

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400, 407 and 457

RIN 0563-AB85

General Administrative Regulations, Subpart T—Federal Crop Insurance Reform, Insurance Implementation, Regulations for the 1999 and Subsequent Reinsurance Years; Group Risk Plan of Insurance Regulations for the 2001 and Succeeding Crop Years; and the Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: The Federal Crop Insurance Corporation is reopening and extending the comment period for the proposed rule that was published in the **Federal Register** on Wednesday, September 18, 2002 (67 FR 58912-58933) that amended the General Administrative Regulations, Subpart T; Group Risk Plan of Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions. The proposed rule implements certain provisions of the Agricultural Risk Protection Act of 2000 (ARPA) eliminating identified program vulnerabilities that have lead to potential fraud, waste, and abuse, and make such other changes to existing policy provisions to better meet the needs of producers. This action will allow interested persons additional time to prepare and submit comments.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business November 12, 2002, and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop

0812, Room 421, Kansas City, MO 64133-4676. Comments titled "Basic Provisions" may also be sent via the Internet to DirectorPDD@rm.fcic.usda.gov. A copy of each comment will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT:

Janice Nuckolls, Insurance Management Specialist, Research and Development, Product Development Division, Risk Management Agency, at the Kansas City, MO address listed above, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Background

On Wednesday, September 18, 2002, FCIC published a proposed rule with request for comments in the **Federal Register** proposing changes to subpart T in the General Administrative Regulations, the Group Risk Plan of Insurance Regulations, and the Common Crop Insurance Regulations; Basic Provisions to implement program changes mandated by ARPA, and make other changes to existing policy provisions to better meet the needs of the insured.

Comments were required to be received on or before October 18, 2002. Based on requests received during the comment period, we are reopening and extending the comment period until November 12, 2002. This action will allow interested persons additional time to prepare and submit comments.

Signed in Washington, DC, on October 23, 2002.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 02-27367 Filed 10-25-02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02-993-3 PR]

Dried Prunes Produced in California; Revising the Regulations Pertaining to a Voluntary Prune Plum Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revising the administrative rules and regulations pertaining to a voluntary prune plum diversion program under the California prune marketing order (order). The order regulates the handling of dried prunes produced in California and is administered by the Prune Marketing Committee (Committee). The proposed changes would revise the regulations to reflect changes in industry structure and current economic conditions, and would modify administrative procedures used in connection with implementing a diversion program. These changes would provide for more timely and efficient implementation of a diversion program if recommended in the future.

DATES: Comments must be received by December 27, 2002. Pursuant to the Paperwork Reduction Act, comments on information collection burden that would result from this proposal must be received by December 27, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

Richard P. Van Diest, Marketing Specialist, California Marketing Field

Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revising the administrative rules and regulations pertaining to a voluntary prune plum diversion program under the California prune marketing order (order). The order regulates the handling of dried prunes produced in California and is administered by the Prune Marketing Committee (Committee). The proposed changes would revise the regulations to reflect changes in industry structure and current economic conditions, and would modify administrative procedures used in connection with implementing a diversion program. These changes also would provide for more timely and efficient implementation if a diversion program is needed in the future. The proposed changes were unanimously recommended by the Committee at a meeting on November 29, 2001.

Volume Regulation Authority

Section 993.54 of the order provides authority for volume control in the form of reserve pooling. Volume control regulation is designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California prune crop may be sold by handlers to any market (salable or free tonnage) while the remaining percentage must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve prunes are disposed of through various programs authorized under the order. Net proceeds generated from sales of reserve prunes are distributed to the reserve pool's equity holders, primarily producers.

Diversion Program Authority

The order also provides authority under § 993.62 for prune producers to participate in a voluntary prune plum diversion program when a reserve pool is implemented. Under this program, prune producers can elect to divert part of their prune plum crop from normal prune or prune product markets in lieu of placing prunes in a reserve pool. Section 993.62 also authorizes establishment of rules and regulations to implement and administer a diversion program.

Section 993.162 contains the rules and regulations necessary for governing the implementation of a diversion program.

