committee recommends a reserve pool and diversion program (except the Committee with the approval of the Secretary may extend this date by not more than 10 business days if warranted by a late crop), the Committee shall identify, with the approval of the Secretary, the acceptable method(s) of voluntary prune plum diversion through reasonable publicity to producers, commercial dehydrators, handlers, and the cooperative bargaining association(s). For the purposes of this section, cooperative bargaining association means a nonprofit cooperative association of dried prune producers engaged within the production area in bargaining with handlers as to price and otherwise arranging for the sale of natural condition dried prunes of its members.

(c) *Applications for diversion*—(1) *By producers.* Each producer desiring to divert prune plums of his own production shall, prior to diversion, file with the Committee a certified application on Form PMC 10.1 “Application for Prune Plum Diversion” containing at least the following information:

(i) The name and address of the producer; whether the producer is an owner-operator, share-landlord, share-tenant, or cash tenant; and the name and address of any other person or persons sharing a proprietary interest in such prune plums;

(ii) The proposed method of diversion and the location where the diversion is to take place;

(iii) The quantity and variety of prune plums proposed to be diverted; and

(iv) The approximate period of diversion.

(v) A deposit fee shall accompany each producer’s application to cover costs associated with processing the application and administering the diversion program. The Committee shall compute, with the approval of the Secretary, and announce to the industry, the deposit fee. The deposit fee announced shall be a set dollar amount or a per ton cost based on the tonnage to be diverted. The fee paid by the applicant shall be the greater of these amounts.

(2) *By dehydrator as agent.* Any producer, or group of producers, may authorize a dehydrator to act as an agent to divert harvested prune plums. Prior to diversion such dehydrator shall submit to the Committee an application on Form PMC 10.1 “Application for Prune Plum Diversion” for each producer or group of producers under contract with the dehydrator. A deposit fee shall accompany each such application to cover the costs associated with processing the application and administration of the program. With respect to any group of four or more producers under contract with a dehydrator, the deposit fee for the group shall be the greater of either double the single deposit fee, pursuant to paragraph (c)(1) of this section, or the amount obtained by multiplying the total tonnage of prune plums to be diverted by the group of producers covered in the dehydrator’s application times the per ton deposit rate announced by the Committee pursuant to (c)(1) of this section.

(3) *Receipt of applications.* The Committee shall establish, and give prompt notice to the industry, a final date for receipt of applications for diversion: *Provided,* That the Committee may extend such deadline if the total tonnage represented in all applications is substantially less than the total tonnage established by the Committee pursuant to paragraph (a) of this section.

(d) *Approval of applications.* No certificate of diversion shall be issued by the Committee unless it has approved

the application covering such diversion.

(1) The Committee's approval of an application shall be in writing, and include at least the following:

(i) The details as to the method of diversion to be followed;

(ii) The method of appraisal to be used by the Committee to determine the quantity of prune plums diverted;

(iii) The lesser of either the quantity specified in the application to be diverted, or modification of that quantity as a result of any Committee action to prorate the total quantity to be diverted by all producers; and

(iv) Such other information as may be necessary to assist the applicant in meeting the requirements of this section, including the conditions for proof of diversion.

(2) If the Committee determines that it cannot approve an application it shall notify the applicant promptly. The Committee shall state the reason(s) for failing to approve the application, and request the applicant to submit, if practicable, an amended application correcting the deficiencies in the original application.

(3) The Committee shall establish, and give prompt notice to the industry of a final date by which a producer or dehydrator may modify an approved application, including changing the method of diversion or the quantity of prune plums to be diverted: *Provided*, That any such change shall include information on the location or quantity of such diversion and shall be accompanied by a payment of a second deposit fee, calculated pursuant to paragraph (c)(1) or (c)(2), as applicable, of this section, plus a \$2 per ton service charge for any increase in tonnage to be diverted.

(4) If an applicant cancels an approved diversion application prior to diversion, no part of the deposit fee shall be refunded, except upon approval by the Committee following review of all circumstances in the matter.

