Rules and Regulations

Federal Register

Vol. 66, No. 244

Wednesday, December 19, 2001

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–3 IFR]

Raisins Produced From Grapes Grown in California; Extension of Redemption Date for Unsold 2001 Diversion Certificates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule extends the deadline by which raisin handlers must redeem diversion certificates issued under the 2001 raisin diversion program (RDP). The deadline is specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). This action gives producers additional time to sell their certificates to handlers and thus be compensated for diverting their 2001 production, which is the intent of the RDP.

DATES: Effective December 20, 2001. Comments received by January 3, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. 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) 720–5698, 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: Maureen T. Pello, Senior 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) 720–5698.

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) 720–5698, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule extends the deadline by which handlers may redeem diversion certificates issued under the 2001 RDP for Natural (sun-dried) Seedless (NS) raisins. The deadline is extended from December 17, 2001, to January 18, 2002, and applies only to certificates unsold by producers to handlers as of December 18, 2001. This rule will not preempt any State or local laws, 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. Such 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 rule extends the deadline by which handlers may redeem diversion certificates issued under the 2001 NS RDP. The deadline is extended from December 17, 2001, to January 18, 2002, and applies only to certificates unsold by producers as of December 18, 2001. This action gives producers additional time to sell their certificates to handlers and thus be compensated for diverting their 2001 production, which is the intent of the RDP. This action was recommended by the RAC at a meeting on December 11, 2001, by a near unanimous vote of 36 in favor, 2 opposed (believed the RAC should adhere to the current deadline), and 1 abstained.

Volume Regulation Provisions

The order provides authority for volume regulation 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 raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction. Authority for the program is provided in § 989.56 of the order. Paragraph (e) of that section provides authority for the RAC to establish, with the approval of USDA, such rules and regulations as may be necessary for the implementation and operation of an RDP. Accordingly, additional procedures and deadlines are specified in § 989.156.

Pursuant to these sections, the RAC must meet by November 30 each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC prior to December 20. The RAC conducts a lottery if the tonnage applied for exceeds what has been allotted. RAC staff then notifies producers whether they have been accepted into the program.

Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate the following fall from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC by December 15 (Monday, December 17, 2001, for the 2001 RDP since December 15 fell on a Saturday) and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

2001 NS Diversion Program

The 2000–01 California NS raisin crop was the largest on record with final deliveries of raisins from producers to handlers totaling 432,616 tons. This compares to the 10-year average of 344,303 tons. With this large crop, 203,330 tons of NS raisins were set aside in a reserve pool. Of that reserve tonnage, 89,076 tons were ultimately allocated to a diversion program. As of December 1, 2001, 70,529 tons of diversion certificates had been acquired by handlers. It was reported at the December 11, 2001, RAC meeting, by RAC staff that the status of about 2,000 tons of 2001 diversion certificates are unknown.

RAC Recommendation

The RAC met on December 11, 2001, and addressed a concern expressed by some producers with the 2001 RDP. Some producers have had trouble selling their 2001 diversion certificates to handlers. There was concern that some certificates may remain unsold and unredeemed by the December 15 deadline (or Monday, December 17, 2001, for the 2001 RDP since December 15 fell on a Saturday). Several reasons were mentioned as to why this was occurring. The California raisin industry as a whole is experiencing a severe economic downturn. Two short crops in 1998 and 1999 along with other factors caused producer prices to drop drastically for the 2000 crop, marking the first time in about 13 years that prices had fallen. The value of handler inventories has likewise fallen which has contributed to handler difficulties in securing financing to purchase diversion certificates from producers. In addition, some handlers do not need any more raisins to meet their market needs. In some instances, producers have tried to negotiate a premium price for their certificates with handlers.