Prune Marketing Committee Recommendations

Because a diversion program has not been implemented since the 1970's, the administrative rules and regulations

contain several outdated provisions. Section 993.162(a) of the regulations currently establishes specific dryaway ratios by producing regions within the production area. Dryaway ratios represent the ratio of the weight of fresh prune plums needed to produce dried prunes, and are the basis for computing the dried weight equivalent of diverted fresh prune plums. The ratios range from 2.6 to 3.25 pounds of fresh plums to make a pound of French prunes, depending on the producing region. For non-French prunes, the dryaway ratio is established at 3.5 pounds of plums for one pound of non-French prunes for the entire production area.

The dryaway ratios can change from year to year depending upon weather conditions, fruit maturity at time of harvest, fruit solids and other factors. The dryaway ratios used in the early 1970's are no longer valid. Expanding production together with limited dehydration capacity has forced some growers to begin harvesting earlier and continue later than in the past. This has resulted in dryaway ratios higher than those currently specified. Because of this, and to provide more flexibility, the Committee recommended removing the specific dryaway ratios for non-French prunes from § 993.162(a) of the regulations and proposed adding language that would allow the Committee to compute dryaway ratios for the applicable producing regions based on a survey of at least eight commercial prune dehydrators geographically dispersed within the production area.

When the Committee believes a diversion program is needed, the Committee would obtain annual average dryaway ratios from commercial dehydrators surveyed and compute a five-year average dryaway ratio for each dehydrator. The Committee would then add together the participating commercial dehydrators' five-year average dryaway ratios for each producing region within the production area, and divide the total dryaway ratio by the number of participating commercial dehydrators to obtain each year's average dryaway ratio by producing region. In the event any of the annual dryaway ratios for any of the crop years are abnormally high or low in any year, the Committee could replace the abnormal year's data with that of an earlier year. After the computations are made, the resulting ratios would be announced and commercial dehydrators would be notified by letter prior to the beginning of any crop year in which reserve pooling and a diversion program was being contemplated. This would result

in more accurate dryaway ratios in determining the dried weight equivalent of fresh prune plums being diverted.

No change to the dryaway ratio for non-French prunes was recommended. Production of these prunes is small (0.06 percent of total prune production), little data is available, and it is believed that the currently listed ratio of 3.5 to 1 is accurate.

As previously mentioned, dryaway ratios for French prunes are calculated and applied to various producing regions within the production area. Section 993.162(a) of the regulations currently contains reference to 13 counties that no longer produce prunes. Prune production has shifted within the production area over the years. Thus, the Committee recommended updating the prune producing regions and condensing them into fewer regions. It is proposed that the regions used in determining dried weight equivalents for a diversion program in § 993.162(a) be realigned as follows:

French Prunes

- North Sacramento Valley—The counties of Butte, Glenn, Shasta, and Tehama.
- South Sacramento, Napa, Sonoma, and Santa Clara Valleys and the counties of Amador, Colusa, Lake, Placer, Solano, Sutter, Yolo, Yuba, Napa, Sonoma, San Benito, and Santa Clara.
- San Joaquin Valley—The counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

This proposal also would allow the Committee to assign any new counties of production to one of these three regions or remove counties when production ceased. When prune acreage ceases to exist in a county, the Committee would remove that county from the existing production region, with the approval of the Secretary, and announce the removal to the industry. In like manner, if there were new producing counties within the State, the Committee would, with the approval of the Secretary, be allowed to assign them to one of the existing regions based on geographic proximity and/or production/dehydration characteristics, instead of listing the counties in the rules and regulations. These assignments also would be announced to the industry. This process would allow the Committee to make timely changes to the producing regions so they reflect the current industry situation. Section 993.162(a) is proposed to be modified to reflect these changes.

The region for non-French prunes would continue to include all counties

within the production area because specific information on growing regions within the State is not maintained.

Section 993.162(b) of the regulations currently establishes the following eligible diversion 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. This proposal would specifically reference the removal of prune plum trees prior to harvest as an eligible diversion method. In the past, it has been determined that removing trees would qualify as unharvested production under the existing regulations. However, the Committee recommended adding clarifying language to the regulations to ensure that the removal of trees would qualify as an eligible diversion method.

A final change to § 993.162(b) would require the Committee to conduct a meeting prior to the beginning of any crop year in which a diversion program was being contemplated to determine which diversion method or methods may be used, and announce the eligible diversion method(s) to the industry. Section 993.162(b) is proposed to be modified to reflect these changes.

