

(ii) \$3 per ton for bin rental during all or any part of the succeeding crop year.

(iii) For insurance as prescribed in paragraph (b) of this section.

(d) *Certain additional payments in connection with the delivery of reserve prunes to the committee or its designee.* (1) Whenever a handler is directed by the committee to deliver to it or its designee reserve prunes in natural condition, the committee shall furnish the handler with the containers in which to deliver the prunes, or reimburse the handler, at cost, for any containers which he furnishes pursuant to an agreement with the committee.

(2) Whenever the committee arranges with a handler for the reserve prunes delivered to it or its designee to be in processed and packaged condition, the committee shall reimburse the handler at the agreed rate, determined by the committee to be reasonable, for the processing, container, and packaging costs.

[31 FR 5751, Apr. 14, 1966, as amended at 34 FR 19704, Dec. 16, 1969; 35 FR 11381, July 16, 1970; 48 FR 57261, Dec. 29, 1983]

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. The Committee shall compute the dried weight equivalent of prune plums so diverted on a dryaway basis in accordance with the following schedule:

(1) For prune plums of French variety produced in the counties of Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, Siskiyou, Solano, Sonoma, and Trinity, 1 pound of dried prunes for each 2.6 pounds of prune plums diverted;

(2) For prune plums of French varieties produced in the counties of Alameda, Monterey, San Benito, Santa Clara, Santa Cruz, San Francisco, and San Mateo, 1 pound of dried prunes for each 2.75 pounds of prune plums diverted;

(3) For prune plums of French varieties produced in the counties of Amador, Butte, Colusa, Contra Costa, Glenn, Sacramento, Shasta, Sutter, Tehama, Yolo, and Yuba, 1 pound of dried prunes for each 3 pounds of prune plums diverted;

(4) For prune plums of French varieties produced in the counties of Fresno, Merced, San Joaquin, San Luis Obispo, Stanislaus, Tulare, and all of the counties in the area not included in paragraphs (a)(1), (2), and (3) of this section, 1 pound of dried prunes for each 3.25 pounds of prune plums diverted; and

(5) For prune plums of non-French varieties produced in any country in the area, 1 pound of dried prunes for each 3.50 pounds of prune plums diverted.

Whenever diversion operations for a crop year have been authorized by the Secretary, the Committee shall notify producers, dehydrators, and handlers, known to it of such authorization.

(b) *Eligible diversions.* Eligible diversions shall preclude prune plums from becoming prunes and shall be limited to 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; and (2) leaving unharvested the entire production of prune plums from a solid block of bearing trees designated by the producer applying for the diversion. 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.

(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 diversion is to take place; (iii) the quantity and variety of prune plums proposed to be diverted; and (iv) the approximate period of diversion. A deposit fee shall accompany each application and shall be the greater of either \$100 or the amount obtained by multiplying the quantity, in tons, of prune plums proposed to be diverted by \$3.50.

(2) *By dehydrator as agent.* Any producer, or group of producers, may authorize any dehydrator to act as agent to divert harvested prune plums. Prior to diversion such dehydrator shall submit to the Committee with respect to each producer the certified application on Form PMC 10.1 "Application for Prune Plum Diversion" required by paragraph (c)(1) of this section. A deposit fee shall accompany each application and shall be the greater of either \$100 per producer who authorized the dehydrator to act as agent or the amount obtained by multiplying the quantity in tons of prune plums proposed to be diverted by \$3.50: *Provided*, That with respect to any group of four or more producers that authorized the dehydrator to act as agent for the group and the dehydrator so informs the Committee, the deposit fee shall be the greater of either \$200 or the amount obtained by multiplying the aggregate quantity in tons of prune plums proposed to be diverted by the group by \$3.50.

(3) *Receipt of applications.* The Committee shall establish, and give prompt notice of, a final date for receipt of applications for diversion: *Provided*, That if the Committee determines that the total quantity of prune plums covered by applications received by such date is substantially less than the quantity which the Committee has determined pursuant to paragraph (a) of this section, the Committee may provide such additional time for such receipt of applications as it deems appropriate and establish and give prompt notice of such additional time.

(d) *Approval of applications.* No certificate of diversion shall be issued by the Committee unless it had 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 the application for diversion as proposed to be diverted, or any modification of that quantity as a result of any Committee proration of the total quantity proposed 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 of proof of diversion under which diverted prune plums shall receive credit for certification.

(2) If the Committee determines that it cannot approve an application it shall notify the applicant promptly. The Committee shall state the reason 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 of a final date by which a producer may modify his approved application including changing the proposed method of diversion and the quantity of prune plums proposed to be diverted: *Provided*, That any change in the proposed method of diversion shall include information on the location where such diversion is to take place and shall be accompanied by a payment of \$50 as a service charge, and any increase in the quantity of prune plums proposed to be diverted shall be accompanied by a payment of \$4.50 per ton for such increase, of which \$3.50 shall be the deposit fee and \$1 shall be a service charge.

(4) Whenever an applicant cancels his approved diversion application prior to diversion, no part of the deposit fee covering actual costs incurred in connection with the application 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 cer-

tificate. 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 handler 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 asso-

ciation 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 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]

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,