(e) *Report of diversion.* (1) When diversion of prune plums has been completed, the diverter (whether producer or dehydrator as agent of a producer) shall submit the required proof of such diversion to the Committee. When the Committee concludes that diversion

has been completed pursuant to the requirements of this section, it shall furnish the producer whose prune plums were diverted with a listing of the total quantity of prune plums concluded to be so diverted: *Provided*, That a producer shall be given credit for any quantity of his prune plums diverted in excess of the quantity approved by the Committee pursuant to paragraph (d) of this section but not in excess of 120 percent of such approved quantity and then only to the extent that such creditable excess is already covered by his applicable deposit fee or such fee is increased by an additional deposit to cover such excess.

(2) Upon completion of the computation of dryaway pursuant to paragraph (a) of this section applicable to the diverter's diversion of prune plums, the Committee shall issue a report of diversion to the producer whose prune plums were diverted for the total quantity, dried weight equivalent, credited for diversion setting forth the computations by which such total quantity was derived.

(f) *Transferable certificate of diversion*—(1) *General.* As hereinafter set forth, transferable certificates of diversion shall be issued by the Committee. Any transferable certificate of diversion issued to a handler that is a cooperative marketing association, or submitted to a handler and accepted by him, shall be returned to the Committee by the handler for credit against the handler's reserve obligation of the crop year in accordance with § 993.57. Such credit shall be based on the amount shown on the certificate, and shall be applied to reduce the handler's holding requirement for such crop year. With respect to such creditable certificate of a handler with a holding requirement prior to issuance or acceptance, as applicable, of the transferable certificate of diversion, such credit shall result in an adjustment downward in the handler's then applicable holding requirement in an amount equal to that computed by applying the applicable salable percentage to the total quantity on such certificate. Any adjustment in a handler's holding requirement shall not affect his obligation, if any, to continue to hold reserve prunes that are undersized

prunes. The term *undersized prunes* shall have the same meaning as prescribed by the Secretary for the then current crop year. If the Committee determines that effective administration of diversion operations requires establishment of a final date for submission of transferable certificates of diversion by producers to handlers, or a final date for return of such certificates by handlers to the Committee for crediting against their reserve obligations, or both, it shall establish such dates.

(2) *Issuance to producers.* Except as provided in paragraph (f)(3) of this section, the Committee shall issue transferable certificates of diversion to each producer diverting prune plums and to whom a report of diversion was issued. Prior to issuance of any such transferable certificate of diversion, the producer shall advise the Committee, in writing: (i) Of the name of the handler to whom the transferable certificate of diversion is to be submitted and who is holding reserve prunes referable to prunes received from such producer; and (ii) how much of the quantity shown on his report of diversion he desires to use in lieu of reserve prunes but not in excess of the quantity of reserve prunes referable to prunes received by the handler from such producer. The Committee shall enter on the transferable certificate of diversion the name of the handler and the quantity covered by the certificate. The transferable certificate of diversion shall be endorsed by the producer and the handler prior to its return to the Committee in order to be credited by the Committee against such handler's reserve obligation. If any portion of the quantity shown on the producer's report of diversion remains unused and he desires to transfer a transferable certificate of diversion covering all or any part of such unused portion to another producer, he shall advise the Committee, in writing, of the name and address of such producer, together with the applicable quantity desired to be covered by the transfer, and, if known, the name of the handler to whom such a transferable certificate is to be submitted. However, the quantity to be covered by the transfer shall not exceed the quantity of reserve prunes referable to prunes received by the han-

dlar from the transferee-producer. The Committee shall enter on the transferable certificate of diversion the names of the transferee-producer and the handler, and the quantity covered by the certificate. Prior to submission of any such transferred diversion certificate to a handler, the transferee-producer shall advise the Committee, in writing, of the name and address of the handler to whom the transferable certificate is to be submitted and who is holding reserve prunes referable to prunes received from such producer. Such transferred diversion certificate shall be endorsed by both producers and the handler in order to be credited by the Committee against such handler's reserve obligation.

(3) *Issuance to a cooperative marketing association.* In connection with prune plums diverted by producers who are members of a cooperative marketing association, the Committee shall, when so requested by the association, issue the applicable transferable certificates of diversion to it. The quantity entered on the report of diversion of a cooperative producer shall be entered on or annexed to the applicable transferable certificate of diversion issued to the association. Such transferable certificates of diversion shall be returned to the Committee by the association endorsed by an authorized officer of the association in order to be credited by the Committee against the association's reserve obligation.