After deliberating various options (discussed in the following section of this rule regarding the Regulatory Flexibility Analysis), the RAC recommended extending the deadline for handlers to redeem 2001 diversion certificates from December 17, 2001, to January 18, 2002. The extension applies only to 2001 certificates unsold by producers as of December 18, 2001. Producers still holding certificates must have the certificates verified and stamped appropriately by the RAC by December 21, 2001, to indicate that such certificates will be valid until January 18, 2002. Handlers may then purchase these certificates from producers and redeem them for 2000–01 crop reserve raisins following prescribed procedures in § 989.156(k). This action will give producers still holding certificates additional time to sell their certificates to handlers, and give handlers additional time to secure financing to purchase the certificates from producers and redeem them with the RAC. Thus, producers will likely be compensated for diverting their 2001 production, which is the intent of the RDP. Section 989.156(k) is changed accordingly for the 2001 RDP only.

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 action 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 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule revises § 989.156(k) of the order's rules and regulations regarding the RDP. Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. This rule extends the date whereby handlers may redeem 2001 diversion certificates with the RAC from December 17, 2001, to January 18, 2002, and applies only to certificates unsold by producers to handlers as of December

18, 2001. Authority for this action is provided in § 989.56(e) of the order.

Regarding the impact of this action on affected entities, producers who curtailed 2001 production and have had trouble selling their diversion certificates to handlers will have additional time to sell their certificates to handlers. Handlers pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. For the 2001 RDP, the industry average free tonnage price applied to diversion certificates was $854 per ton, and applicable harvest costs as established by the RAC were $340 per ton. Preliminary volume regulation percentages for the 2001–02 crop were announced by the RAC at 56 percent free and 44 percent reserve. Thus, using these figures, if a producer was issued a certificate for 100 tons of raisins, he/she would be paid $138.24 per ton by the handler, or a total of $13,824 (($854 per ton × 100 tons × .56) minus (100 tons × $340 per ton harvest cost)). Extending the deadline allows producers additional time to sell their certificate and earn some income for not producing a 2001 crop.

Regarding the impact of this action on handlers, handlers experiencing financial difficulty would have additional time to arrange for financing through likely extending lines of credit with financial institutions. Handlers pay producers for the free tonnage applicable to the diversion certificate minus the $340 per ton harvest cost. Handlers redeem the certificates for 2000–01 crop NS reserve raisins and pay the RAC the $340 per ton harvest cost, plus payment for bins ($20 per ton) and for receiving, storing, fumigating, handling (currently totaling $46 per ton) and inspecting (currently $9.00 per ton) the tonnage represented on the certificate (or a total of $415 per ton). In the above example, the handler would redeem the 100-ton certificate with the RAC, pay the RAC $41,500 ($415 per ton × 100 tons), and receive 44 tons (.44 × 100 tons) of raisins from the 2000–01 reserve pool.

In addition, the $41,500 in the above example paid by the handler to the RAC would be allocated to the 2000–01 reserve pool and be used to pay remaining pool expenses or be distributed to 2000–01 reserve pool equity holders (producers). Thus, all such equity holders could potentially benefit from this action.

Several alternatives to the recommended action were considered by the RAC and/or by the RAC's Administrative Issues' Subcommittee. It was proposed that the RAC purchase unsold diversion certificates from producers. However, the order currently provides no authority for this. In addition, there are concerns as to how this would impact future raisin diversion programs, in particular, whether the integrity of the RDP could be maintained.

It was also proposed that a late fee be added to handlers' costs for redeeming diversion certificates after December 17, 2001. However, the order provides no authority for such a late charge. Another option considered was to take no action and adhere to the current deadline. Some industry members believe that there is no guarantee that producers can sell their harvested crop each season, and there should likewise be no "guarantee" that producers can sell their diversion certificates.

There was also consideration of other extension dates besides January 18, 2002. However, after much deliberation, the majority of RAC members believe that extending the deadline to January 18, 2001, was the best solution to this situation. This date will allow the RAC sufficient time before it recommends final volume regulation percentages to ensure that all redeemed diversion certificates are properly reported as 2001 acquisitions by handlers and included in the 2001–02 crop estimate.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (i.e., the application) has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. 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. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on December 11, 2001, and the RAC's Administrative Issues Subcommittee meeting on December 5, 2001, where this action was deliberated were all public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and information impact 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.