To participate in the diversion program, producers must file an application with the Committee. Section 993.162(c) of the regulations currently requires that when a producer applies for the diversion program, a deposit fee shall accompany the application. The deposit fees established in the current regulations are as follows: For each producer application, the fee 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. For commercial dehydrators acting as an agent for a group of four or more producers, the 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. The deposit fees charged to diverting growers were intended to finance the Committee's administrative costs for the entire diversion program with any excess monies to be refunded on a prorated basis to participants. Because of changed economics since these fees were established in the 1970's, the deposit fees established in the regulations would not currently cover these costs. The Committee, therefore, recommended revising the regulations

to provide that whenever a diversion program is implemented, the Committee shall, with the approval of the Secretary, compute and announce the deposit fees associated with filing applications for the diversion program. The deposit fees would be announced to the industry, instead of specifying the deposit fees in the rules and regulations. It is intended that the computed fees would reflect Committee administrative costs associated with administering a diversion program whenever such a program is recommended.

These changes would allow flexibility in the regulations by allowing the Committee to compute and announce the fees. Section 993.162(c) is proposed to be modified to reflect these changes.

The Committee also recommended changes to § 993.162(d) of the regulations. This section includes criteria for approving diversion applications and establishes fees in connection with modifying applications. The proposed changes would remove reference to specific fees and allow the Committee to apply fees consistent with the proposed process regarding deposit fees. The changes also would increase the service charge for modifying applications from \$1 to \$2 per ton to reflect current administrative costs. Section 993.162(d) is proposed to be modified accordingly. The rules and regulations pertaining to implementing a prune diversion program were developed in the 1970's, and several provisions are outdated. These proposed changes are designed to bring the rules and regulations in line with the present California prune industry practice. The changes also provide for flexibility in years when reserve pooling and a diversion program are implemented.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 24

handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

An updated industry profile shows that 9 out of 24 handlers (37.5 percent) shipped over \$5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5 percent) shipped under \$5,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual receipts over \$500,000. The majority of handlers and producers of California dried prunes may be classified as small entities. USDA does not have precise numbers on the total number of commercial dehydrators in the industry or their size. However, it may be assumed that many may be considered small under SBA criteria.

Under § 993.62 of the order, when volume control in the form of a reserve pool is implemented, prune producers can elect to divert part of their prune plum crop from normal markets in lieu of placing prunes in a reserve pool. Section 993.163 contains the administrative rules and regulations necessary to administer a diversion program. This proposed rule would revise those regulations.

One of the proposed changes would remove references in the regulations to establish dryaway ratios for prune plums of the French variety. Dryaway ratios are used to determine the dried weight equivalent of fresh prune plums diverted from normal markets. Because these dryaway ratios are outdated, the Committee recommended replacing them by a process that would allow the Committee to compute and announce current dryaway ratios based on a survey of commercial dehydrators. Surveying commercial prune dehydrators would impose a minor information collection burden on such entities. It is estimated that between 8 and 15 commercial dehydrators would be requested to furnish information on their annual average dryaway ratios to the Committee, and that it would take approximately 15 minutes to furnish the information. The total estimated annual burden of collecting this information is estimated to be 225 minutes (3 hours and 45 minutes) for the industry. The additional information collection burden is being submitted to the Office

of Management and Budget (OMB) for approval, and is addressed in a later section of this proposed rule.

Another change would update the prune producing regions to which the dryaway ratios for French prunes are applied, and allow the Committee to update the areas based on current production information. Dryaway ratios vary from area to area, and prune production shifts over time. Another change would specify in the regulatory text that tree removal is an acceptable diversion method, and that the Committee may determine, with the approval of the Secretary, and announce which method(s) of diversion may be used whenever a program is implemented. Another change would remove from the regulations outdated deposit fees for diversion program participants and authorize the Committee to compute such fees based on current program administration costs.

The proposed changes to the prune producing regions, addition of acceptable diversion methods, and the Committee's authority to determine which methods of diversion are to be used are not expected to have a significant impact on growers or handlers, either small or large. These changes would update the regulations to reflect changes in the industry and to facilitate administration and implementation of a voluntary diversion program, if recommended in the future.