(4) *Applicability of certain payments.* The provisions of §§ 993.59 and 993.159 governing payments to a handler for necessary services rendered by the handler in connection with reserve prunes shall not be applicable to prunes no longer required to be held as reserve prunes due to a downward adjustment by the Committee in the handler's holding requirement on the basis of applicable transferable certificates of diversion returned to the Committee.

(g) *Costs.* Pursuant to § 993.62(g), the costs pertaining to diversion are to be defrayed by payment of fees by the producer or cooperative marketing association to whom a diversion certificate is issued. After authorized diversion operations for a crop year are completed, the Committee shall ascertain its costs of diversion operations during

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such crop year. If the total amount represented by the deposit fees which accompanied the applications for diversion exceeds such costs, each producer, and each cooperative marketing association, entitled thereto shall receive a proportionate refund of the net amount. Such refund shall be calculated in the same proportion as the quantity of prune plums diverted by each such producer, and each such cooperative marketing association, is to the total quantity of prune plums diverted: *Provided*, That the Committee may prescribe a minimum charge to cover costs of processing each application for diversion submitted to it.

[35 FR 12323, Aug. 1, 1970, as amended at 36 FR 15039, Aug. 12, 1971; 48 FR 57261, Dec. 29, 1983; 68 FR 17270, Apr. 9, 2003]

EFFECTIVE DATE NOTE: At 70 FR 30613, May 27, 2005, § 993.162 was suspended indefinitely.

### DISPOSITION OF RESERVE PRUNES

#### § 993.165 Disposition of reserve prunes.

(a) *General*. For purposes of § 993.65(a)(2), normal outlets for salable prunes (herein referred to as "normal outlets") and outlets noncompetitive with normal outlets for salable prunes (herein referred to as "noncompetitive outlets") are defined in paragraphs (b) and (c) of this section.

(b) *Normal outlets*. *Normal outlets* means all outlets not specifically set forth in paragraph (c) of this section as noncompetitive outlets.

(c) *Noncompetitive outlets*. *Noncompetitive outlets* means (1) the U.S. Government or any agency thereof and any State or local government, except when such outlets are normally serviced through regular commercial trade channels, (2) any foreign government or any agency thereof, except any which normally is serviced through regular commercial trade channels, (3) any foreign country with an average of annual commercial imports of California prunes of less than 5 tons, based on imports during the most recent 5 years, (4) diced prunes for use as an ingredient in, or the manufacture of, food products for human consumption, other than for use in the manufacture of prune juice, prune concentrate, baby food, puree, butter, jam, and low mois-

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ture nuggets, granules, and powder, (5) charities, (6) research or educational activities, and (7) animal feed, distillation, and other salvage use.

[31 FR 5751, Apr. 14, 1966, as amended at 37 FR 5600, Mar. 17, 1972]

EFFECTIVE DATE NOTE: At 70 FR 30613, May 27, 2005, § 993.165 was suspended indefinitely.

### REPORTS AND BOOKS AND OTHER RECORDS

#### § 993.172 Reports of holdings, receipts, uses, and shipments.

(a) *Holdings as of March 31*. Each handler shall, on or before the 15th day of April, file with the committee a signed report of holdings of prunes which have not been inspected or received by him as a handler as of March 31. The report shall show for such prunes the name and address of the producer or dehydrator, the date of each identification tag assigned to such prunes, the numbers and dates of door receipts or weight certificates or any other identifying documents assigned to such prunes, the net weight shown on each, the total net weight of all prunes so held, and the name and address of the handler making the report.

(b) *Receipts by handlers*. Each handler shall file with the committee, for each month, not later than the 5th working day of the next succeeding month, a signed report on Form PMC 11.1, "New Crop Supply and Inbound Prune Report", containing at least the following information: (1) The date, the name and address of the handler, and the period covered by the report; and (2) the total tonnage received during the month from each of (i) producers and dehydrators, (ii) other handlers, including interhandler transfers, and (iii) sources other than producers, dehydrators and other handlers.

(c) [Reserved]

(d) *Shipments by handlers*. Each handler shall file with the Committee for each quarter, not later than the 5th working day of the months of November, February, May and August, signed reports on Form PMC 12.1, "Reports of Shipments," and Form 12.1A, "Cumulative Prune Export Shipments" reporting shipments of prunes during the crop year through the last day of the immediately preceding quarter. Such