A 15-day comment period is provided to allow interested persons to respond to this rule. Fifteen days is deemed appropriate because the deadline is extended until January 18, 2002, and comments should be received by USDA prior to that date.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule needs to be in effect as soon as possible to extend the December 17, 2001, deadline; (2) this rule is a relaxation of the existing regulations because it extends a deadline; (3) producers are aware of this action which was recommended by the RAC at a public meeting; and (4) this interim final rule provides a 15-day comment period for written comments and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.156, paragraph (k) is revised to read as follows:

§ 989.156 Raisin diversion program.

* * * * *

(k) *Redemption of certificates.* Any handler holding diversion certificates may redeem such certificates for reserve pool raisins from the Committee. To redeem a certificate, a handler must present the diversion certificate to the Committee and pay the Committee an amount equal to the established harvest costs plus an amount equal to the payment for receiving, storing, fumigating, handling, and inspecting raisins as specified in § 989.401 for the entire tonnage shown on the certificate. Handlers who acquire diversion certificates from producers shall report acquisitions of such certificates and submit them for redemption in a manner and for the reporting periods provided in § 989.173(b) for the acquisition of raisins acquired from producers. The Committee shall issue a reserve release entitling the handler to an amount of reserve pool raisins equal to the entire tonnage shown on the certificate. Upon receipt of the diversion certificate, the Committee shall note on the certificate that it is cancelled. Diversion certificates will only be valid and honored if presented to the Committee for redemption on or before December 15 of the crop year for which they were issued: *Provided*, That for the 2001 diversion program for Natural (sun-dried) Seedless raisins, producers who have not sold certificates to handlers on or before December 17, 2001, may present them to the Committee on or before December 21, 2001. The Committee shall verify and stamp such certificates to indicate that the certificate is valid until January 18, 2002. Handlers may redeem such certificates with the RAC on or before January 18, 2002, in the same manner as described elsewhere in this paragraph (k).

* * * * *

Dated: December 14, 2001.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–31321 Filed 12–17–01; 10:22 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–17–AD; Amendment 39–12557; AD 2001–25–04]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. Models LTS101–600A–2 and LTS101–600A–3 Turboshaft Engines; and LTP101–600A–1A and LTP101–700A–1A Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc. and Textron Lycoming) Models LTS101–600A–2 and LTS101–600A–3 turboshaft engines; and LTP101–600A–1A and LTP101–700A–1A turboprop engines. This amendment requires replacing certain fuel controls that have beryllium-copper bellows with improved fuel controls that incorporate Inconel 718 stainless steel welded bellows. This amendment is prompted by a report of an uncommanded power loss on a Textron Lycoming LTS101 engine due to a corrosion damaged fuel control bellows. The actions specified by this AD are intended to prevent the engine from reducing the fuel flow to minimum flow resulting in an uncommanded power loss.

DATES: Effective date January 23, 2002.

ADDRESSES: The information in this AD may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc. and Textron Lycoming) Models LTS101–600A–2 and LTS101–600A–3 turboshaft engines; and LTP101–600A–1A and LTP101–700A–1A turboprop engines was published in the **Federal Register** on March 12, 2001 (66 FR 14345). That action proposed to require replacement of fuel controls with the following part numbers with an improved design fuel control that incorporates an Inconel 718 stainless steel welded bellows.

4–301–098–01
4–301–098–04
4–301–098–10
4–301–098–15
4–301–288–01
4–301–288–04
4–303–023–01
4–303–023–02
4–303–023–03
4–303–023–04
4–303–033–01
4–303–033–02
4–303–033–04

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

The FAA estimates that 40 engines installed on aircraft of U.S. registry would be affected by this proposed AD and that it would take approximately 3 work hours per engine to accomplish the proposed actions. The average labor rate is $60 per work hour. There are no required parts costs. Based on these figures, the total cost effect of the proposed AD on U.S. operators is estimated to be $7,200.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic effect, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is