The proposed changes regarding deposit fees would allow the Committee to collect charges from diversion program participants that reflect actual administrative costs incurred by the Committee. The fees specified in the regulations are outdated and would not cover the Committee's actual costs if a diversion program was needed to be implemented in the future. These changes would help to ensure that the growers participating in a future diversion program would pay the administrative costs of the program, as specified in § 993.62(g) of the order. Because growers participating in a diversion program are the beneficiaries of the program, it is appropriate that they pay the administrative fees of the program. In addition, because the diversion program is voluntary, growers would determine individually whether the costs would outweigh the benefits prior to their participation. It is not known how many growers would participate in a diversion program, since there has not been one implemented under the marketing order since the 1970's.

This proposed rule would be applied to small and large entities equally,

regardless of size. It is anticipated that the recommended actions would benefit the prune industry by updating the regulations to reflect changes in the industry, and by providing a process that would facilitate more timely implementation of a diversion program, if recommended.

The Committee discussed alternatives to this change on November 29, 2001, including taking no action. However, that would leave any future diversion program a less viable supply management tool due to outdated program elements. Another alternative was to update the data on dryaway ratios, prune producing regions, and diversion application charges through informal rulemaking the next time a diversion program was considered, rather than changing to a formula or survey procedure as proposed herein. This alternative was not recommended because the Committee believed that this proposal would provide for more flexibility in administering a future diversion program.

This action would allow the Committee to survey commercial prune dehydrators to estimate costs applicable to drying prune plums. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data to administer a future program. This rule would impose some additional reporting or recordkeeping requirements on both small and large California prune plum commercial dehydrators. The information collection requirements are discussed in the following section. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's Supply Management Subcommittee meeting on November 28, 2001, and the Committee meeting on November 29, 2001, where this action was deliberated, were both public meetings widely publicized throughout the prune industry. All interested persons, both large and small, were invited to attend the subcommittee and Committee meetings and participate in the industry's deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/>

fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that AMS is seeking approval for a new information collection request for Dried Prunes Produced in California, Marketing Order No. 993 (order).

Title: Dried Prunes Produced in California, Marketing Order No. 993.

OMB Number: 0581-NEW.

Type of Request: New collection.

Abstract: The information collection requirements in this request are essential to carryout the intent of the Act, to provide the respondents the type of service they request, and to administer the dried prune marketing order program, which has been operating since 1949.

On November 29, 2001, the Prune Marketing Committee unanimously recommended revising the order's administrative rules and regulations pertaining to a voluntary prune plum diversion program. One of the proposed revisions would require the Committee to survey commercial prune dehydrators to determine dried weight equivalents for fresh prune plums to be diverted. The Committee would obtain commercial dehydrators' annual dryaway ratios for the preceding five years, and would compute a five-year average dryaway ratio for each dehydrator. The Committee would then average those ratios and compute a five-year average dryaway ratio for each producing region, and apply that ratio to diverted prune plums in those regions.

The survey is needed so the Committee can compute and announce dried weight equivalents for fresh prune plums for use by those choosing to participate in a voluntary diversion program.

The information collection would be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff, and authorized Committee employees. Authorized Committee employees will be the primary users of the information and AMS is the secondary user.

The request for approval of the new information collection under the order is as follows:

Prune Dehydrator Survey

Estimate of Burden: Public reporting burden for this collection of information

is estimated to average 15 minutes per response.

Respondents: Commercial prune dehydrators.

Estimated Number of Respondents: 15.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3.75 hours.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-NEW and the Dried Prune marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

As mentioned before, AMS is seeking approval from OMB for the additional burden imposed by the *Prune Dehydrator Survey*. Upon OMB approval, the additional burden will be merged into the information collection currently approved under OMB No. 0581-0178, Vegetable and Specialty Crop Marketing Orders.

In addition to the information collection burden, this rule also invites comments on revising the regulations concerning a voluntary prune plum diversion program under the order. A 60-day comment period is invited to allow interested persons to respond to this proposal. All written comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 993.162, paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 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 would, 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 would 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 would, with the approval of the Secretary, remove that county from the existing region. Removal of a county from a production region also would 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 or 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 or 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 proposed 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 proposed method of diversion or the quantity of prune plums proposed 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.

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Dated: October 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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